

FERC Issues Proposed Rule on Transmission Planning and Cost Allocation

June 18, 2010

On June 17, the Federal Energy Regulatory Commission (FERC) issued a Notice of Proposed Rulemaking (NOPR) in which it proposes to amend the transmission planning and cost allocation requirements for public utility transmission providers established in Order No. 890. FERC states that there have been significant changes in the electric power industry since Order No. 890 and the NOPR's purpose is to address deficiencies in the current transmission planning and cost allocation processes.

In the NOPR, FERC proposes to require public utility transmission providers to submit compliance filings implementing several reforms to their planning processes, including the following requirements:

- Each public utility transmission provider must participate in a regional transmission planning process that produces a regional transmission plan and meets the following transmission planning principles: (1) coordination, (2) openness, (3) transparency, (4) information exchange, (5) comparability, (6) dispute resolution, and (7) economic planning studies.
- Each public utility transmission provider must amend its tariff such that its local and regional transmission planning processes explicitly provide for consideration of public policy requirements established by state or federal laws or regulations that may drive transmission needs.
- Each public utility transmission provider must remove from its tariff or FERC-jurisdictional agreements any provisions that establish a federal right of first refusal for an incumbent transmission provider with respect to facilities in a transmission plan.
- Each public utility transmission provider must, through its regional transmission planning process, coordinate with the public utility transmission providers in each of its neighboring transmission planning regions to address transmission planning issues. Such coordination must be reflected in an interregional transmission planning agreement filed with FERC.

With respect to cost allocation, FERC proposes to require each public utility to have both intraregional and interregional cost allocation methods. For intraregional cost allocation, each public utility transmission provider within a planning region would be required to have a cost allocation methodology

for projects that are located entirely within the geographic boundaries of such region. For interregional cost allocation, public utility transmission providers located in each pair of neighboring transmission planning regions would be required to have a method for allocating between the two regions the costs of a new transmission facility that is located within both regions. Both types of cost allocation methods would have to satisfy certain principles proposed by FERC.

Each public utility transmission provider would be required to submit a compliance filing within six months of the final rule demonstrating compliance with the planning reforms. In addition, each public utility transmission provider would be required to submit, within one year of the effective date of the final rule, compliance filings that (i) demonstrate that it meets the proposed requirements with respect to interregional transmission planning agreements, and (ii) demonstrate that it meets the proposed requirements with respect to an interregional cost allocation method or methods.

Comments on the NOPR are due 60 days after its publication in the *Federal Register*.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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