

1    **Q:    Re: Raphals Supplemental Report, dated June 21, 2019, pages 2-6**

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**Citation 1 (pages 2-3):**

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**FERC is indeed very flexible about some things, but not about others.  
It is important to be clear which is which.**

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**Regarding charges for network upgrades, Order 890 showed no  
flexibility at all, as seen in paragraphs 870-885, which rejected calls  
for modification to the iron-clad requirement regarding incremental  
rates.**

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**Citation 2 (pages 4-6):**

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**In the present case, CAEC and Hydro fail to distinguish between:**

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**a) Network upgrade policies carried out by a jurisdictional utility  
applying its own FERC-compliant OATT;**

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**b) Network upgrades that create benefits in other regions, in  
particular those governed by RTOs or ISOs; and**

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**c) Transmission planning procedures.**

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**Case a) is governed by Order 890 and the many following orders that  
implemented it. Network upgrades are directly assigned to the customer that  
required them, based on a “but for” analysis, described below. CAEC has not  
advanced any references indicating that FERC shows flexibility in this regard.**

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**Of these three policy areas, a) is the only one which is relevant to Hydro’s  
NAP. While FERC left considerable flexibility and room for regional  
differences in b) and c), it did not do so in a). It is thus misleading to invoke  
this supposed flexibility, as it is not relevant to the case at hand.**

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**The “but for” analysis that FERC to this day applies to the question of  
network upgrades under an OATT is well described in a recent Order  
concerning the Southwest Power Pool (SPP).**

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**When such an upgrade subsequently allows the provision of service to a new  
customer which would not have been possible “but for” the upgrade, SPP’s**

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1 OATT provides revenue credits to the party to whom the upgrade was  
2 directly assigned:  
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4 3. ...The directly-assigned network upgrade costs are recoverable, with  
5 interest, from customers taking new transmission service that could not  
6 have been provided “but for” the Creditable Upgrade in the form of  
7 credit payment obligations, until the amount owed to the upgrade  
8 sponsor (i.e., the transmission customer or generator interconnection  
9 customer) that was directly assigned the costs of the Creditable Upgrade  
10 is zero.<sup>3</sup> (underlining added)  
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12 Thus, at each step, the “but for” analysis is critical. The full costs of the  
13 upgrade are directly assigned to the new customer if they would not have  
14 been required “but for” its service request. And, to avoid the free rider  
15 problem and the disincentive that would result from making the party  
16 that moves first shoulder the full cost of the upgrade, future users will be  
17 obliged to reimburse the first mover for a share of those costs, if it would  
18 not have been possible to provide service to the future user “but for” the  
19 upgrade directly assigned to the first mover. This is FERC’s solution —  
20 within the framework of an OATT for network upgrades which do not  
21 raise inter-regional issues — to the concern raised by CAEC on page 4 of  
22 the Memorandum, where it wrote:  
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24 To summarize, the notion of *beneficiary pays*-based cost allocation  
25 generally improves upon the comparatively rough justice associated  
26 with load-ratio share or various notions of *the load that triggered the*  
27 *investment pays the full freight*-basis of cost allocation when applied in  
28 cases where benefits accrue broadly across many loads.  
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30 (underlining added)  
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- 32 a) Does the Brattle Group agree with Mr. Raphals’ assessment of FERC’s  
33 flexibility with regard to network upgrade policies carried out by a  
34 jurisdictional utility applying its own FERC-compliant OATT? If not, why  
35 not?  
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- 37 b) Does the Brattle Group agree with Mr. Raphals’ view, expressed in  
38 Citation 2, that FERC addresses the « free rider » problem by using “but  
39 for” analysis to determine which future users should contribute to  
40 reimbursing the first mover? If not, why not?

- 1           c) **In the Brattle Group’s opinion, should the Board apply the approach**  
2           **described in Citation 2 to ensure that future customers that benefit from a**  
3           **transmission upgrade paid for by a new customer also contribute to its**  
4           **costs? If so, how does it suggest that such an approach be integrated into**  
5           **the NAP? If not, why not?**  
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- 7    A.    a) Yes, Brattle generally agrees with Mr. Raphael’s assessment.  
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- 9           b) Yes, Brattle agrees that in the FERC Order cited, the FERC addresses the “free  
10          rider” issue through the “but for” analysis approach.  
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- 12          c) As stated on page 7 of the Brattle Report, we recommend that customers that  
13          paid for initial network upgrades “should be eligible for additional refunds as  
14          additional customers join the system over a pre-determined time horizon.”  
15          Brattle recommends that the network upgrades and thus costs of additional  
16          customers are determined through a “but for” analysis as well. This is  
17          consistent with the approach described in lines 40-45 of the question. In other  
18          words, as additional customers join the system, an analysis will be performed  
19          “but for” the initial network upgrades. This “but for” analysis will consider the  
20          initial network upgrades paid for by a prior customer and determine whether  
21          “but for” those previous network upgrades the subsequent customer would have  
22          been unable to receive service without a network upgrade. That is, if the  
23          subsequent customer could not be served “but for” the initial network upgrade  
24          the new customer would be responsible for a portion of the network upgrade  
25          costs.