UNITED STATES OF AMERICA
ELECTRIC ENERGY MARKET COMPETITION
INTERAGENCY TASK FORCE
AND THE
FEDERAL ENERGY REGULATORY COMMISSION

Electric Energy Market Competition Task Force Docket No. AD05-17-000

NOTICE REQUESTING COMMENTS ON
WHOLESALE AND RETAIL ELECTRICITY COMPETITION

(October 13, 2005)

Overview

Section 1815 of the Energy Policy Act of 2005 requires the Electric Energy Market Competition Task Force to conduct a study of competition in wholesale and retail markets for electric energy in the United States. Over the past several years, wholesale competition has developed unevenly in many regions of the country. Moreover, fewer than 20 states have adopted retail choice programs that allow some electricity consumers to choose their retail electric generation supplier. The purpose of this study is to analyze and report to Congress on the critical elements for effective wholesale and retail competition, the status of each element, impediments to realizing each element, and suggestions for overcoming these impediments.

In recent years, some states and the federal government have taken steps to encourage competition in the electric power industry. In the Energy Policy Act of 2005, Congress established an inter-agency task force, known as the "Electric Energy Market Competition Task Force" (the Task Force), to conduct a study and analysis of competition within the wholesale markets and retail markets for electric energy in the United States. The Task Force consists of 5 members:

(1) 1 employee of the Department of Justice, appointed by the Attorney General of the United States – J. Bruce McDonald, Deputy Assistant Attorney General, Antitrust Division; (202) 514-1157, bruce.mcdonald@usdoj.gov.

(2) 1 employee of the Federal Energy Regulatory Commission, appointed by the Chairperson of that Commission – Michael Bardee, Associate General Counsel, Office of the General Counsel- Markets, Tariffs, and Rates; (202) 502-8068, michael.bardee@ferc.gov.

(3) 1 employee of the Federal Trade Commission, appointed by the Chairperson of that Commission – Michael Wroblewski, Assistant General Counsel for Policy Studies; (202) 326-2166, mwroblewski@ftc.gov.

(4) 1 employee of the Department of Energy, appointed by the Secretary of Energy – David Meyer, Deputy Director, Division of Permitting, Siting, and Analysis, Office of Electricity Delivery and Energy Reliability; (202) 586-1411, David.Meyer@hq.doe.gov.

(5) 1 employee of the Rural Utilities Service, appointed by the Secretary of Agriculture – Karen Larsen, Office of Assistant Administrator, Electric Programs (202) 720-9545, Karen.Larsen@usda.gov.

Section 1815(c) of the Energy Policy Act of 2005 requires the Task Force to "consult with and solicit comments from any advisory entity of the task force, the States, representatives of the electric power industry, and the public." This Notice begins this process. The Task Force also will publish a draft final report for public comment, before submitting the final version to Congress as required by Section 1815(b)(2)(B).

Listed below is a series of questions for which the Task Force seeks public comment. For both wholesale and retail competition for electric power, we focus on the current state of competition and on factors that help support competition, or that otherwise may limit competition, among suppliers and buyers in regional wholesale markets and retail markets at the state level. The questions listed below are by no means exhaustive. The Task Force encourages commentors to raise any other additional factors that affect competition in wholesale and retail electric power markets. It is not necessary to respond to each question. Rather, it would be helpful for respondents to provide, for example, specific information about market responses to particular governing regulations, or to compare and contrast the market reaction to the means individual states have used to address various retail competition issues (*e.g.*, generation siting, provider of last resort pricing, etc.).

Overview Questions

1. What are the critical elements or attributes of competition in wholesale electricity markets that the Task Force should examine?

2. What are the critical elements or attributes of competition in retail electricity markets that the Task Force should examine?

3. What benefits have occurred because of competition in wholesale and retail electricity markets? What additional benefits are expected? What benefits were forecasted and have not occurred? Why? What harms have occurred because of competition in wholesale and retail electricity markets ?

4. What are the major public policy concerns that the Task Force should examine in its review of competition in wholesale and retail electricity markets?

5. In what significant ways do wholesale and retail electricity markets differ from other energy or commodity markets? What implications do their differences have for public policy?

Wholesale Market Questions

Commentors should answer with a specific regional wholesale market in mind and should be as specific as possible.

A. Wholesale Supply Trading and Participation

1. To what extent does wholesale trading help result in an economic and reliable supply of electricity in each region? What are ways to improve the provision of an economic and reliable supply of electricity?

2. What share of electric power used to serve retail (or ultimate consumer) load is obtained through wholesale market transactions in each state or region? In what ways has this share changed over the past 10 years and the past 5 years and why?

3. What share of electric power used to serve ultimate consumer load is generated by a utility for its own native load? What share of electric power used to serve utility customer load comes from utility affiliates? What share comes from unaffiliated generators?

4. What opportunities exist for generation owners to sell output in wholesale markets?

5. What opportunities exist for wholesale power buyers to purchase electricity in wholesale markets? Is demand (negawatts) a product that can be traded in the wholesale market?

6. Is there an organized regional market or exchange serving buyers and sellers in the region? What products does the organized market provide? What percentage of energy supplied is secured through organized markets and through bilateral trades? Are there liquid trading points in the region? What are the volumes traded? What is the trend of bid/ask spreads (getting greater or smaller)?

7. To what extent do wholesale buyers and sellers participate in futures or others commodity markets or transactions to balance the financial risks of competitive electricity markets? How liquid are forward markets in different regions and how far ahead can one transact in these markets?

8. What role have credit issues played in the ability of market participants to participate in wholesale markets, including forward markets?

9. Are there competitive processes by which distribution utilities solicit proposals for native load or default service?

10. How can changes and trends in wholesale market prices by region be measured?

11. How should the performance of wholesale markets in serving the needs of various types of power sellers (*e.g.*, marketer, generator, independent producer, merchant, public utility, nonpublic utility, qualified facility, renewable power producer, co-generator) be measured?

12. How has restructuring of incumbent utility operations and the introduction of competitive retail markets in retail choice states affected participation in regional wholesale markets? Has the introduction of retail markets affected the level of long-term contracting in wholesale markets?

13. Please describe instances in which competition has resulted in relatively higher prices or lower reliability in a specific regional market.

B. Generation Ownership:

1. How has ownership of electric generating plants changed over the past 10 years?

2. In the past 10 years, when generations assets have been sold or transferred, how much capacity was sold or transferred to a) utility or utility affiliates, b) existing non-utility market participants; c) new market participants?

3. How much existing merchant or non-utility generation assets have been sold or transferred? What were the reasons for these transactions?

4. How much existing capacity has been sold or transferred to utilities and converted to rate-based assets? Of those how many were previously affiliated with a utility and how many were purchased from other entities?

C. Generation Adequacy:

1. How is generation adequacy addressed in each region or system? Is there a specific enforceable requirement that load serving entities or market participants must meet? How is planning for generation adequacy conducted?

2. Has new generation construction kept pace with demand growth in the state or market region? If not, why not? What are the most important factors that affect whether generation will be built?

3. What role does the ability to enter into long-term contracts play in financing new generation projects?

4. What generation facilities have been installed in the past five years? What was the experience in the process?

5. What generation facilities have been cancelled in the past five years and why?

6. What difficulties, if any, have developers of new generation facilities encountered in bringing generation supply to market? (*E.g.*, difficulties in financing, siting, permitting, licensing, interconnection, transmission access, fuel supply). What are ways to improve the process?

7. Are there instances in the past five years in which a new generation facility has been completed that caused prices in a previously congested area to decline?

8. How do the approaches and responsibilities for assuring the availability of sufficient generation capacity to meet peak load and load growth vary among regions and states that have retail choice and/or tightly organized regional markets and those that do not?

9. What incentives do competitive suppliers have to maintain adequate reserve capacity?

10. What incentives or responsibilities do load serving utilities have to maintain adequate reserve capacity?

11. How can competitive markets assure adequacy of generation supply? How is reserve sharing to meet state or regional generation adequacy standards accomplished in competitive markets? How can other institutions/market processes provide an effective substitute for reserve sharing?

D. Transmission Investment and Regulation

1. What are the most important factors that affect whether transmission will be built? What are ways to improve the process? What difficulties have transmission owners had in upgrading or building new transmission facilities? What are the prospects for merchant transmission?

2. Over the past 10 years, what have been the trends in investments in transmission by utilities by state or region? Are there any prevailing patterns in transmission investments in upgrades and replacement of existing plant versus new lines, interconnections, automation? Have these patterns of investment shifted over this period? Are there any projected changes in patterns of transmission investment over the next 5 years?

3. How are transmission needs of merchant generators and renewable energy projects included in regional or utility transmission planning and upgrades?

4. How has the establishment of Regional Transmission Organizations (RTOs) changed transmission operations, transmission planning, and investment patterns?

5. Within a region or RTO, is there a different process for transmission upgrades that are not required for reliability but would increase access to lower priced power in areas with economic congestion?

6. In the absence of RTOs, how is transmission planning, siting, and construction for regional needs coordinated among utilities, generators, and State regulators? What challenges do transmission owners face upgrading or building new transmission facilities?

7. How have transmission costs changed for transmission owners and for transmission customers over the past 10 years? What are the reasons for any increases or decreases?

E. Wholesale Market Transparency and Information

1. Do purchasers and sellers view markets as providing stable, transparent prices? Are there differences among products and markets?

2. Is there sufficient timely and accurate publicly available information to assure that market participants can adequately assess the economics of proposed wholesale power transactions or assess the financial implications of self build versus competitive alternatives for generation supply?

3. How can any information deficits be remedied to improve the utility of market information? Are there any competitive risks associated with greater transparency of prices or of other information about market participants?

4. Are there open and transparent processes by which load serving entities solicit proposals for generation from independent firms and/or from affiliated generators?

Retail Market Questions

Commentors can answer the following questions based on their knowledge and experience in any state with retail competition:

A. Retail Markets Overview

1. What factors or measures should the Task Force examine in reviewing state retail choice experiences? How should these factors and measures be evaluated?

2. How should the Task Force assess the performance of evolving competitive retail markets?

3. How can the performance of competitive retail markets for retail customers be measured in the absence of competitive suppliers for residential and small business customers in many areas?

4. Why did your state implement a retail electric choice program?

5. Why did your state decide not to implement a retail electric choice program?

B. State Retail Choice Experience

1. How have consumers benefited from retail electric competition? How have consumers been harmed by retail electric competition?

2. How have retail customer prices changed since the beginning of the transition to retail choice? Have the changes been comparable across all classes of customers?

3. How many alternative competitive retail suppliers are currently soliciting or accepting new customers in each service area? Has the number increased or decreased since the state introduced retail choice?

4. Does the availability of alternative competitive suppliers differ among service areas, customer classes, load size, rural and urban areas, or other geographic areas, or by credit policies? If so, why? If not, why not?

5. Have suppliers offered new types of products and services (*e.g.*, time of day pricing, interruptible contracts, green power, etc.) in states where retail competition has been implemented? If so, describe the products and what customer response has been.

6. How do retail customers obtain information about competitive alternatives? Do retail consumers have enough information to readily make informed choices among competing suppliers?

7. Does the state allow groups of retail customers to aggregate their electricity demand? How are they structured? What customer groups are included? Is participation on an opt-in or an opt-out basis? Has aggregation enabled consumers to benefit from retail electricity competition? If not, why not?

8. Now that many state-mandated transition periods to phase-in retail competition are ending, what issues do states face to ensure competitive retail markets?

C. Retail Supply Questions in States with Retail Competition

1. How does the state program address assurance of adequate generation supplies for default service customers (*i.e.*, customers that: (a) do not choose a competitive provider, or (b) have lost their competitive supplier for whatever reason)?

2. How do default service obligations affect retail power competition? Do the transmission services allowed for default service obligations affect retail competition and, if so, how? What changes, if any, would you suggest in these transmission services?

3. How has the development of RTOs affected the development of retail competition in the state?

4. Did the state require that the incumbent utility divest all or some of its generation assets used to serve its retail native load when retail competition was introduced? Did incumbent utilities voluntarily divest generation assets as part of restructuring to implement retail competition? Did incumbent utilities transfer ownership of generation assets used to serve native load to an affiliated entity?

5. What has been the result of generation ownership transfers serving the state or region since the start of retail competition? Has there been a consolidation of generation ownership in the state or region?

6. If a retail load serving utility no longer owns sufficient generation assets to meet its obligations to its retail customers (existing customers, or as the supplier of last resort or default service provider) what mechanism (*e.g.*, spot market purchases, buy back or output contracts, etc.) does it use to obtain generation services to fulfill these obligations? What share of a utility's load is obtained via the different mechanisms? How are these shares trending?

7. How do non-utility retail service providers in the state secure access to transmission and distribution services needed to deliver power to their retail customers?

8. What difficulties have retail supplier entrants encountered in entering the market? What conditions/incentives attract suppliers to retail markets?

D. Demand Side Participation

1. How do rate structures affect the incentives of large, medium, or small electric customers to participate in demand side response programs? Does this effect differ if a state has a retail choice program?

2. What measures have states taken to make customer demand responsive to changes in availability and price of electricity supply? Do these measures differ if a state has a retail choice program?

3. What mechanisms allow for the participation of load response measures – interruptible load, self-generation, demand-side management, conservation and energy efficiency measures as alternatives in wholesale electric markets and or load serving utility resource portfolios? How has the performance of these measures been monitored?

4. Have states adopted alternatives to average cost pricing to encourage demand response?

5. What has been the effect on demand and demand elasticity in light of these measures?

6. How prevalent is the use of distributed resources (*e.g.*, distributed generation and distributed energy storage) within the state?

7. To what extent are retail customers within the state or region increasing use of distributed resources and what types of resources are involved?

E. Rising Fuel Prices

1. Are changes in prices for oil, natural gas, and coal affecting the results of competitive wholesale markets and viability of competitive suppliers and if so, how?

2. How are changes in prices for oil, natural gas, and coal affecting retail electricity costs?

3. Are there differences in retail price impacts between states and/or utility systems operating under retail competition models and those that operate under traditional utility cost based rate models?

How to File Comments

Any interested person may submit a written comment that will be considered part of the public record. Comments may be filed electronically via the e-Filing link on the Federal Energy Regulatory Commission's web site at http://www.ferc.gov for Docket No. AD05-17-000. Most standard word processing formats are accepted, and the e-Filing link provides instructions for how to Login and complete an electronic filing. First-time users will have to establish a user name and password. User assistance for electronic filing is available at 202-208-0258 or by E-Mail to **efiling at ferc.gov**. Comments should not be submitted to the E-Mail address. Commentors filing electronically do not need to make a paper filing. Commentors that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street N.E., Washington, DC, 20426.

This filing is accessible on-line at http://www.ferc.gov, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on November 18, 2005

Magalie R. Salas
Secretary