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Order No. 1000-A Transmission Planning and Cost Allocation

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Overview

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Background

- On July 21, 2011, the Federal Energy Regulatory Commission (FERC) issued Order No. 1000, which is a Final Rule that aims to correct the deficiencies in the Commission's electric transmission planning and cost allocation requirements for public utility transmission providers that were adopted in Order No. 890.
- On May 17, 2012, FERC issued Order 1000-A, upholding Order No. 1000 and denying rehearing of the criteria in the planning and cost allocation process that transmission providers are required to satisfy.
- Order No. 1000-A reaffirms FERC's goal to expand and modernize the transmission grid.

Order No. 1000-A

- *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Docket No. RM10-23-000, 139 FERC ¶ 61,132 (2012), 77 Fed. Reg. 32,182 (May 31, 2012).
- Effective Date: October 11, 2012

The Need for Reform

- Order Nos. 1000 and 1000-A are intended to address deficiencies in transmission planning and cost allocation processes that remain following the issuance of Order No. 890:
 - Lack of requirement for a regional transmission plan
 - Transmission needs driven by public policy requirements
 - Renewable energy resources
 - Energy efficiency / demand response
 - State economic development policies
 - Obstacles to non-incumbent transmission projects developers' participation in regional transmission planning processes
 - Lack of coordination between transmission planning regions
- In Order No. 1000, FERC concluded that existing methods for allocating costs of new transmission are not just and reasonable because they inhibit the development of efficient, cost-effective transmission facilities necessary to produce just and reasonable rates

Order No. 1000-A: Overview

- In Order No. 1000-A, the Commission denied rehearing in all respects.
- The Commission, among other things:
 - Upheld the minimum criteria that a regional and interregional transmission planning process must satisfy, and reiterated general principles for cost allocation;
 - Upheld its decision to remove from Commission-approved tariffs and agreements any federal right of first refusal for transmission facilities selected in a regional or interregional transmission plan for purposes of cost allocation; and
 - Did **not** alter or otherwise extend the deadlines for Transmission Providers to submit compliance filings implementing Order No. 1000.

Order No. 1000-A: Legal Authority

- Substantial Evidence for Order 1000.
 - Theoretical threat exists that, absent the reforms, rates would otherwise become unjust, unreasonable, or unduly discriminatory.
- Burden of reforms does not outweigh benefits.
- Order 1000 does not infringe upon state authority.
- A contract is not needed to allocate costs.
- Role of FPA Section 217(b).
- FPA Section 202(a) does not preclude FERC from Order 1000 reforms.

Clarifications Regarding Transmission Planning

- FERC is concerned with process, not substantive outcomes
 - Transmission plans and cost allocation decisions do not need to be filed.
- Facilities in a local plan do not need to be approved at the regional or interregional levels, except where the transmission provider seeks to have the facilities included for cost allocation purposes.
- It is premature to mandate any specific role for state regulators in the regional planning process.
 - Appropriate place to determine role of state regulators and whether state regulators can be reimbursed for planning costs is through development of each region's regional planning process.

Order 1000-A: The Enrollment Process

- Order 1000-A creates new requirement for an enrollment process.
 - The regional transmission planning process must include a clear enrollment process for public and non-public utility transmission providers that make the choice to become part of a transmission planning region.
 - The regional transmission planning process must be clear that enrollment will subject enrollees to cost allocation if they are found to be beneficiaries of new transmission facilities selected in the regional transmission plan for purposes of cost allocation.
 - Each Transmission Provider must maintain a list of enrolled entities in the Transmission Provider's Tariff.
- Non-public utilities:
 - Not required to enroll by Order 1000.
 - May make enrollment decision towards end of its region's process to develop Order 1000 planning revisions.

Transmission Needs Driven by Public Policy Requirements

- What must be considered are transmission needs driven by public policy requirements, not the public policy requirements themselves.
 - “Public policy requirements” includes duly enacted laws or regulations passed by a local government (e.g., municipal or county government).
- The necessary “consideration” of transmission needs driven by public policy requirements is: (i) to identify transmission needs driven by public policy requirements; and (ii) to evaluate potential solutions.
- Order No. 1000 did not prescribe how active a public utility transmission provider must be in identifying transmission needs driven by Public Policy Requirements.
- Posting obligation is:
 - (a) to post an explanation of those transmission needs driven by Public Policy Requirements that have been identified for evaluation; and
 - (b) to post an explanation of how other transmission needs driven by Public Policy Requirements introduced by stakeholders were considered during the identification stage and why they were not selected for further evaluation.

Clarifications to Interregional Coordination Requirements

- Order 1000 only requires the development of a formal procedure to identify and jointly evaluate interregional transmission facilities.
 - It does not require any particular types of studies to be undertaken or that the interregional coordination process plan and develop interregional transmission facilities.
- Transmission needs driven by public policy requirements do not need to be a part of interregional transmission coordination.
- No requirement that stakeholders be permitted to participate in the interregional transmission coordination process. But stakeholders may provide input through the regional planning process.

New Interregional Transmission Coordination Obligations

- In Order 1000-A, FERC established two new compliance obligations:
 - Each public utility transmission provider must describe in its OATT how its regional transmission planning process will enable stakeholders to provide meaningful and timely input with respect to the consideration of interregional transmission facilities.
 - Each public utility transmission provider must explain in its OATT how stakeholders and transmission developers can propose interregional transmission facilities for the public utility transmission providers in neighboring transmission planning regions to evaluate jointly.

Nonincumbent Reforms: Qualification Criteria

- FERC declined to provide standardized qualification criteria.
- Clarification of what is not permitted:
 - Cannot require a transmission developer to demonstrate that it either has, or can obtain, the state approvals necessary to operate in that state.
 - Cannot require a transmission developer to demonstrate registration with NERC as a precondition to being assigned a reliability project.
- FERC clarifies certain steps if project is included:
 - If a transmission project is selected for inclusion in a regional transmission plan, the transmission developer is required to submit a development schedule that indicates the required steps necessary to develop and construct the facility.
 - As part of the ongoing monitoring of the progress of the transmission project once it is selected, Transmission Providers in a transmission planning region must establish a date by which state approvals to construct must be achieved.
 - If the required steps have not been achieved by that date, the project may be removed from the transmission plan.

Nonincumbent Reforms: Evaluation of Proposed Projects

- FERC affirms that a nondiscriminatory process is required.
- FERC declined to set minimum standards for selecting a project for inclusion in a plan for cost allocation purposes.
 - When determining which facilities should be included in a regional transmission plan, public utilities transmission providers may use either flexible criteria or bright-line metrics.
- Same process must be used in a region to evaluate new transmission facilities whether they are proposed by nonincumbents or incumbents.
 - The regional transmission planning process may take into consideration the particular strengths of an incumbent or nonincumbent developer during its evaluation.
 - When cost estimates are part of the selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or nonincumbent.

Nonincumbent Reforms: Reevaluation of Proposals if Delay

- **Reliability Standard Compliance Impacts**
 - Reliability Standards changes unnecessary because Functional Entity must prepare its system even if transmission project is delayed/abandoned.
 - A Registered Entity will not be subject to a *penalty* for a violation of a reliability standard caused by a nonincumbent developer's abandonment of a transmission facility if, on a timely basis, the Registered Entity identifies the violation and complies with all of its obligations under the NERC reliability standards.
- **Responsibility to complete abandoned project:**
 - Nothing in Order 1000 requires an incumbent to construct a nonincumbent's project selected in a regional plan if the nonincumbent abandons the project.
 - Nothing in Order 1000 requires an incumbent to purchase the facilities/materials, related to an abandoned project that the incumbent must complete.
- **Clarification of abandoned plant recovery:**
 - FERC did not make a blanket finding that abandoned plant recovery will be permitted, but will review requests on case-by-case basis.

Cost Allocation

- FERC affirmed cost allocation findings
 - Emphasizes difference between cost allocation and cost recovery.
 - Declines to provide guidance on “beneficiary” and “benefit”; these issues should be addressed in regional process.
 - Finds that entities in regions remote from region where new facility is located will not be harmed because their regional process must include the facility in its plan for cost allocation to occur.
- Non-Public Utility Enrollment:
 - If a non-public utility transmission provider exercises its discretion to enroll as a transmission provider in a regional transmission planning process, it may be allocated costs roughly commensurate with the benefits that it is determined to receive from new transmission facilities.
- All interested parties, including transmission customer LSEs, must have the opportunity to participate in the process of developing the interregional cost allocation method(s).

Cost Allocation Clarifications

- Other Clarifications:
 - Postage Stamp may meet Cost Allocation Principle 1.
 - Public utility transmission providers can rely on scenario analyses to prepare the regional transmission plan and to select new transmission facilities for cost allocation. This satisfies Cost Allocation Principle 2.
 - Cost Allocation Principle 4 does not preclude an RTO from allocating to a withdrawing RTO member the cost of eligible transmission upgrades that are located solely in the RTO and are approved before the withdrawal pursuant to a Commission-approved RTO agreement
 - Cost Allocation Principle 5 applies to the benefit to cost analysis of Cost Allocation Principle 3, requiring data used in the analysis to be transparent.
 - Participant funding may be permitted, but not as a regional or interregional cost allocation method.

Reciprocity Clarifications

- The reciprocity provision of Order No. 1000 does not directly require non-public utility transmission providers to comply with the Order No. 1000 transmission planning and cost allocation reforms.
 - Non-public utility transmission providers are free to decide whether they will seek transmission service subject to FERC jurisdiction.
 - Regional planning process can have withdrawal process.
- In the absence of a safe harbor tariff, a non-public utility transmission provider's obligation to a public utility transmission provider to provide comparable transmission service begins when the public utility transmission provider requests comparable reciprocal service from the non-public utility transmission provider.
 - FERC refuses to establish rule that a public utility transmission provider can refuse service to a non-public utility transmission provider that declines to enroll in the regional transmission planning and cost allocation processes.
- If non-public utility chooses to use a reciprocity tariff, it must ensure the tariff's provisions substantially conform or are superior to the pro forma OATT and Attachment K, as revised by Order 1000.
- FERC does not intend to enforce reciprocity tariff provisions on its own.

Additional Clarifications

- **Difficulties in Reaching Agreement on Regional Processes**
 - FERC refuses to specify the necessary level of “agreement” (e.g., consensus, majority, impasse?).
 - A public utility transmission provider will not be deemed out of compliance with Order No. 1000 if it demonstrates that it made a good faith effort, but was ultimately unable, to reach resolution with neighboring non-public utility transmission providers on a regional transmission planning process, interregional transmission coordination procedures, or a regional or interregional cost allocation method.
- **Waivers of Order 1000:**
 - Entities that have received waivers of Order Nos. 888, 889, and 890 are not required to make a compliance filing to Order No. 1000 and do not have to seek waiver of Order No. 1000.
 - FERC will entertain requests from any entity for waiver of Order No. 1000 on a case-by-case basis.

Order No. 1000-A: Potential Issues

- Entities seeking rehearing of Order 1000-A raised a number of issues. Some of the issues raised concern:
 - Elimination of ROFRs;
 - Available options for entities to challenge a cost allocation methodology filed with the Commission;
 - Process for considering public policy requirements; and
 - Whether a transmission planning process may also select a project developer.

Order Nos. 1000 and 1000-A: Appellate Review

- In addition to rehearing requests filed in response to Order No. 1000-A, several Petitions for Review have been filed.
- Presently:
 - One Petition for Review has been filed with the Seventh Circuit; and
 - Three Petitions for Review have been filed with the D.C. Circuit.
- The Commission has sought to transfer the Seventh Circuit appeal to the D.C. Circuit. However, the Commission has been unsuccessful in that effort thus far.

Questions / Comments

Order No. 1000-A: Transmission Planning and Cost Allocation

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