



FERC Podcast Transcript

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Betsy Moler: Order No. 888

Craig Cano: Welcome to Open Access, the podcast series of the Federal Energy Regulatory Commission, or FERC. I'm Craig Cano your host.

Our goal here is to have a conversation about FERC; what it does and how that can affect you. FERC can get very legal and very technical, so we will strive to keep it simple. FERC is an independent regulatory agency that oversees the interstate transmission of electricity, natural gas and oil. FERC's authority also includes review of proposals to build interstate natural gas pipelines and liquefied natural gas terminals and licensing of nonfederal hydropower projects.

FERC protects the reliability of the high-voltage interstate transmission system through mandatory reliability standards, and it monitors interstate energy markets to ensure that everyone in those markets is playing by the rules.

Today on "Open Access, a FERC Podcast," Mary O'Driscoll and I continue our two-part series on the development of competitive energy markets in the United States.

The open, competitive and reliable markets that we rely on today could not have come about without a major policy shift that occurred in a pair of landmark FERC rulemakings in the 1990s. These rules cracked open the monopoly hold that electric utilities and natural gas companies had on the transmission of those commodities that are so critical not just to our economy, but to everyday life.

In part one of the series, we talked about Order No. 636, which injected competition into the natural gas industry by requiring the separation of the commodity sales from pipeline transportation service. Today's podcast addresses Order No. 888, a 1996 FERC rulemaking that removed impediments to the competition in the wholesale bulk power marketplace to bring more efficient, lower-cost power to the nation's electricity consumers.

Mary O'Driscoll: The evolution of energy markets over the past 40 years has been nothing short of amazing. It started in the early days of the 20th Century, when cities generated electricity for use by their residents and expanded into our high-voltage interstate transmission system. Today, that system can send electricity from a power generator that bid to provide electricity to consumers hundreds of miles away. It has been a marvel of science, economics, policy and politics that evolved over time.

Yet we would not be where we are today without a major policy shift that came about more than 20 years ago. That's when the Federal Energy Regulatory Commission

issued a landmark rule known as Order No. 888 that required all owners of high-voltage interstate transmission lines to open up their systems to any power generator or power consumer who wanted to use them.

That rule effectively created and opened the regional markets we have today, and that served to improve the efficiency of the sprawling US electric system and promote competition that has helped lower prices for consumers.

With us today is Betsy Moler, who served as chair of FERC 20 years ago and who was the guiding force of Order No. 888 in the early years of its implementation. Betsy Moler joined the Commission in 1988 and has the distinction of being appointed by three separate presidents, two of them Republican and one a Democrat. Originally an appointee of Ronald Reagan, Betsy Moler was reappointed to the commission by George H. W. Bush and then was named chair by Bill Clinton. Betsy Moler left the Commission in 1997 to become Deputy Secretary of Energy and following that worked in the private sector. She's now retired.

Welcome to Open Access.

Betsy Moler: Thank you Mary, it's good to see you.

Mary O'Driscoll: It's good to see you, too. Let's kind of get to the bottom of it: What is the effect of Order 888? What did it actually do, why was it so important?

Betsy Moler: Well it paved the way for an open competitive electricity market, which has meant that customers have the benefit of bidding and the lowest possible cost under the circumstances.

Mary O'Driscoll: What is it about that though that made such a landmark. It is considered one of the landmark orders.

Betsy Moler: Well before 888, the commission was experimenting with the idea of open access. It had really started in the natural gas side of the Commission's jurisdiction when the Commission opened up pipelines on a case-by-case basis. Started with natural gas part of the Commission when the Commission opened up natural gas pipelines to all comers. And then competitive generators came about through acts of Congress, and we eventually decided that we needed to provide a generic, uniform tariff and require all owners of transmission that we had jurisdiction over to file a tariff – modeled on the one we had provided – to provide open access to their transmission lines. They were required to take service under the tariff, as was everybody else who wanted to transmit electricity.

Mary O'Driscoll: And so then this meant that the lines were essentially open to anybody who wanted to use them?

Betsy Moler: Within the limits of the physical capacity, correct.

Mary O'Driscoll: How did the Commission kind of set the stage for this? You said that you had been doing things on kind of an ad hoc basis, one company or one line at a time, I guess.

Betsy Moler: Well, when I became chair of the Commission, four other Commissioners were appointed shortly thereafter and we began to think about and talk about amongst ourselves what we could do to make our electricity grid more efficient. We began to experiment with open-access tariffs. The first one we acted on was an individual case involving AEP, one of the largest transmission owners in the country. Then we sent it to hearing and told them to develop an open-access tariff. Then we experimented a little bit more. As a matter fact, we sent 44 cases to hearing where they were told to figure out what to do.

It then became very obvious that that wasn't going to happen very uniformly or consistently or efficiently. So the Commission developed an open-access Notice of Proposed Rulemaking, known affectionately as the Mega-NOPR, where our goal was to facilitate competitive wholesale electric power markets. And in our proposal we said that all jurisdictional entities would have to file a uniform open-access tariff. We proceeded generically rather than case-by-case, where the commission set the rules rather than the parties in a proceeding.

Mary O'Driscoll: OK, so then how did all the stakeholders feel about this? I'm sure there was a variety of responses.

Betsy Moler: Well, some were thrilled, some were horrified because it was a major undertaking. But we had the benefit of a rulemaking where we heard from everyone, as this Commission does so well. We heard all comers and we developed a tariff that worked. I remember the day that we issued Order 888 and 889 – Order numbers, excuse me, I have to follow the proper lawyerly lexicon. I went that afternoon to speak to the annual Washington meeting of the Edison Electric Institute, and I had plenty to say that day. No lack of material. But I think we were careful, we were fair. We said you have to open up your lines, we said you have to take service the same as everybody else does.

It gave companies that own generation access to markets. We also said that we would cover their legitimate, prudent, verifiable stranded costs. So I think overall most of those that were affected by it thought it was fair. It got great coverage, we did an environmental impact statement that showed billions and billions of dollars in savings for customers and it was an exciting time.

Mary O'Driscoll: And it went to the Supreme Court as I recall, too, didn't it.

Betsy Moler: It did. There is no lack of plaintiffs suing the Commission. That's true with every major Commission initiative. It went to the DC Circuit; they affirmed it. Then it went to the Supreme Court, and the Supreme Court affirmed the order, in whole, in March 2002 in a case called *New York v. FERC*. I went to the oral argument there, too. I

was very excited, and I have to tell you that my stomach turned upside down and backward and forward during the oral argument, and we were thrilled with the decision.

There were as a separate opinion that said we should have gone even further, that we should have gone all the way to retail, open access. But that was not the rule that we issued.

Craig Cano: So the whole evolution of the industry really took off from there. You opened up the transmission system with Order 888 and that led to regional markets with all different services offered within those markets. Did you foresee anything like that happening?

Betsy Moler: Never in my wildest dreams could I have predicted what has happened, but I will say I'm very proud to have played a major part, along with four wonderful colleagues and the Commission staff, in opening up one of the major enterprises in the United States to competition. It's been a success. Things like regional transmission organizations and the kinds of cases the Commission is dealing with now just show how much more sophisticated the industry and the world have gotten in those intervening 20 years.

Mary O'Driscoll: Right, right. I think technology has probably had a tremendous amount to do with that as well.

Betsy Moler: Oh, it's huge. We were having a big debate on what would be the platform, what would be the technology platform for these tariffs and for requesting service. At the time you had the telephones were used, and these were not my cell phone. You had to call up on the telephone and request service. We had a technical conference on technology and lots of people there didn't trust the Internet, didn't think it was going to be reliable enough to do this important task. It makes me feel like that was a long time ago.

Mary O'Driscoll: It was quite in its infancy. With 20 years of hindsight, what would you have done differently, if anything?

Betsy Moler: You warned me you were going to ask that question, I will say. And, you know, I can't say that I would have done anything differently. It was a group effort. It was a collaborative effort. The orders were issued with no dissenting voices and opinions, so we gave the industry certainty at what they were dealing with. And, yeah, you know you think about well could we have gone all the way to an individual's house with an open-access tariff. Could we have grabbed jurisdictions away from the state to go even further than we did?

I'm fairly certain that we would've had a whole lot more litigation had we done that, and it may not have been so successful. So I think we hit it about right.

Mary O'Driscoll: Thank you so much for being here with us today and talking about the

history of one of the real landmark orders, the basis for what we have today with our electric industry and our economy, and for all the work that you've done with that.

Betsy Moler: Thank you, it was a wonderful thing to be a part of and I've enjoyed the trip down memory lane thinking about it again.

Mary O'Driscoll: Thank you so much Betsy Moler.

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