Discussion of FERC's Order No. 1000: Reforming Transmission Planning & Cost Allocation Requirements

PRESENTED BY

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Overview

- Disclaimer: *This webinar does not constitute legal advice. Opinions are those of the presenters.*

- The following presentation will address:

  - Key Dates

  - Major reforms in transmission planning and cost allocation, including elimination of the Federal Right of First Refusal

  - Legal authority for adopting the reforms

  - Implications of Order No. 1000

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Key Dates

- Issuance Date of Final Rule: July 21, 2011
- Federal Register Date: TBD
- Rehearing Date: August 22, 2011
- Initial Regional Compliance Filing Due Date: Early October 2012
- Initial Interregional Filing Due Date: Early April 2013

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Who is Subject to the Final Rule?

- Public Utility Transmission Providers
  - Must submit OATT revisions to Attachment K and other applicable agreements
  - Combined regional compliance filings are permitted, but each public utility transmission providers' OATT must include the relevant reforms
- ISOs/RTOs and Members
  - Like other public utility transmission providers, RTO/ISO and its members may make a compliance filing to show their existing processes satisfy the requirements of the Final Rule
  - Members of RTOs/ISOs need not make a separate filing

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Who is Subject to the Final Rule?

- Non-public utility transmission providers
  - To maintain a safe harbor tariff, non-public utility transmission provider must ensure that their tariff is consistent with or superior to the *pro forma* OATT as revised by the Final Rule
  - If the Commission finds through an appropriate record that non-public utility transmission providers are not participating in the transmission planning and cost allocation requirements of the Final Rule, the Commission may exercise authority under FPA section 211A on a case-by-case basis

Which Facilities are Subject to the Final Rule?

- Requirements of the Final Rule are intended to apply to new transmission facilities selected in a regional transmission plan for purposes of cost allocation
  - New transmission facilities are those which are subject to evaluation, or reevaluation, within a local or regional transmission planning process after the effective date of the Order No. 1000 compliance filing of the public utility transmission provider
  - Each region should determine at what point a previously approved project is no longer subject to reevaluation, and thus is subject to requirements of the Final Rule

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Transmission Planning Reforms

- Transmission Providers must participate in a regional transmission planning process which produces a single regional transmission plan that satisfies Order No. 890 principles
  - Transmission Providers must evaluate alternative transmission solutions that may be more efficient or cost-effective than those identified in local transmission processes
  - Transmission Providers must also consider non-transmission alternatives proposed on a comparable basis (i.e. : demand response, and energy efficiency)

- Transmission Providers in neighboring transmission planning regions must coordinate concerning more efficient or cost-effective solutions
  - Does not have to meet Order No. 890 principles, but each transmission provider in neighboring regions must develop same language in their OATT regarding interregional coordination
  - Must adopt coordination procedures that allow for transparent exchange of data that can account for any differences in data

Interregional Coordination Requirements

- Transmission Providers in neighboring transmission regions must develop a formal procedure to identify and jointly evaluate interregional transmission facilities that are proposed to be located in neighboring regions as well as facilities that could address transmission needs more cost-effectively and efficiently
    - The interregional transmission coordination procedures must provide for the exchange of planning data and information at least annually
    - A website or email list must be maintained to communicate information related to coordination procedures

- Transmission Providers must update their OATTs to describe the interregional transmission coordination procedures for a particular pair of regions
    - Transmission Providers have the option of filing an interregional transmission coordination agreement

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Public Policy Consideration in Transmission Planning

- Each transmission planning processes (local and regional) must consider transmission needs driven by established federal or state laws or regulations (public policy requirements)
  - "Public policy requirements" – enacted statutes and regulations promulgated by a relevant jurisdiction (state or federal)
- No mandate to include any specific requirement
  - Transmission Providers and stakeholders will determine procedures to identify transmission needs and potential solutions (including potential consideration of requirements under EPA regulations) procedure needs to be just and reasonable and not unduly discriminatory
- Not precluded from choosing to plan for goals

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Public Policy Requirements continued

- By “consider” FERC means: (1) the identification of transmission needs driven by public policy requirements and (2) evaluation of potential solutions to meet those needs. **Need procedures for both**
- At a minimum, procedures must allow for input from stakeholders, including but not limited to, those responsible for complying with the public policy requirements and developers of potential transmission facilities that are needed to comply with one or more requirements
- Must identify out of the larger set of needs, those needs for which transmission solutions will be evaluated (Committee of LSEs; Committee of state regulators; stakeholder group)
- Post on website an explanation of which transmission needs - driven by public policy requirements - will be evaluated for potential transmission solutions in the local or regional transmission planning process, as well as an evaluation of why other suggested transmission needs will not be evaluated

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Removal of ROFR

- **What is a ROFR:** the right of an incumbent to construct, own, and propose cost recovery for any new project that (1) is located within its service territory; and (2) approved for inclusion in a new transmission plan developed through the Order No. 890 planning process

- **What does the rule do:** remove from OATT, Commission-approved tariffs, and agreements any provision that grants a **federal** ROFR for facilities selected in a regional plan for purposes of cost allocation

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Removal of ROFR continued

- **Scope**: FERC rejects request that reforms related to non-incumbent transmission developers do not apply in non-RTO regions. "The reforms apply equally to public utility transmission providers in all regions."
  - For RTOs it may mean removing affirmative provisions granting ROFR (e.g. SPP Attachment O Section VIII; CAISO Tariff Section 24.4 6.2; MISO Transmission Owners Agreement Appendix B Section VI)
  - For Non-RTOs it will be adding provisions to Attachment K regarding ability of non-incumbents to be able to develop projects approved in the regional transmission plan for purposes of cost allocation

Removal of ROFR continued

- Focus is on the set of transmission facilities that are evaluated at the regional level for purposes of cost allocation – not projects included in the local plan that are rolled-up without going through a needs analysis at the regional level

  - Does not require removal of a federal ROFR for local transmission facility – facility located solely within the utility's retail distribution service territory or footprint that is not selected in the regional plan for purposes of cost allocation
  - Does not affect the right of the incumbent to build, own and recover costs for upgrades to its own transmission facilities - such as tower change outs or reconductoring - regardless of whether or not the project has been selected in the regional plan for purposes of cost allocation
  - Does not alter the incumbent's use and control of an existing right of way

- Nothing in the rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to, authority over siting or permitting of transmission facilities

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Removal of ROFR continued

- Requires nonincumbent developers of a facility selected in the regional plan to have comparable opportunity to transmission developer to allocate the cost through a regional cost allocation method or methods
  - Must establish framework in consultation with stakeholders
  - May, but are not required to, use competitive solicitation to solicit projects or project developers to meet regional needs
- Change from NOPR – elimination of proposed requirement to allow a developer to maintain for a defined period, a right to build and own

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Need to Develop

- **Qualification criteria** – provide developer the opportunity to demonstrate that it has the necessary financial resources and expertise to develop, construct, own, operate and maintain transmission facilities
  - Must provide opportunity to remedy a deficiency
  - No qualification is necessary for parties that only propose transmission projects but do not intend to develop them
  - May enter voluntary arrangements - nothing requires incumbent to operate and maintain facility developed by another party

- **Protocols for submission and evaluation**
  - Must have in OATT the same information requirements as other providers in the same planning region
  - Must allow a project to be evaluated on a comparable basis
  - May request engineering studies and cost analysis

- **Criteria for evaluation** - The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular project was selected or not selected in the regional transmission plan for purposes of cost allocation

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Reliability

- Transmission Owner can choose to build facilities that are located within its retail service territory or footprint and not submitted for regional cost allocation
- OATT must describe the circumstances and procedures under which providers in the regional planning process will reevaluate the regional plan to determine if delays in the development of a facility selected require evaluation of alternative solutions, including those that the incumbent transmission provider proposes to ensure the incumbent can meet its reliability needs or service obligations
- FERC recognizes there may be circumstances when an incumbent may be called upon to complete a project that it did not sponsor – this would be a basis for the incumbent transmission provider to be granted abandoned plant recovery upon filing with FERC

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Cost Allocation Generally
Regional Transmission Facilities

- Transmission providers must have a method for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation

- Commission is not specifying how the costs of an individual regional transmission facility should be allocated

- Methods for different types of transmission projects should apply to all transmission facilities of the type in question

Cost Allocation Principle 1—costs allocated in a way that is roughly commensurate with benefits

- The cost of transmission facilities must be at least roughly commensurate with estimated benefits
  - Benefits include maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements
  - Must be an "identifiable benefit"
  - Beneficiaries not limited to those that make direct use of the transmission facilities
  - No allocation of costs for a facility located entirely within one region to beneficiaries in another region without agreement
  - If a non-public utility transmission provider chooses to become part of the transmission planning region, and it is a beneficiary of new transmission, then it would be responsible for the costs associated with those benefits

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Cost Allocation Principle 2—no involuntary allocation of costs to non-beneficiaries

- Those that receive no benefit from transmission facilities, must not be involuntarily allocated any of the costs of those transmission facilities
- No specific threshold voltage level for which benefits would be ineligible for cost allocation
- No opting out of Commission-approved cost allocation for a specific transmission project if they merely assert that they receive no benefits from it
- Public utility transmission providers in a transmission planning region may propose a cost allocation method (or methods) that considers the benefits and costs of a group of new transmission facilities or they may apply the principle on a project-by-project basis within the context of the entire regional transmission plan

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Cost Allocation Principle 3—benefit to cost threshold ratio

- A public utility transmission provider in a transmission planning region <u>may</u> choose to use a benefit to cost threshold to account for uncertainty in the calculation of benefits and costs, however the threshold may not include a ratio that exceeds 1.25 unless it justifies the ratio to the Commission and the Commission approves a higher ratio
    - Use of a ratio is not required
    - Public utility transmission providers in a transmission planning region also may use a lower ratio than 1.25 without a separate showing
    - Commission did not address the issue of whether any benefit to cost ratio threshold for an interregional transmission facility may supersede the ratio for a regional transmission cost allocation in the Final Rule; the Commission will address this issue in compliance filings based on specific facts presented

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Cost Allocation Principle 4—allocation to be solely within transmission planning region(s) unless those outside voluntarily assume costs

- Costs must be allocated solely within a transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs
- A transmission facility in one region intending to export electric energy to another transmission planning region must first negotiate an agreement with the importing region before adopting a regional cost allocation method that assigns any of the costs to beneficiaries in the importing region
- A cost allocation method cannot assign costs of the transmission facility to beneficiaries in a third transmission planning region unless the beneficiaries in the third region voluntarily reach an agreement with the two original transmission planning regions
  - The Midwest ISO and PJM are not required to revise their existing cross-border allocation method

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Cost Allocation Principle 5—transparent method for determining benefits and identifying beneficiaries

- The cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility or interregional transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility

- The Commission did not address specific suggestions for methodology of cost allocation or rule on whether any current RTO and ISO process provides enough transparency to satisfy Cost Allocation Principle 5, but will review such matters in compliance filings

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Cost Allocation Principle 6—different methods for different types of facilities

- A transmission planning region may choose to use a different cost allocation method for different types of transmission facilities
- Neighboring transmission planning regions may also choose to use a different cost allocation method for different types of interregional transmission facilities
- Each cost allocation method must be set out clearly and explained in detail in the compliance filing for the Final Rule

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Historical Context

- FERC has been considering how to address transmission market power in the electric industry for two decades – Order Nos. 888, 889, 2001, 2003, 890
- FERC continues to act pursuant to its Section 206 authority
- Past Transmission Rulemakings have been time consuming - Order No. 1000 will continue this trend

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Legal Authority for Reforms

- The reforms build on Order No. 890 and are intended to correct deficiencies so the grid can better support wholesale power markets

- Under section 206 of the FPA, the Commission has authority to revise terms in jurisdictional tariffs and agreements which may cause rates, terms or conditions of transmission service to become unjust, unreasonable or unduly discriminatory

- A federal right of first refusal is a “rule, regulation, practice or contract” affecting rates for jurisdictional transmission or service

- The Commission is not exercising authority over substantive matters reserved to the states

Implications

- RTO v. Non-RTO
- Rights of Third Parties
- Local v. “Inter-Local” v. Regional v. Inter-regional
- FERC Implementation and Deference
- State v. Federal
- Wall Street
- Will Order No. 1000 result in more “wire in the air ?”

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Appendix

Application of Cost Allocation Principles

- **Whether To Have Broad Regional Cost Allocation for Extra-High Voltage Facilities**
  - No rebuttable presumption that the costs of extra-high voltage facilities (345 kV and above) should be allocated widely across a transmission planning region or to adopt a *pro forma* cost allocation method
  - A transmission planning region may decide to allocate widely the costs of such high voltage facilities, if it would result in a distribution of costs that is at least roughly commensurate with the benefits received
- **Whether To Limit the Use of Participant Funding**
  - Participant funding will not comply with the regional or interregional cost allocation principles adopted in the Final Rule
  - A transmission developer, a group of developers, or one or more individual transmission customers may voluntarily assume the costs of a new transmission facility
  - Does not apply to existing transmission facilities with existing cost allocations or to transmission projects currently under development
  - Not intended to modify existing *pro forma* OATT transmission service mechanisms for individual transmission service requests or requests for interconnection service

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Application of Cost Allocation Principles continued

- **Whether Regional and Interregional Cost Allocation Methods May Differ**
  - The method(s) for interregional cost allocation used by two transmission planning regions may be different from the method(s) used by either of them for regional cost allocation
  - The method(s) for allocating a region's share of the cost of an interregional transmission facility may differ from the method(s) for allocating the cost of a regional facility within that region
  - Does not require transmission providers in a transmission planning region to allocate their share of the costs of an interregional transmission facility using their regional cost allocation method or methods
  - Does not require acceptance of the regional transmission planning method(s) of another transmission planning region with which a provider participates regarding interregional transmission coordination
  - Each transmission planning region will decide for itself how to allocate the costs of a new interregional transmission facility

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Application of Cost Allocation Principles continued

- **Additional Commission Guidance on the Application of the Transmission Cost Allocation Principles**
  - Commission wants to afford public utility transmission providers in individual transmission planning regions the flexibility necessary to accommodate unique regional characteristics
  - Rule already allows for different regional and interregional cost allocation methods for different types of transmission projects
  - Any variations between regions must be consistent with the 6 cost allocation principles
  - A “postage stamp” cost allocation may be an acceptable cost allocation method if it meets the requirements of this rule
  - Dispute resolution processes in place under Order No. 890 will be adequate to address any disagreements that may arise regarding the allocation of transmission costs

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Moeller Dissent

- The Final Rule should have allowed transmission owners to maintain their existing rights of first refusal for projects within their franchised service territory in order to maintain the reliability of their existing network and satisfy NERC reliability standards
- The Commission also should have clarified that while an incumbent utility with a right of first refusal can initially exercise its right to develop a project, if it decides not to construct, a non-incumbent developer should be given the opportunity to construct
- The Commission should have clarified that the right of first refusal is not a right of “forever” refusal; the Commission should also have encouraged every region to adopt a time frame that best reflects the needs and circumstances of that region

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Compliance Items for Transmission Providers Within 12 months of the Effective date of the Final Rule

- Amend OATT to:
  - (1) detail procedures which provide for consideration of transmission needs driven by public policy requirements in the local and regional transmission planning process;
  - (2) identify the information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process; and the date by which such information must be submitted to be considered in a given transmission planning cycle;
  - (3) demonstrate that the regional planning process has appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation and whether it is an incumbent or non-incumbent; and
  - (4) describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation

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Compliance Items for Transmission Providers Within 12 months of the Effective date of the Final Rule continued

- Take part in a regional transmission planning process which produces a regional transmission plan that complies with the transmission planning principles in Order No. 890
- Eliminate provisions from tariffs that establish a federal ROFR for an incumbent transmission provider with respect to facilities selected in a regional transmission plan for purposes of cost allocation
- Have in place a method(s) for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation
  - Demonstrate its cost allocation method for regional cost allocation is just and reasonable and not unduly discriminatory or preferential by demonstrating that each method satisfies the six cost allocation principles

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Compliance Items for Transmission Providers Within 18 months of the Effective date of the Final Rule

- Develop procedures for sharing of information regarding the needs of neighboring transmission planning regions, and for identification and evaluation by the neighboring transmission planning regions of potential interregional transmission facilities that address those needs

- Describe the methods by which they will identify and evaluate interregional transmission facilities

- Develop procedures by which differences in the data, models, assumptions, planning horizons, and criteria used to study a proposed transmission project can be identified and resolved for purposes of jointly evaluating the proposed interregional transmission facility

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Compliance Items for Transmission Providers Within 18 months of the Effective date of the Final Rule continued

- Providers in each pair of neighboring transmission planning regions must develop the same language to be included in their OATT that describes the interregional transmission coordination procedures

- Have a common method or methods for allocating the costs of a new interregional transmission facility among the beneficiaries of that transmission facility in the two neighboring transmission planning regions in which the transmission facility is located

- Demonstrate its cost allocation method for interregional cost allocation is just and reasonable and not unduly discriminatory or preferential by demonstrating that each method satisfies the six cost allocation principles

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