

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Docket No. RM93-19-001

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Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Docket No. RM93-19-001

Order on Reconsideration and Clarifying Policy Statement

(Issued May 22, 1995)

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, Donald F. Santa, Jr.

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On October 26, 1994, the Commission issued a Transmission Pricing Policy Statement.¹ We announced a new policy regarding the pricing of transmission services provided by public utilities and transmitting utilities under the Federal Power Act (FPA) that allows greater transmission pricing flexibility than was allowed under previous Commission policies. The Commission traditionally had allowed only postage-stamp, contract-path pricing. The Policy Statement announced that the Commission also will allow a variety of other pricing methods that may be more suitable for competitive wholesale power markets, including distance-sensitive and flow-based pricing.

The Policy Statement identified five principles for evaluating transmission pricing proposals. The first principle is that transmission pricing should conform to the traditional embedded cost revenue requirement. However, the Commission also provided procedures whereby utilities can propose rates that do not conform to the traditional revenue requirement and thus do not meet the first principle, i.e., non-conforming proposals. The second principle requires that any new transmission pricing proposal, conforming or non-conforming, must meet the Commission's comparability standard.² The remaining three principles (concerning economic efficiency, fairness, and practicality) reflect goals that an applicant must try to meet, but that may need to be balanced against one another in the Commission's determination of whether the proposed rates are just and reasonable.

On November 22, 1994, the Vermont Department of Public Service (Vermont Department) filed a request for reconsideration of the Commission's decision to treat opportunity cost pricing as a form of marginal cost pricing consistent with comparability principles. On November 23, 1994, the American Forest and Paper Association (American Forest and Paper) filed a request for rehearing and motion for reconsideration concerning several aspects of the Policy Statement. American Forest and Paper asks the Commission to replace the Policy Statement with a Notice of Proposed Rulemaking. Further, it opposes the Commission's decision to allow opportunity cost pricing and marginal cost pricing. In addition, it asks the Commission to clarify that non-conforming proposals are subject to the notice and filing requirements of the FPA. Also on November 23, 1994, Catex Vitol Electric, Inc. (Catex) filed a request for reconsideration. Catex argues, among other things, that a generic approach specifying a standard method of transmission pricing is preferable to a case-by-case approach that allows experimentation.³

As discussed below, the requests for reconsideration of the Policy Statement are denied.⁴

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However, the Commission clarifies certain matters concerning non-conforming transmission pricing proposals.

Discussion

A. Policy Statement or Rulemaking

American Forest and Paper and Catex support a generic approach to transmission pricing in lieu of the case-by-case approach envisioned in the Policy Statement. American Forest and Paper argues that the Policy Statement will increase

uncertainty concerning transmission rates and thus inhibit the development of competitive power markets. It contends that the Policy Statement will allow utilities to propose widely varying tariffs that will make it difficult for a prospective customer to calculate transmission rates. American Forest and Paper and Catex argue that the customer will be forced to bear litigation costs and to wait until the completion of rate proceedings and any court review to know with certainty what rates, terms and conditions will be in effect. By that time, the customer may have lost the opportunity to win a competitive bid or otherwise finalize a long-term power plant financing. American Forest and Paper also argues that the Policy Statement will create a heavy administrative burden because the Commission will be required to adjudicate a high number of transmission rate cases. It requests that the Commission replace the Policy Statement with a Notice of Proposed Rulemaking of greater specificity.

Catex similarly asks the Commission to consider adopting a generic approach to transmission pricing, arguing that transmitting utilities will use the case-by-case approach to file experimental tariffs that will inhibit the transition to competition and open access. It submits that power marketers may be foreclosed for economic reasons from participating in all of the rate cases that they deem important. Catex also argues that the case-by-case approach will create a patchwork of rate structures that will make it difficult for transmission customers to arrange multi-utility transactions or calculate rates.

While we understand the concerns voiced by American Forest and Paper and Catex, we nevertheless do not believe that a "simple, generic approach to transmission pricing"⁵ is advisable. As we noted in the Policy Statement, there was a strong consensus among the 165 entities from whom the Commission received comments that we should allow greater pricing flexibility. We provided several reasons in the Policy Statement why greater pricing flexibility is required.⁶ First, exclusive use of methods that worked reasonably well in the past does not provide sufficient flexibility to accommodate the evolving needs of transmission owners and users in a more competitive era. Second, our existing "or" pricing policy may not always encourage the most efficient investments in and use of the transmission grid. Third, regional differences, such as power flow patterns and population densities, justify a more flexible policy that can account for such differences. Fourth, a more flexible pricing policy may be necessary to implement effectively our regional transmission group (RTG) policy, which encourages RTGs to deal with a broad range of issues, including pricing, and which indicates that the Commission will afford deference to RTG decision-making.

Our conclusion at this juncture in the transition to competitive bulk power markets is that, if the pricing flexibility envisioned in the Policy Statement is to be achieved, a case-by-case approach to transmission pricing, not a generic approach, is appropriate. As a result, we will deny the requests of American Forest and Paper and Catex to replace the Policy Statement with a generic proceeding.

With regard to the concerns of American Forest and Paper and Catex as to transmission pricing certainty, as the Policy Statement makes clear, the Commission, too, supports pricing certainty. Indeed, the Policy Statement states that the comparability principle includes comparable pricing certainty.⁷ In addition, the fifth pricing principle is that transmission pricing should be practical and as easy to administer as appropriate given the other pricing principles. The Policy Statement recognizes, however, that certain of the Commission's goals may have to be balanced against one another. For example, we recognize the inevitability of tradeoffs between the sometimes competing goals of simplicity and better price signals.⁸ Some pricing proposals may be so complex that they are difficult to understand and analyze. The Policy Statement indicates

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that while such complexity is not fatal, it should be balanced by efficiency gains or other advantages.⁹

B. Opportunity Cost and Marginal Cost Pricing

In the Policy Statement, the Commission explained that when the transmission grid is constrained and a utility chooses not to expand its system, we have allowed the utility to charge transmission-only customers the higher of embedded costs or legitimate and verifiable opportunity costs, but not the sum of the two ("or" pricing). The opportunity costs are capped by incremental expansion costs.¹⁰ The Policy Statement reflects the Commission's support for the use of marginal cost pricing to promote efficient decision-making by both transmission owners and users. It states that, to the extent practicable, transmission rates should be designed to reflect marginal costs, rather than embedded costs, in a manner consistent with the remaining pricing principles. As we explained, when lines are not congested, marginal transmission costs are primarily line losses. When lines are congested, marginal transmission costs are opportunity costs.¹¹

The Vermont Department asks us to reconsider our holding that opportunity cost pricing is a form of marginal cost pricing consistent with comparability principles. It argues that opportunity cost pricing is not marginal cost pricing because marginal

cost pricing contemplates that all customers will be assessed the same marginal cost price and because opportunity costs are inherently unverifiable. The Vermont Department further contends that opportunity cost pricing makes rates unpredictable, contrary to the comparability requirement.¹² The Vermont Department requests that the Commission either find that opportunity cost pricing is inconsistent with the comparability standard or provide that filings proposing opportunity cost pricing will be treated as non-conforming proposals.

American Forest and Paper similarly urges the Commission to reconsider whether utilities should be permitted to propose opportunity cost pricing. It argues that opportunity cost pricing is unfair and anticompetitive. According to American Forest and Paper, the requirement that the utility charge itself the same opportunity costs as it charges others is unenforceable because the determination that opportunity costs exist is a subjective decision made by the utility.

American Forest and Paper also opposes the use of marginal cost pricing, arguing that it will not create efficient transmission and generation siting decisions, as anticipated by the Policy Statement, in the absence of a competitive market for transmission. It suggests that the expansion of transmission capacity and the location of new generators and new load will be based on critical environmental, fuel supply, and siting factors rather than on marginal cost-based transmission rates.

We stand by our policy of allowing utilities to include opportunity cost charges in their transmission rates. The rationale for that policy is discussed in the Policy Statement, is set forth in prior Commission orders, and has been affirmed by the Court of Appeals for the District of Columbia Circuit.¹³

Moreover, because any new transmission pricing proposal, whether conforming or non-conforming, must meet the comparability standard, we will have ample opportunity to address any concerns that opportunity cost pricing may be unfair and anticompetitive or otherwise inconsistent with the comparability standard in the course of our evaluation of a particular transmission pricing proposal. With regard to the Vermont Department's argument that opportunity cost pricing is not the equivalent of marginal cost pricing because marginal cost pricing contemplates that all customers will be charged the same price, we do not agree that marginal cost pricing requires that all customers be charged the same price.¹⁴

With regard to American Forest and Paper's opposition to marginal cost pricing, while we agree that environmental, fuel supply, and siting factors are important considerations in the

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expansion of transmission capacity and the location of new generators and load, we also believe that providing more efficient price signals through the use of marginal cost pricing can influence efficient siting decisions. As we make clear in the Policy Statement, we believe that marginal cost pricing will promote efficient decision-making by both transmission owners and users.¹⁵ As a result, we encourage experimentation regarding marginal cost pricing proposals, but we expect such proposals to be fully supported. In the end, the Commission will determine the appropriateness of marginal cost pricing proposals on a case-by-case basis.

C. Procedures For Filing Non-Conforming Proposals

American Forest and Paper argues that two of the procedures in the Policy Statement relating to non-conforming proposals may be inconsistent with the FPA. First, it notes that the Policy Statement would permit a utility to submit a non-conforming proposal in the form of a petition for declaratory order. However, American Forest and Paper suggests that the FPA requires utilities to file and support proposed changes in rates and requires "a hearing in which [the utilities'] customers can be afforded due process of law."¹⁶ Second, American Forest and Paper objects that the Policy Statement would improperly exempt non-conforming proposals from the notice provisions of section 205. It asks the Commission to clarify that the FPA controls the notice and filing requirements for utilities submitting non-conforming proposals.

The clarification that American Forest and Paper seeks concerning non-conforming proposals submitted via a petition for declaratory order is unnecessary. A non-conforming proposal that is submitted in a petition for declaratory order will be subject to a notice and comment period. If, at the end of the declaratory order proceeding, the Commission finds that a non-conforming pricing proposal meets the statutory criteria, the Policy Statement provides that "the utility would still need to file a rate reflecting the proposal pursuant to FPA section 205."¹⁷ As the Policy Statement suggests, "[p]resumably the section 205 proceeding would be straightforward (i.e. akin to a compliance filing) . . . since the Commission would have already addressed the merits of the proposal in the declaratory order."¹⁸ However, such a non-conforming proposal would, in any event, be subject to the notice and filing requirements, and opportunity for hearing, under section 205.

With regard to non-conforming proposals submitted under section 205 in conjunction with conforming proposals, the Policy Statement provides that “[t]he conforming proposal would be subject to the notice and suspension procedures of section 205. The non-conforming proposal would not.”¹⁹ The phrase “notice and suspension procedures of section 205” was intended to refer to those provisions of section 205 that require a public utility to give 60 days’ notice to the Commission and the public before making a rate change and that permit the Commission to suspend the effective date of such rates.²⁰ These provisions are not applicable to non-conforming proposals because, as the Policy Statement indicates, a non-conforming proposal will be permitted to go into effect only prospectively from the date the Commission determines that such a pricing proposal meets the statutory requirements.²¹ Although American Forest and Paper apparently has interpreted the statement that non-conforming proposals would not be subject to the notice and suspension procedures of section 205 to mean that public utilities would not be required to provide notice of the submission of non-conforming proposals, that was not the Commission’s intention. Accordingly, we clarify that any non-conforming proposal submitted in conjunction with a conforming proposal must still be filed with the Commission. As with any rate filing under section 205, the Commission would notice the filing of both pricing proposals (i.e., conforming and non-conforming) and provide a period for public comment.

We also wish to clarify the procedures for filing non-conforming pricing proposals. In the Policy Statement, the Commission described those procedures as follows:

Any public utility that seeks non-conforming pricing must have on file with the Commission an open-access transmission tariff offering comparable services. Such comparability tariff must have been accepted for filing by the Commission before a non-conforming pricing proposal will be considered.

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Moreover, utilities proposing non-conforming transmission pricing must submit such pricing proposals either: (a) in conjunction with a section 205 conforming transmission pricing proposal (the non-conforming proposal would be reflected as alternative “pro forma” rate sheets to the conforming proposal); or (b) in a petition for declaratory order. [²²]

The Policy Statement states that, for alternative (a) above, the Commission and interested parties would review the non-conforming proposal in conjunction with review of the companion conforming pricing proposal.

The above-quoted language is somewhat unclear. On one hand, it states that the Commission will not consider a non-conforming proposal unless a comparability tariff has *already* been accepted for filing. On the other hand, it contemplates that a utility may file a non-conforming pricing proposal *simultaneously* with the filing of a conforming pricing proposal—one that has not already been accepted for filing.

We wish to clarify that if a public utility does not already have on file an open-access comparability tariff, it may simultaneously file both a conforming pricing proposal and a non-conforming pricing proposal in conjunction with its filing of an open-access comparability tariff;²³ however, the non-conforming proposal must consist of “pro forma” rate sheets that can take effect, if at all, only on a prospective basis at the end of the section 205 proceeding. If a public utility chooses to submit a non-conforming proposal via a petition for a declaratory order, it must already have a comparability tariff that has been accepted for filing by the Commission.

We also clarify that if a utility already has an open-access comparability tariff on file and later seeks to file a non-conforming pricing proposal, the utility can submit the non-conforming proposal either in a section 205 filing or in a petition for a declaratory order. In other words, the utility may submit the non-conforming proposal alone in a section 205 filing, to take effect, if at all, only on a prospective basis at the end of the section 205 proceeding; it does not have to re-file the conforming proposal that already has been accepted or file a new conforming proposal. In any event, the open-access comparability tariff must be filed before or simultaneously with the non-conforming proposal.

Similarly, we clarify that if a public utility already has an approved non-conforming proposal and seeks to submit a replacement non-conforming proposal, the utility can submit the new non-conforming proposal either in a section 205 filing, to take effect, if at all, only on a prospective basis at the end of the section 205 proceeding (the utility need not file a conforming proposal) or in a petition for a declaratory order. In those cases in which the utility chooses the declaratory order procedure, and the Commission finds that the utility’s proposal meets the statutory criteria, the utility would still need to file a rate reflecting the proposal pursuant to FPA section 205.²⁴

We hope that this clarification removes any uncertainty that may have existed regarding the procedures for filing non-conforming pricing proposals. As we noted in the Policy Statement, we believe that those procedures are flexible enough to permit utilities to propose non-conforming pricing innovations which they believe will benefit ratepayers and promote the development of a competitive bulk power market.²⁵

In addition to allowing utilities to propose non-conforming pricing proposals, the Policy Statement also allows considerable flexibility in the types of conforming proposals that may be filed. As we stated in the Policy Statement, we anticipate that a wide variety of pricing proposals may be reconciled with the traditional revenue requirement.²⁶ However, only a few such proposals have been filed to date.²⁷ Accordingly, we reiterate here that many varieties of cost-based pricing are possible and encourage utilities to consider innovative pricing approaches that conform to the traditional revenue requirement. We anticipate that many

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utilities will consider filing such pricing proposals in conjunction with non-discriminatory open-access (comparability) tariffs that could be filed either prior to issuance of a Final Rule on open access or in Stage Two proceedings following issuance of any final rule.²⁸

D. Miscellaneous

Catex urges the Commission to: (1) emphasize that rates must be simple and predictable; (2) require a utility to give the same transmission rate discounts to a competitor as are given to the utility's affiliates or to support the utility's own sales; (3) avoid subsidies and the loading of fixed costs onto non-firm transmission rates; and (4) require power pools to meet the comparability standard. We will deny Catex's motion for reconsideration with regard to these issues. The first three issues are already adequately addressed in the pricing principles set forth in the Policy Statement as discussed briefly below. The fourth (i.e., that power pools be required to meet the comparability standard) has already been proposed by the Commission in the open-access NOPR.²⁹

With regard to Catex's request that the Commission emphasize simplicity and predictability in transmission rates, we note that the Policy Statement already reflects the Commission's support of transmission pricing that is simple and predictable. Indeed, one of the Policy Statement's pricing principles is that transmission pricing should be practical. To this end, the Policy Statement provides that a transmission user should be able to calculate how much it will be charged for transmission service.³⁰ At the same time, however, the Policy Statement recognizes that this principle may need to be balanced on a case-by-case basis against the other pricing principles, such as the principle that transmission pricing should promote economic efficiency. In addition, although Catex contends that charges to a transmission customer should not be raised after the fact, for example, to compensate for loop flows on other systems, the Commission believes that whether a transmission rate should be increased, as opposed to fixed for the term of a transaction, is a matter to be determined based on the facts and circumstances of a particular case.³¹

With regard to Catex's concern about discounts, we note that the Commission historically has prohibited preferential pricing to affiliates.³² Moreover, such preferential pricing would be inconsistent with the requirement of non-discriminatory open-access transmission.³³ As the Policy Statement makes clear, the requirement that transmission pricing must reflect comparability prohibits the transmission owner from selling itself transmission service at a discount.³⁴

As to Catex's concern that subsidies be avoided, we reiterate that the Policy Statement provides that, consistent with the principle that transmission pricing must reflect comparability, a transmission owner that uses its own transmission system to make off-system sales should pay for transmission service at the same rate that third-party customers pay for the same service. As a result, a transmission owner is prohibited from selling itself transmission service at a discount that would be subsidized by native load and transmission-only customers.³⁵ With respect to Catex's concerns about appropriate pricing of non-firm transmission services, the Commission will consider on a case-by-case basis whether non-firm transmission customers are subsidizing other transmission users.

The Commission orders:

(A) The motions for reconsideration of American Forest and Paper, Catex, the Vermont Department, and RUS are hereby denied as set forth in the body of this order.

(B) The Commission's Policy Statement is hereby clarified as set forth in the body of this order.

-- Footnotes --

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¹ *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, Policy Statement, *FERC Statutes and Regulations* ¶31,005 (1994); 59 Fed. Reg. 55031, Nov. 3, 1994. (Policy Statement).

² *See American Electric Power Service Corporation (AEP)*, 67 FERC ¶61,168 (1994), *reh'g pending*. The comparability standard generally provides that "[a]n open-access tariff that is not unduly discriminatory or anticompetitive should offer third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's uses of its system." *Id.* at p. 61,490. The Commission explained in the Policy Statement that comparability of service applies to price as well as to terms and conditions. Policy Statement at p. 31,142. The Commission recently issued a Notice of Proposed Rulemaking in which it proposes to require all public utilities to have on file non-discriminatory open-access transmission tariffs and provides guidance on the comparability standard. *See Promoting Wholesale Competition Through Open-Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Docket Nos. RM95-8-000 and RM94-7-001, *Notice of Proposed Rulemaking*, 60 Fed. Reg. 17662 (Apr. 7, 1995), *FERC Statutes and Regulations* ¶32,514 (1995) (open-access NOPR).

³ On November 28, 1994, the Rural Utilities Service (RUS), a credit agency in the U.S. Department of Agriculture, filed comments in response to the Policy Statement. RUS asks the Commission to consider the impact of transmission pricing decisions on the RUS electric program, under which RUS provides low-cost financial assistance to rural electric distribution and power generation and transmission cooperatives pursuant to the Rural Electrification Act (RE-Act). RUS suggests, for example, that in considering pricing mechanisms involving RUS borrowers, the Commission should not permit non-RE-Act beneficiaries to get the benefit of RUS loan subsidies to the detriment of RUS borrowers. Although styled as comments, RUS's pleading was submitted after the deadline for comments in this proceeding had closed. Accordingly, we will treat RUS's pleading as a motion for reconsideration and deny it because we believe the issues raised by RUS are best addressed on a case-by-case basis as they may arise in connection with a particular transmission pricing proposal.

⁴ We stated in the Policy Statement that we would accept motions for reconsideration to help us refine the principles established therein and to provide an opportunity to respond to any questions or clarify any ambiguity. Policy Statement at p. 31,150. Although American Forest and Paper styled its pleading as both a request for rehearing and a motion for reconsideration, we will treat it as a motion for reconsideration only, as we find that rehearing does not lie. First, contrary to American Forest and Paper's argument that the Policy Statement has the force of a Final Rule "because it changes the filing requirements for electric transmission rates" (American Forest

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and Paper pleading at p. 1 n.1), as discussed below, the Policy Statement makes no such change in the filing requirements. Second, we find that rehearing does not lie because the Policy Statement constitutes a general statement of policy to be applied to transmission pricing proposals submitted in individual cases. *See, e.g., Pacific Gas and Electric Company v. FPC*, 506 F.2d 33 (D.C. Cir. 1974).

⁵ Catex pleading at p. 2.

⁶ Policy Statement at p. 31,139.

⁷ *Id.* at p. 31,143.

⁸ *Id.* at p. 31,139.

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⁹ *Id.* at p. 31,144.

¹⁰ *Id.* at p. 31,138.

¹¹ *Id.* at p. 31,143.

¹² The Vermont Department notes that the Policy Statement provides that comparability of pricing includes certainty of pricing and that a transmission customer should have the same price certainty as does the transmitting utility. Policy Statement at p. 31,143. The Vermont Department (as well as American Forest and Paper) argue that price certainty is particularly important in light of the court's decision in *Cajun Electric Power Cooperative, Inc. v. FERC*, 28 F.3d 173 (D.C. Cir. 1994).

¹³ *See, e.g., Policy Statement at pp. 31,137-38; Pennsylvania Electric Company, 58 FERC ¶61,278, reh'g denied and pricing policy clarified, 60 FERC ¶61,034, reh'g denied, 60 FERC ¶61,244 (1992), affirmed sub nom. Pennsylvania Electric Company v. FERC, 11 F.3d 207 (D.C. Cir. 1993).*

¹⁴ Marginal cost pricing could be implemented either by charging all customers the same price or by charging a customer for marginal costs at the time it signs a contract. Under the contract version of marginal cost pricing, customers who sign contracts at different times would be charged different prices.

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¹⁵ Policy Statement at p. 31,143.

¹⁶ American Forest and Paper pleading at p. 7.

¹⁷ Policy Statement at p. 31,148.

¹⁸ *Id.*

¹⁹ *Id.* at p. 31,147.

²⁰ *See* 16 U.S.C. §§824d(d),(e); Policy Statement at p. 31,136.

²¹ Policy Statement at p. 31,136. As the Policy Statement provides, if “the Commission determines that the alternative, non-conforming rate proposal is acceptable under the FPA, the Commission will allow the utility to make a compliance rate filing, and the rates will be put into effect prospectively.” *Id.* at p. 31,147.

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²² *Id.*

²³ We note that in *Entergy Services, Inc., et al.*, 70 FERC ¶61,006 (1995) (*Entergy*), the Commission rejected the non-conforming pricing proposal that Entergy Services, Inc. (Entergy) filed simultaneously with a conforming pricing proposal. The Commission gave three reasons for its decision, one of which was that Entergy's non-conforming proposal was premature because Entergy did not have on file (*i.e.*, accepted by the Commission) an open-access tariff offering comparable services. Although our clarification in this order of the procedures for submitting non-conforming pricing proposals eliminates prematurity as a basis for rejecting Entergy's non-conforming proposal, the other two bases remain valid. As a result, our clarification here does not require reversal of the *Entergy* result.

²⁴ *See* Policy Statement at p. 31,148.

²⁵ *Id.* at p. 31,150.

²⁶ *Id.* at pp. 31,144-46.

²⁷ We are aware of only two pricing proposals filed since the issuance of the Policy Statement that propose an alternative to postage-stamp, contract-path pricing. *See Jersey Central Power & Light Company, et al., Docket No. ER95-791-000; Southern Company Services, Inc., Docket No. ER95-969-000.*

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²⁸ Under the Commission's recently proposed open-access NOPR, if utilities have not filed open-access comparability tariffs by the time a Final Rule is issued, the Commission in Stage One would place on file for such utilities open-access tariffs reflecting postage-stamp embedded cost rates. Such utilities could seek a different rate methodology in Stage Two. *See* open access NOPR, *FERC Statutes and Regulations* ¶32,514 at pp. 33,146-48, *mimeo* at pp. 288-95.

²⁹ *See* open access NOPR, *FERC Statutes and Regulations* ¶32,514 at pp. 33,081; 33,147, *mimeo* at pp. 96-97; 290-91.

³⁰ Policy Statement at p. 31,144.

³¹ However, we note that our "or" policy permits transmission rates to reflect the higher of embedded or opportunity costs and that the calculation of such costs can be on an annual basis. *See* Florida Power & Light Company, 70 FERC ¶61,158, at p. 61,483 (1995), *rehearing pending*.

³² *See, e.g., Heartland Energy Services, Inc.*, 68 FERC ¶61,223, at pp. 62,062-63 (1994); *Ocean State Power*, 44 FERC ¶61,261, at pp. 61,983-85 (1988).

³³ *See AEP*, 67 FERC at p. 61,490; open access NOPR, *FERC Statutes and Regulations* ¶32,514 at p. 33,078, *mimeo* at pp. 87-88.

³⁴ Policy Statement at pp. 31,142-43.

³⁵ *Id.* at pp. 31,142-43.