

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

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.³ (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.