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INTRODUCTION TO STATE VERSUS FEDERAL JURISDICTION

Chairman Robert S. Kenney December 8, 2014
Missouri Public
Service Commission



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Why Regulation?

- Natural Monopolies
 - High capital costs
 - Economies of scale
 - Economic efficiency
- Public Interest
 - Essential service



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Why Good Regulation?

- Ensure the provision of an essential service
- Ensure that the services are available to all on a nondiscriminatory basis
- Ensure confidence and credibility of decisions
- Ensure the financial integrity of the utility (Capital Markets Demand It)



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Basis of Federal Jurisdiction

➤ United States Constitution – Commerce Clause

“The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States”

Art. I, § 8.

➤ United States Constitution – Supremacy Clause

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Law of any State to the Contrary notwithstanding.”

Art. VI, § 2.



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Federal Regulatory Bodies

- The Federal Communications Commission (FCC)
- The Nuclear Regulatory Commission (NRC)
- The North American Reliability Corporation (NERC)
- The Department of Energy (DOE)
- The Department of Justice (DOJ)
- The Securities Exchange Commission (SEC)
- The Federal Trade Commission (FTC)
- The Environmental Protection Agency (EPA)
- The Federal Energy Regulatory Commission (FERC)



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FERC

- Established in 1920 as the Federal Power Administration under the Federal Water Power Act of 1920
- In 1977 the FPA becomes the Federal Energy Regulatory Commission



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FERC

➤ Section 201 of the FPA:

- (a) **Federal regulation of transmission and sale of electric energy** It is declared that the business of transmitting and selling electric energy for ultimate distribution to the public is *affected with a public interest*, and that Federal regulation of matters relating to generation to the extent provided in this subchapter and subchapter III of this chapter and of that part of such business which consists of the *transmission of electric energy in interstate commerce* and *the sale of such energy at wholesale in interstate commerce* is necessary in the public interest, *such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.*
- (b) **Use or sale of electric energy in interstate commerce** (1) *The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce*, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. *The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction*, except as specifically provided in this subchapter and subchapter III of this chapter, *over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.*



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FERC

- Section 205 of the FPA:
 - (a) **Just and reasonable rates** All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.
 - (b) **Preference or advantage unlawful** No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission,
 - (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or
 - (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

16 USC § 824d



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KEY LAWS AND FERC ORDERS

- Energy Policy Act of 1992
 - Power market competition
- Order 888
 - Required unbundling of generation and transmission
- Order 889
 - Required Open Access Same-Time Information System (OASIS)
- Order 890
 - Required transparency in the planning process
- Order 2000
 - Facilitated creation of Regional Transmission Organizations
- Order 1000
 - Requires participation in regional and interregional planning processes and regional and interregional cost allocation for projects in regional and interregional plans



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Regional Transmission Organizations

- Characteristics of RTO
 1. Independence
 2. Regional configuration
 3. Operational authority
 4. Reliability
- Functions of RTO
 1. Tariff administration
 2. Congestion management
 3. Parallel path flows
 4. Ancillary services
 5. OASIS
 6. Market monitoring
 7. Planning and expansion
 8. Interregional coordination



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State Jurisdiction

- States have jurisdiction over *intrastate*, retail sales of electricity
- Traditional, vertically integrated states, the state public service or public utility commission is the economic regulator, determining retail rates
- States have jurisdiction over resource adequacy
- States have jurisdiction over safety
- States have jurisdiction over all that is not explicitly given to the federal government



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Basis of State Jurisdiction – Missouri

- Missouri Revised Statutes:
- Chapter 386 – Public Service Commission
- Chapter 392 – Telephone and Telegraph Companies
- Chapter 393 – Gas, Electric, Water, Heating and Sewer Companies
- Chapter 394 – Rural Electric Cooperative



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State Jurisdiction – Missouri

Promulgating Rules:

Chapter 2 – Practice and Procedure

Chapter 3 – Filing and Reporting

Chapter 4 – Standards of Conduct

Gratuities

Ex Parte and Extra Record Communication

Chapter 10 – Utilities (applies to Gas, Electric, and Water)



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State Jurisdiction – Missouri

Promulgating Rules:

Chapter 13 – Service and Billing Practices for Residential Customers of Electric, Gas and Water Utilities

Chapter 14 – Utility Promotional Practices

Chapter 18 – Safety Standards

Chapter 20 – Electric Utilities

Chapter 22 – Electric Utility Resource Planning

Chapter 23 – Electric Utility Operational Standards



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State Regulatory Bodies

- Public Service or Public Utility Commissions
- Environmental Protection Agencies: Department of Natural Resources, Air and Water Conservation Commissions
- State Attorneys General: Consumer Protection Divisions
- County Commissions/Zoning Boards and Commissions



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Missouri RTOs

Intersection of Federal and State Jurisdiction

Southwest Power Pool (SPP)

- West side of state
- 9 States
- Control Center: Little Rock, AK
- 48,368 Miles of Line
- 63,000 MW installed generation capacity
- \$1.98B in market transactions

Midwest Independent System Operator (MISO)

- East side of Missouri
- 15 States
- Control Center: Carmel, IN/St. Paul, MN
- 65,787 Miles of Line
- 176,454 MW installed generation capacity
- \$20.6B in market charges



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Intersection of Federal and State Jurisdiction

Transmission Owner
And RTO Have FPA
Section 205 Filing Rights



Either RTO or TO File Tariff with FERC



Transmission Owner
Starts Constructing
Project



TO Charges RTO for FERC
Approved Costs, including
incentives



FERC Approves with
Incentives & CWIP

RTO charges Load Serving
Entities (utilities) based on cost-
allocation methodology and pays
the TO



**RETAIL RATE
PAYERS PAY FOR
TRANSMISSION**



Utility Includes Transmission Costs
in State rate case, or changes in
transmission cost flow through FAC



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Questions?

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