



Transmission Planning and Cost Allocation Final Rule

July 25, 2011

On July 21, 2011, the FERC voted 5-0 to issue a final rule on Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities ("Final Rule"). Commissioner Moeller issued a partial dissent to the Final Rule on a few discrete issues. This alert provides the highlights of the Final Rule as well as a more in depth summary.

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Highlights of the Final Rule

I. The Final Rule establishes the following:

- Three Requirements for transmission planning
 - Each public utility transmission provider must participate in a regional transmission planning process which produces a single regional transmission plan and satisfies the principles under Order No. 890;
 - Each transmission planning process at the local and regional level must consider transmission needs driven by federal or state laws or regulations; and
 - Public utility transmission providers in neighboring transmission planning regions must coordinate concerning more efficient or cost- effective solutions.
- Three requirements for transmission cost allocation
 - Each public utility transmission provider must participate in a regional transmission planning process which has a regional cost allocation method for new transmission facilities that satisfies six regional cost allocation principles;
 - Public utility transmission providers in neighboring planning regions must have a common interregional cost allocation method for new interregional transmission facilities which satisfies six regional cost allocation principles; and
 - Participant funding of new transmission facilities is permitted but not as part of the regional or interregional cost allocation method.
- Federal Rights of First Refusal must be removed from Commission-approved tariffs and agreements subject to four limitations
 - The requirement would not apply to a transmission facility not selected in a regional transmission plan for purposes of cost allocation;
 - The requirement would not apply to upgrades to transmission facilities (ie: tower change outs or reconductoring);
 - The rule would allow, but not require, competitive bidding to solicit transmission projects or developers; and
 - Nothing in this requirement impacts state or local laws concerning construction of transmission facilities, including siting or permitting.



- Additional requirement
 - Each public utility transmission provider must add a tariff provision that requires the provider to reevaluate the regional transmission plan to determine if alternative solutions need to be evaluated when there is a delay in the development of a transmission facility. Such alternative solutions can include those proposed by the incumbent.
- Compliance
 - All public utility transmission providers would be required to make a compliance filing within 12 months of the effective date of the Final Rule; compliance filings for the regional planning and cost allocation requirements will be due in 18 months.

II. Comments made by the Commission:

- Chairman Wellinghoff
 - Policy drivers behind the draft Final Rule include changes in the transmission system since Order No. 890 and the need for reliable transmission service at just and reasonable rates.
 - The existing transmission system was not built to accommodate the shifting transmission fleet.
 - Enhancement to procedures required today will provide for fair allocation of costs for new facilities needed for reliability.
 - § Planning requirements are technology neutral- costs must be allocated roughly commensurate with benefits, and no costs should be allocated outside a region unless that region agrees.
- Commissioner Moeller
 - Noted the Final Rule does not address the issues of siting, or the fact that it takes way too long and is way too expensive to site transmission..
 - The draft Final Rule also does not address any state laws, or the fact that it in some cases it is Federal agencies which are delaying transmission.
 - Commission Moeller identified areas where rule could have gone farther. Apparently these will be the areas covered in his partial dissent.
 - § Specific right of an incumbent to rely with reliability projects in its footprint when they are NERC-mandated; and
 - § A right of first refusal is not a right to forever not build a project.
- Commissioner Spitzer
 - The Federal Right of First Refusal is a barrier to entry.
- Commissioner Norris
 - Stresses the importance of reliability as a main driver for new transmission development.
- Commissioner LaFleur
 - United States has underinvested in transmission infrastructure.
 - The draft Final Rule requires adoption of a backstop mechanism to ensure that delays in development of a regional facility will not prevent incumbents from complying with reliability of service obligations.



III. Overall Impressions:

- The Final Rule does not impose one size fits all requirements for either regional planning or cost allocation. Regional differences will likely be reflected in compliance filings. In many ways “the devil will be in the details” regarding how the Commission acts on such compliance filings.
- Cost allocation must be “roughly commensurate” with expected benefits. This seems to rule out any Eastern or Western interconnection-wide rolling in of transmission costs, which some in the industry advocated, but many opposed.
- Costs can only be allocated outside of a region with the agreement of the neighboring region. The Commission appears to expect that such seams issues to be dealt with on a negotiated basis.

We anticipate FERC will make many fact specific decisions on the compliance filings that are submitted. This is consistent with the way FERC implemented Order Nos. 888 and 890.

DETAILED SUMMARY

I. INTRODUCTION

- The Commission concludes there are certain deficiencies in current transmission planning, and thus, through the Final Rule seeks to accomplish two primary objectives: (i) ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet transmission needs more efficiently and cost-effectively; and (ii) ensure that the costs of transmission solutions chosen to meet regional transmission needs are allocated fairly to those who receive benefits from them. Final Rule at P 4.
- First, the Commission requires public utility transmission providers to participate in a regional transmission planning process that evaluates transmission alternatives at the regional level that may resolve the transmission planning region’s needs more cost-effectively and efficiently than through local planning processes. Final Rule at P 6.
- Second, the Commission requires public utility transmission providers to remove from their OATTs or other jurisdictional tariffs and agreements any provisions that grant a federal right of first refusal to transmission facilities that are selected in a regional transmission plan for purposes of cost allocation. Final Rule at P 7.
- Third, the Commission requires public utility transmission providers to improve coordination across regional transmission planning processes by developing and implementing procedures for joint evaluation and sharing of information regarding transmission needs of the transmission planning regions, including identification and joint evaluation by neighboring transmission planning regions of interregional transmission facilities. Final Rule at P 8.
- Fourth, the Commission requires public utility transmission providers to have in place: (i) a method to allocate costs for new transmission facilities selected in a regional transmission plan; and (ii) a method to allocate the costs of a new interregional transmission facility that is jointly evaluated by two or more transmission planning regions in their interregional transmission coordination procedures. Final Rule at P 9.
- The Commission finds that the approach adopted in the Final Rule requires that all regional and interregional cost allocation methods allocate costs of new transmission facilities in a manner that is at least roughly commensurate with the benefits received by those who will pay those costs. In other words, costs may not be involuntarily allocated to entities that do not receive benefits. Final Rule at P 10.
- The Commission will hold informational conferences within 60 days of the effective date of the Final Rule to review and discuss those requirements set forth in the Final Rule. The Commission



also encourages dialogue with staff as transmission providers work with stakeholders to prepare compliance proposals. Final Rule at P 14.

A. Background

- Order No. 890 required each public utility transmission provider to develop a transmission planning process that satisfies nine principles, including: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. Final Rule at P 18. The Commission notes that the Final Rule expands upon those reforms begun in Order No. 890 by addressing new concerns that became apparent in the Commission's ongoing monitoring of such planning processes. Final Rule at P 21.
- The Commission held three technical conferences regarding transmission planning requirements in 2009 and subsequently issued a Notice of Request for Comments, presenting numerous questions with respect to enhancing regional transmission planning processes and allocating the cost of transmission. Final Rule at PP 23-24.

B. Developments Since Order No. 890

- In February 2009, Congress enacted the American Recovery and Reinvestment Act ("ARRA"), providing \$80 million for the U.S. Department of Energy ("DOE") to award in support of the development of interconnection-based transmission plans with the Eastern, Western, and Texas interconnections. DOE awarded ARRA funding in December 2009, and has indicated the goal of this funding is to develop a portfolio of long-term energy supply and demand for future needs and associated transmission requirements. According to DOE, significant expansion of the grid is necessary under any future electric industry scenario. Final Rule at PP 26-29.

II. THE NEED FOR REFORM

A. The Proposed Rule

- The Commission finds that Order No 890's transmission planning and cost allocation requirements provide an inadequate foundation for public utility transmission providers to address the challenges they are currently facing or will face in the future. The Final Rule is intended to enhance the ability of the transmission grid to support wholesale power markets and ensure that Commission-jurisdictional transmission services are provided at rates, terms, and conditions that are just and reasonable and not unduly discriminatory or preferential. Final Rule at P 42.
- Despite arguments that the Commission has not met its burden to show that reforms to current rates, terms and conditions are necessary, the Commission finds otherwise, concluding that the narrow focus of current planning requirements and shortcomings of current cost allocation practices create an environment that fails to promote efficient and cost effective development of new transmission facilities, and addressing such issues is necessary to ensure just and reasonable rates. Final Rule at PP 48-52.
- The Commission encourages regions with existing transmission planning processes in place to use the objectives and principles in the Final Rule to guide continued development. Final Rule at P 61.

B. Use of Terms

- The Commission notes that there is a distinction in the Final Rule between "a transmission facility in a regional transmission plan" and a "transmission facility selected in a regional transmission plan for purposes of cost allocation." The latter term, "transmission facility selected in a regional transmission plan for purposes of cost allocation," is a transmission facility that has been selected pursuant to a transmission planning region's Commission-approved regional transmission



planning process for inclusion in a regional transmission plan for purposes of cost allocation. Such a facility may be a regional transmission facility or an interregional transmission facility. Such transmission facilities often will not comprise all of the transmission facilities in the regional transmission plan; rather such transmission facilities may be a subset of the transmission facilities in the regional transmission plan. The Commission states that such transmission facilities do not include a transmission facility in the regional transmission plan that has not been selected pursuant to a Commission-approved planning process, such as a local transmission facility or a merchant transmission facility. Final Rule at P 63.

- The Commission notes that in some regions, transmission facilities not selected for purposes of a regional transmission plan for cost allocation purposes may nonetheless be in a regional transmission plan for informational purposes. Final Rule at P 64.
- The requirements of the Final Rule apply to the evaluation or reevaluation of any transmission facility that occurs after the effective date of the transmission provider's filing adopting the transmission planning and cost allocation reforms of the *pro forma* OATT required by the Final Rule. Final Rule at P 65. The Commission recognizes there are ongoing planning cycles, and as such, each region is to determine at what point a previously approved project is no longer subject to reevaluation and, as a result, whether it is subject to the requirements of the Final Rule. Final Rule at P 65. Transmission providers are directed to explain in their compliance filings how they will determine which facilities evaluated in their local and regional planning processes will be subject to the requirements of the Final Rule. Final Rule at P 65.
- The Commission notes that nothing in the Final Rule requires that a facility in a regional transmission plan or selected in a regional transmission plan for purposes of cost allocation be built, nor does it give any entity permission to build a facility. Entities must still obtain necessary approvals required to build the facility. Final Rule at P 66.

III. PROPOSED REFORMS

A. Regional Transmission Planning Process

- The Final Rule requires that each public utility transmission provider participate in a regional transmission planning process which produces a regional transmission plan and complies with Order No. 890 transmission planning principles. The Final Rule also adopts reforms to ensure that transmission needs driven by public policy requirements are considered in local and regional transmission planning processes. Final Rule at P 68.
- The Commission elaborates that "local" means the transmission planning process which a public utility transmission provider undertakes for its individual retail distribution service territory or footprint pursuant to Order No. 890. Final Rule at P 58.

1. Need for Reform Concerning Regional Transmission Planning

- The Commission concludes that it is necessary to act under section 206 of the FPA to adopt regional transmission planning reforms in order to ensure just and reasonable rates and prevent undue discrimination by public utility transmission providers. The Commission concludes that existing Order No. 890 requirements are inadequate to ensure that public utility transmission providers evaluate transmission alternatives at the regional level which might meet regional needs more efficiently or cost-effectively than local transmission plans indicated by individual public utility transmission providers. Final Rule at P 78.
- In the absence of reform, the Commission expresses concern that public utility transmission providers may not assess potential benefits of alternative transmission solutions at the regional level which may prove to meet regional needs in a more cost-effective or efficient manner. Final Rule at P 81.



- Each public utility transmission provider must amend its OATT to explicitly provide for consideration of transmission needs which are driven by public policy requirements in local and regional transmission planning processes. The Commission concludes that a public utility transmission provider has to consider how to plan for transmission needs driven by public policy requirements in order to avoid acting in an unduly discriminatory manner. Final Rule at PP 82-83.

2. Legal Authority for Transmission Planning Reforms

- The Commission's proposed reforms intend to correct deficiencies in order to allow the transmission grid to support wholesale power markets and ensure Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential. Final Rule at P 85.
- The Commission concludes that it has authority under section 206 of the FPA to adopt the transmission planning reforms in the Final Rule. These reforms build on the Commission's Order No. 890 and the requirement that each public utility transmission provider have a coordinated, open and transparent regional transmission planning process. The Commission notes that no party sought judicial review of its authority under Order No. 890 to adopt the reforms that are enhanced through the Final Rule. Final Rule at P 99.
- The Commission disagrees with commenters who argue section 202(a) of the FPA prohibits the Final Rule, as the Final Rule deals with activities that occur before the operational activities focused on in section 202(a). Final Rule at P 104.
- Nothing in the Final Rule concerns an exercise of siting, permitting or construction authority, and should not create a conflict between state and federal requirements. The Commission is not exercising authority over substantive matters reserved to the states. Final Rule at P 107.
- Requiring a regional transmission plan which considers transmission needs driven by public policy requirements cannot be characterized as pursuing "broad general welfare goals" that reach beyond matters under the Commission's authority under the FPA. Public policy requirements can directly affect the need for interstate transmission facilities, which is within the Commission's jurisdiction. Final Rule at P 111.
- The Proposed Rule did not violate the due process clause because it did not identify how the public policy requirements in the transmission planning process would be fulfilled. The Commission gave fair notice to the parties of the issue involved and they had an opportunity to comment. Final Rule at P 114.

3. Regional Transmission Planning Principles

- The Final Rule requires that each public utility transmission provider take part in a regional transmission planning process that produces a regional transmission plan which complies with the transmission planning principles of Order No. 890. This will ensure that rates, terms and conditions of Commission-jurisdictional services are just and reasonable and not unduly discriminatory. Final Rule at P 146.
- During the regional transmission planning process, public utility transmission providers must evaluate, with their stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region in a more efficient or cost-effective manner than those identified by individual providers in local transmission processes. Public utility transmission providers must also consider non-transmission alternatives proposed on a comparable basis. Order No. 890's comparability transmission planning principle requires that the interests of public utility transmission providers and similarly situated customers be treated comparably in regional transmission planning, and the Commission recognizes that generation, demand response, and energy efficiency options are frequently considered in local resource planning and that transmission often is planned as a last resort. Final Rule at PP 148, 153-154.



- The Commission declines to establish minimum requirements for when non-transmission alternatives should be considered or appropriate metrics to measure non-transmission alternatives against transmission alternatives. Further, the Commission rejects the notion that the comparability principle will interfere with integrated resource planning, as the Final Rule will not exercise authority over substantive matters reserved to the states. Final Rule at PP 155-156.
- The Commission does not set a specific set of analyses which a public utility transmission provider must perform. Each public utility transmission provider has flexibility to develop procedures to evaluate a set of solutions to meet the region's needs. The Commission will review these mechanisms on compliance, using statutory requirements of the FPA, Order No. 890 transmission planning principles and precedent regarding Order No. 890 compliance and further guidance as necessary. Final Rule at P 149.
- The Final Rule builds on the following transmission planning principles required in Order No. 890: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning. The Commission requires that public utility transmission providers adopt these principles in connection with the process used to produce a regional transmission plan. Final Rule at P 151.
- Consistent with the Commission's approach to Order No. 890, the Commission will not order the exact way in which public utility transmission providers must fulfill requirements of complying with regional transmission planning principles. Public utility transmission providers developing regional transmission planning processes may come up with requirements that work for their region. These regional transmission planning processes may entail a "top down" or "bottom up" approach or another approach, so long as it complies with the Final Rule requirements. Final Rule at PP 157-158.
- The Commission declines to impose obligations to build or mandatory processes to obtain commitments to construct transmission facilities in the regional transmission plan. Public utility transmission providers' obligations to post information on the status of transmission upgrades in transmission plans and commitments to build transmission facilities are adequate. Final Rule at P 159.
- In order to clarify the Final Rule, the Commission states that a transmission planning region is one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate in for purposes of regional transmission planning and development of a single regional transmission plan. The Commission further clarifies that the Final Rule requirements are intended to apply to new transmission facilities, however, it recognizes the Final Rule may be in the middle of a transmission planning cycle. Public utility transmission providers should explain in their compliance filings how they will implement the requirements of the Final Rule. Final Rule at PP 160, 162.
- Merchant transmission developers are not required to participate in regional transmission planning, as they assume the financial risk for their projects. The Commission defines merchant transmission projects as those for which costs will be recovered through negotiated rates, rather than cost-based rates. Nothing in the Final Rule prevents the merchant transmission developer from voluntarily participating in the regional transmission planning process, and the Commission encourages them to do so. Additionally, the Final Rule does not limit or affect a merchant transmission developer's obligations to fund network upgrades caused by its projects' interconnection. Final Rule at PP 119, 164-165.
- It is necessary for the merchant transmission developer to give adequate information and data to permit public utility providers in the transmission planning region to examine reliability and operational impacts of the merchant transmission developers' proposed transmission facilities. Public utility transmission providers, with stakeholders, should propose what information would be required and include this in their compliance filings to the Final Rule. Final Rule at PP 164-165.



4. **Consideration of Transmission Needs Driven by Public Policy Requirements**

- The Commission requires public utility transmission providers to amend their OATTs to detail procedures which provide for consideration of transmission needs driven by public policy requirements in the local and regional transmission planning processes. These reforms will remedy opportunities for undue discrimination by allowing stakeholders a process through which they can provide input into what transmission needs are driven by public policy requirements, instead of a public utility transmission provider planning for its native load customers or its own needs only. Final Rule at P 203.
- In order to consider transmission needs driven by public policy, the Commission clarifies that a public utility transmission provider must: (1) identify transmission needs driven by public policy requirements; and (2) evaluate potential solutions to meet those needs. Final Rule at P 205.
- The Commission further explains that in order to identify transmission needs driven by public policy requirements, stakeholders must be able to provide input and offer proposals on transmission needs they think are driven by public policy requirements. If there are no identified needs, there is no obligation placed upon the public utility transmission provider to evaluate potential solutions. Final Rule at P 207.
- There is regional and local flexibility in designing procedures to identify transmission needs driven by public policy requirements for which solutions will be evaluated in the local or regional transmission planning processes. The Commission notes that effects of these requirements are highly variable based on geography, existing resources and transmission constraints. The Commission's minimum requirement is that procedures allow for input from stakeholders, and that the procedures establish a just and reasonable and not unduly discriminatory process to identify needs for which transmission solutions will be evaluated by the public utility transmission provider. Final Rule at PP 208-209.
- The Commission will allow public utility transmission providers and their stakeholders, subject to review on compliance, to determine procedures for how potential solutions to identified transmission needs will be evaluated. The goal of these procedures is to meet identified transmission needs more efficiently and cost-effectively. Final Rule at P 211.
- The Final Rule is not intended to change the role of the states in transmission planning and is intended by the Commission to complement state efforts to make sure that solutions to transmission needs driven by public policy requirements of the states can be evaluated in local and regional transmission planning processes. Further, the need to evaluate identified transmission needs driven by public policy requirements does not establish an independent requirement to fulfill such public policy requirements. To clarify, the Commission states that a public utility transmission provider's failure to fulfill the public policy requirement is not a violation of its OATT. Final Rule at PP 212-213.
- The Commission declines to specify consideration of transmission needs driven by a specific public policy requirement, but intends that procedures be flexible to allow stakeholder suggestions, including Environmental Protection Agency regulations, FPA section 217 or other federal or state laws driving transmission needs. Final Rule at P 215.
- The Commission clarifies in response to numerous comments that the Final Rule does not create an obligation for a public utility transmission provider or the transmission planning process to consider transmission needs driven by a public policy objective not required by state or federal laws or regulations. If the public utility transmission provider, with stakeholders, identifies public policy objectives not specifically required by state or federal laws or regulations, transmission facilities made to meet these objectives can be eligible for cost allocation in the transmission planning process. Final Rule at P 216.
- If consideration of transmission needs driven by public policy requirements results in new transmission costs, it must follow the cost allocation principles discussed in section IV of the Final Rule. Costs of new transmission facilities in the planning region have to be allocated in a way that is at least roughly commensurate with costs. Final Rule at P 219.



- The Commission determines that there is merit in a flexible approach to determining which transmission projects are in the regional transmission plan. Public utility transmission providers may include within their compliance filings in response to the Final Rule tariff revisions they believe are necessary to implement flexible transmission planning criteria. These changes will be submitted under section 206 of the FPA. Those with bright line criteria are not required to file changes if they do not wish to. The Commission will evaluate compliance filings with bright line and flexible criteria to determine if they permit unjust and unreasonable rates or undue discrimination through planning criteria and whether they ensure fair consideration of transmission needs driven by public policy requirements. Final Rule at P 224.

B. Nonincumbent Transmission Developers

- The Commission clarifies that “nonincumbent transmission developer” includes two categories of developers: (1) a transmission developer that does not have a retail distribution service territory or footprint; and (2) a public utility transmission provider that proposes a transmission project outside of its existing retail distribution service territory or footprint, where it is not the incumbent for purposes of that project. Final Rule at P 225.

1. Need for Reform Concerning Nonincumbent Transmission Developers

- The Commission concludes based on the comments it has received, if a regional transmission planning process does not consider and evaluate transmission projects proposed by nonincumbents, the regional transmission planning process cannot meet the Order No. 890 planning principle of being “open.” As such, the process may not result in cost-effective solutions, and may be unjust and unreasonable. Moreover, whenever an incumbent transmission owner has a federal right of first refusal, a nonincumbent transmission developer risks losing its investment to develop a transmission project that it proposed in the regional transmission planning process, thus presenting opportunities for undue discrimination and preferential treatment against nonincumbent transmission developers. Final Rule at P 229.
- The Commission notes that Order No. 890 required comparable evaluation of all potential transmission solutions in an effort to ensure more efficient or cost-effective solutions in the regional transmission plan. However, if the Commission did not act now, it would leave in place practices that have the potential to undermine the identification and evaluation of more efficient or cost-effective solutions to regional transmission needs. Final Rule at PP 253-255.
- Specifically, an incumbent transmission provider’s ability to use a federal right of first refusal to act in its own economic self-interest may discourage new entrants from proposing new transmission projects in the regional transmission planning process. Final Rule at P 256.
- The removal of the federal right of first refusal (which does not apply to a local transmission facility) may have varying impacts in each region, but it will not fundamentally alter the regional transmission planning process. Final Rule at PP 258-259.
- While the Commission states that incumbent public utility transmission providers are free to highlight their strengths to support projects in a regional transmission plan, those strengths should not categorically exclude a nonincumbent transmission developer from presenting its own strengths. And while several public utility transmission providers may have accepted an obligation to build in relation to its membership in an RTO or ISO, that obligation is not necessarily dependent on the incumbent transmission provider having a corresponding federal right of first refusal to prevent other entities from constructing and owning transmission facilities located in that region. Final Rule at PP 260-261.
- In terms of reliability standards and obligations to serve customers, the Final Rule continues to permit an incumbent transmission provider to meet its reliability needs and service obligations by choosing to build new transmission facilities that are located solely within its retail distribution service territory or footprint and that are not submitted for regional cost allocation. Final Rule at P 262.



- The Commission concludes that elimination of federal rights of first refusal does not result in discrimination against incumbent transmission providers in favor of nonincumbent transmission developers and clarifies that the reforms in the Final Rule apply equally to public utility transmission providers in all regions. Final Rule at P 265.

2. Legal Authority To Remove a Federal Right of First Refusal

- The Commission determines that it has the authority under section 206 of the FPA to eliminate the federal right of first refusal to incumbent transmission providers with respect to the construction of transmission facilities selected in a regional transmission plan for purposes of cost allocation. A federal right of first refusal is a “rule, regulation, practice or contract” affecting rates for jurisdictional transmission service. As such, section 206 of the FPA is broad enough to allow the Commission to revise terms in jurisdictional tariffs and agreements that may cause the rates, terms or conditions of transmission service to become unjust and unreasonable or unduly discriminatory or preferential. Final Rule at PP 284-285.
- Eliminating the federal right of first refusal does not result in the regulation of matters reserved to the states because the reforms in the Final Rule are focused solely on public utility transmission provider tariffs and agreements subject to the Commission’s jurisdiction. Final Rule at P 288.
- The Commission is focused on the effect that federal rights of first refusal have on rates for jurisdictional transmission services and on undue discrimination; it is not changing internal governance practices, drawing a conclusion regarding the prudence of any investment decisions, enlarging transmission facilities under section 210 and 211 of the FPA, or making findings under sections 215 and 216 of the FPA. Final Rule at PP 288-291.

3. Removal of a Federal Right of First Refusal from Commission-Jurisdictional Tariffs and Agreements

- The Commission clarifies that not every transmission facility being planned by an incumbent transmission provider is, in effect, sponsored by that entity and therefore, could no longer be subject to a federal right of first refusal. The Commission is focused on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation. As such, the requirement to remove a federal right of first refusal does not apply to a local transmission facility or upgrades made by an incumbent transmission provider to its own transmission facilities. The reforms in the Final Rule are also not intended to alter an incumbent transmission provider’s use and control of its existing rights-of-way. Final Rule at PP 317-319.

a. Qualification Criteria to Submit a Transmission Project for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

- First, the Commission requires that each public utility transmission provider revise its OATT to demonstrate that the regional transmission planning process in which it participates has established 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, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer. The criteria must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities. Final Rule at P 323.
- The qualification criteria requirement is necessary since adopting a one-size-fits-all requirement would be inappropriate. Final Rule at P 324.

b. Submission of Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation



- Second, the Commission requires that each public utility transmission provider revise its OATT to identify: (a) 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 (b) the date by which such information must be submitted to be considered in a given transmission planning cycle. Each public utility transmission provider that had its own OATT must have in that OATT the same information requirements as other public utility transmission providers in the same transmission planning region. Final Rule at P 325.
- The region may establish *prima facie* showings of need for a project and may also determine for itself what deadline is appropriate, including rolling or flexible dates. Final Rule at P 327.

c. Evaluation of Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

- Third, the Commission requires each public utility transmission provider to amend its OATT to 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. The process must be transparent, allow for stakeholder coordination, and culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission was selected or not selected. Final Rule at P 328.
- Public utility transmission providers must also amend their OATTs to describe the circumstances and procedures in which they will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected require evaluation of alternative solutions, including those proposed by the incumbent transmission provider. Final Rule at P 329.

d. Cost Allocation for Projects Selected in the Regional Transmission Plan for Purposes of Cost Allocation

- Fourth, the Commission requires that a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected. The cost of a transmission facility that is not selected may not be recovered through a transmission planning region's cost allocation method(s). Final Rule at P 333.
- The Commission does not adopt a requirement to identify the most similar project to the one initially proposed to determine which developer should have the right to construct and own the facility. However, public utility transmission providers in a region must establish, in consultation with stakeholders, procedures to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation. Final Rule at PP 334-336.

e. Rights to Construct and Ongoing Sponsorship

- Finally, the Commission declines to include two additional features: (1) to require public utility transmission providers to revise their OATTs to contain a regional transmission planning process that provide a right to construct and own a transmission facility; and (2) to allow a transmission developer to maintain for a defined period of time its right to build and own a transmission project that is proposed but not selected. Final Rule at P 338.
- With regard to ongoing sponsorship rights, the Commission acknowledges that there is some risk for transmission developers in disclosing their transmission projects for consideration. However, that risk is outweighed by the potentially negative impacts where transmission developers submit a multitude of possible transmission projects simply to acquire future development rights. Final Rule at P 340.



4. Reliability Compliance Obligations of Transmission Developers

- The Commission determines that potentially increasing the number of asset owners through the elimination of a federal right of first refusal does not, by itself, make it more difficult for system operators to maintain reliability. In terms of NERC compliance, when a nonincumbent transmission developer becomes subject to the requirements of FPA section 215, it will be required to comply with all applicable reliability obligations. As part of that process, all entities that are users, owners or operators of the electric bulk power system must register with NERC. Final Rule at PP 342.
- The Commission clarifies that if a violation of a NERC reliability standard would result from a nonincumbent transmission developer's decision to abandon a transmission facility meant to address such a violation, the incumbent transmission provider does not have the obligation to construct the nonincumbent's project. Rather, the transmission provider must submit a NERC mitigation plan to address the violation. If the public utility transmission provider follows the NERC approved mitigation plan, the Commission will not subject the provider to enforcement action. Final Rule at P 344.

C. Interregional Transmission Coordination

- First, the Commission requires the development and implementation of procedures that provide for the sharing of information regarding the respective needs of neighboring transmission planning regions, as well as the identification and joint evaluation by the neighboring transmission planning regions of potential interregional transmission facilities that address those needs. Second, the Commission requires the development and implementation of procedures for neighboring public utility transmission providers to identify and jointly evaluate transmission facilities that are proposed to be located in both regions. Third, the Commission requires the exchange of planning data and information between neighboring transmission planning regions at least annually. Finally, the Commission requires public utility transmission providers, either individually or through their transmission planning region, to maintain a website or e-mail list for the communication of information related to interregional transmission coordination. Final Rule at P 343.

1. Need for Interregional Transmission Coordination Reform

- The Commission concludes that implementing those reforms to interregional transmission coordination activities are necessary at this time. Specifically, the planning requirements of Order No. 890 are too narrowly focused geographically and fail to provide for adequate analysis of the benefits associated with interregional transmission facilities in neighboring transmission planning regions. Final Rule at PP 368-369.
- The existing transmission planning processes do not adequately provide for the evaluation of proposed interregional transmission facilities or the identification of interregional transmission facilities that could address transmission needs more efficiently or cost-effectively than separate regional transmission facilities. While there have been some positive developments in some transmission planning initiatives, the Commission will not postpone its coordination reforms on account of those initiatives. Final Rule at PP 370-371.
- The Final Rule establishes coordination requirements that are applicable to all public utility transmission providers. If a public utility transmission provider believes that it participates in a regional transmission planning process that fulfills the interregional transmission coordination requirements adopted in this Final Rule, it may describe in its compliance filing how such participation complies with the requirements of this Final Rule. Final Rule at PP 372-373.



2. Interregional Transmission Coordination Requirements

a. Interregional Transmission Coordination Procedures

- The Commission requires each public utility transmission provider, through its regional transmission planning process, to establish further procedures with each of its neighboring transmission planning regions in order to coordinate and share the result of respective regional transmission plans to identify possible interregional transmission facilities that could address transmission needs more efficiently or cost-effectively than separate regional transmission facilities. Final Rule at P 396.
- The Commission intends that neighboring transmission planning regions will enhance their existing processes to provide for: (1) the sharing of information regarding the respective needs of each region, and potential solutions of those needs; and (2) the identification and joint evaluation of interregional transmission facilities that may be more efficient or cost-effective solutions to those regional needs. Final Rule at P 396.
- The Commission declines to impose specific obligations as to how neighboring regions must share information regarding their needs or specific planning horizons or the performance of particular scenario analyses. Final Rule at P 397.
- On compliance, public utility transmission providers must describe the methods by which they will identify and evaluate interregional transmission facilities, and transmission providers in neighboring planning regions must include a description of the type of transmission studies they will conduct to determine if interregional transmission facilities would be more efficient or cost-effective than regional facilities. Final Rule at P 398.
- The Final Rule does not address or dictate which investments identified in a transmission plan should be undertaken by public utility transmission providers, including interregional transmission facilities. However, public utility transmission providers must make available information regarding the status of transmission upgrades identified in their regional transmission plans in addition to the underlying transmission plans and related transmission studies. These information requirements will apply to the portions of the interregional transmission facilities within each of the individual region's transmission plans. Final Rule at P 400.
- The Commission neither requires nor precludes longer-term interregional transmission planning, including the identification of conceptual or contingent elements, the consideration of transmission needs driven by public policy requirements, or the evaluation of economic considerations. Final Rule at P 401.
- The Commission does not intend to infringe on state authority, monitor coordination efforts so closely as to intrude in the interregional transmission coordination activities, or require public utility transmission providers to conduct periodic reviews of the effectiveness of their interregional transmission coordination efforts and file information reports at the Commission. Final Rule at PP 402-404.

b. Geographic Scope of Interregional Transmission Coordination

- The Commission clarifies that it will require interregional coordination between public utility transmission providers in neighboring transmission planning regions with respect to transmission facilities that are proposed to be located in both regions, as well as interregional transmission facilities that are not proposed but that could address transmission needs more efficiently than separate intraregional transmission facilities. Final Rule at P 405.
- The coordination requirements do not require joint evaluation of the effects of a new transmission facility proposed to be located solely in a single transmission planning region. Final Rule at P 416.



- The Commission agrees that imposing multilateral or interconnection-wide coordination requirements at this time could frustrate the progress being made in the ARRA-funded transmission planning initiatives. Final Rule at P 417.
- The Commission declines to revisit how each transmission planning region defines itself. Final Rule at P 420.

3. Implementation of the Interregional Transmission Coordination Requirements

a. Procedure for Joint Evaluation

- The Commission requires the development of a formal procedure to identify and jointly evaluate interregional transmission facilities that are proposed to be located in neighboring transmission planning regions. Final Rule at P 435. The Commission also requires the developer of an interregional transmission project to first propose its transmission project in the regional transmission planning processes of each of the neighboring regions in which the transmission facility is proposed to be located. Final Rule at P 436.
- The Commission directs, as part of compliance with the interregional transmission coordination requirements, that each public utility transmission provider, through its transmission planning region, 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. Neighboring transmission planning regions may use discretion in the way this requirement is designed and implemented. Final Rule at P 437.
- The Commission does not specify a timeline for the interregional transmission coordination procedures, instead expecting public utility transmission providers in neighboring transmission planning regions to cooperate and develop timelines that allow for the development of interregional transmission projects in the same general time frame. Final Rule at P 438. By “same general time frame,” the Commission expects public utility transmission providers to develop a timeline that provides a meaningful opportunity to review and evaluate information developed through the regional transmission planning process. Final Rule at P 439.
- The Commission clarifies that public utility transmission providers in a transmission planning region will not be required to accept allocation of the costs of an interregional transmission project unless the region has selected that transmission facility in the regional transmission plan for purposes of cost allocation. Final Rule at P 443.

b. Data Exchange

- The Commission requires each public utility transmission provider to adopt interregional transmission coordination procedures that provide for the exchange of planning data and information at least annually, which will ensure that neighboring transmission planning regions are aware of each others’ transmission plans and the assumptions and analysis that support such plans. Final Rule at P 454. Interregional transmission coordination procedures must include specific obligations for sharing planning data and information rather than only an agreement to do so. Final Rule at P 455.

c. Transparency

- The Commission requires public utility transmission providers, either individually or through their transmission planning region, to maintain a website or e-mail list to communicate information related to interregional transmission coordination procedures. Information related to interregional transmission coordination may be maintained on an existing public utility transmission provider’s website or a regional transmission planning website. Final Rule at P 458.

**d. Stakeholder Participation**

- The Commission does not require the interregional transmission coordination procedure to meet the requirements of the planning principles required for local planning (under Order No. 890) and regional planning (under this Final Rule). Since the Commission requires in the Final Rule that an interregional transmission facility must be selected in each relevant regional transmission plan for purposes of cost allocation to be eligible for interregional cost allocation, the Commission notes that stakeholders will have the opportunity to participate fully in the consideration of interregional transmission facilities during the regional transmission planning process. Final Rule at P 465.
- The Commission requires that each public utility transmission provider give stakeholders the opportunity to provide input into the development of its interregional transmission coordination procedures and the commonly agreed-to language to be included in its OATT. Final Rule at P 466.

e. Tariff Provisions and Agreements for Interregional Transmission Coordination

- The Commission requires that public utility transmission providers in each pair of neighboring transmission planning regions must develop the same language to be included in each public utility transmission provider's OATT that describes the interregional transmission coordination procedures for that particular pair of regions. If the public utility transmission providers so choose, these procedures may be reflected in an interregional transmission coordination agreement filed on compliance for approval by the Commission. Final Rule at P 475.
- The Commission will accept the submission of existing interregional agreements on compliance, provided the compliance filing explains how the existing agreement satisfies the requirements of this Final Rule. Final Rule at P 477.

IV. Proposed Reforms: Cost Allocation**A. Need for Reform Concerning Cost Allocation**

- The Commission states that it is necessary to adopt the cost allocation requirements because without these requirements, cost allocation methods used by public utility transmission providers may fail to account for the benefits associated with new transmission facilities, and thus result in rates that are not just and reasonable or are unduly discriminatory or preferential. Final Rule at P 495.

B. Legal Authority for Cost Allocation Reforms

- The Commission concludes that it has the legal authority to adopt the cost allocation reform required by the Final Rule. Final Rule at P 530. While commenters challenged the Commission's authority to require allocation of transmission costs to beneficiaries that do not have a contractual or formalized customer relationship with the entity that is collecting the costs, the Commission states that its jurisdiction is broad enough to allow it to ensure that all beneficiaries of services provided by specific transmission facilities bear the costs of those benefits regardless of their contractual relationship with the owner of those transmission facilities. Final Rule at P 531.

C. Cost Allocation Method for Regional Transmission Facilities

- The Commission requires that a public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation. If the public utility transmission provider is an RTO or ISO, then the cost allocation method(s) must be set forth in the OATT. In a non-RTO/ISO



transmission planning region, each public utility transmission provider in the region must set forth in its OATT the same language regarding the cost allocation method(s) used in its transmission planning region. Final Rule at P 558.

- The Commission does not specify in the Final Rule how the costs of an individual regional transmission facility should be allocated, but while each transmission planning region may develop methods for different types of transmission projects, such methods should apply to all transmission facilities of the type in question. If public utility transmission providers choose to propose a different cost allocation method for different types of transmission facilities, each method would have to be determined in advance for each type of facility. Final Rule at P 560.

D. Cost Allocation Method for Interregional Transmission Facilities

- The Commission requires a public utility transmission provider in a transmission planning region to have, together with the public utility transmission providers in its own transmission planning region and a neighboring transmission planning region, 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. The cost allocation method(s) may differ from the cost allocation method(s) used by each region to allocate the cost of a new interregional transmission facility within that region. Final Rule at P 578.
- The Commission does not require a single nationwide approach to interregional cost allocation, and will allow each pair of neighboring regions flexibility in developing its own cost allocation method(s) consistent with the interregional cost allocation principles adopted in the Final Rule. Final Rule at P 580. The Commission does not specify here how the costs for an individual interregional transmission facility should be allocated, but while transmission planning regions can develop a different cost allocation method(s) for different types of transmission projects, such a cost allocation method(s) should apply to all transmission facilities of the type in question. Final Rule at P 581.
- With respect to existing interregional transmission coordination and cost allocation agreements, a public utility transmission provider who believes its agreement satisfies the Final Rule's requirements should describe in its compliance filing how the relevant requirements are met. Final Rule at P 583.

E. Principles for Regional and Interregional Cost Allocation

1. Use of a Principles-Based Approach

- The Commission adopts the six regional and six interregional cost allocation principles. The Commission recognizes that a variety of methods may satisfy the set of cost allocation principles. Final Rule at PP 604 – 605.
- The Commission concludes that public utility transmission providers in each transmission planning region or pair of transmission planning regions must be allowed the opportunity to determine for themselves the cost allocation method or methods to adopt based on their own regional needs and characteristics, consistent with the six cost allocation principles. Final Rule at P 606.
- In the event of a failure to reach an agreement on a cost allocation method, the Commission will use the record in the relevant compliance filing proceeding as a basis to develop a cost allocation method(s) that meets its proposed requirements. Each public utility transmission provider must make an individual compliance filing that includes its own proposed method or set of methods of allocating costs, and groups of public utility transmission providers that agree on a proposed method or methods may make a coordinated filing or filings with their common views. Final Rule at P 607.



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

- § The Commission adopts Regional Cost Allocation Principle 1 for both regional and interregional cost allocation:
- Regional Cost Allocation Principle 1: “The cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. In determining beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.”
 - Interregional Cost Allocation Principle 1: “The costs of a new interregional transmission facility must be allocated to each transmission planning region in which that transmission facility is located in a manner that is at least roughly commensurate with the estimated benefits of that transmission facility in each of the transmission planning regions. In determining the beneficiaries of interregional transmission facilities, transmission planning regions may consider benefits including, but not limited to, those associated with maintaining reliability and sharing reserves, production cost savings and congestion relief, and meeting Public Policy Requirements.” Final Rule at P 622
- § The Commission finds that it is appropriate to adopt a cost allocation principle that includes as beneficiaries those that cause costs to be incurred or that benefit from a new transmission facility because it is fully consistent with the cost causation principle as recognized by the Commission and the courts. Final Rule at P 623.
- § However, the Commission is not prescribing a particular definition of “benefits” or “beneficiaries.” The Commission, though, provides some guidance, stating that any benefit used by a public utility transmission provider in a regional cost allocation method must be an “identifiable benefit” and that the transmission facility cost allocated must be roughly commensurate with that benefit. In addition, beneficiaries are not limited to those that make direct use of the transmission facilities because other benefits may accrue to an interconnected transmission grid. Final Rule at PP 624-625.
- § Instead, the Commission prefers that each public utility transmission provider first develop its own method or methods for cost allocation, subject to Commission review. This will allow for flexibility to accommodate a variety of approaches and regional differences that may warrant distinctions in cost allocation methods. Concerns that the definition of “benefits” could be interpreted too broadly or narrowly will be addressed as each public utility transmission owner consults with their stakeholders to develop its own cost allocation method. Final Rule at PP 624-625.
- § The Commission further finds that cost causation is the foundation of an acceptable cost allocation method because a departure from cost causation principles can result in inappropriate cross-subsidization. Final Rule at P 626.
- § Determination of the beneficiaries of transmission facilities “individually or in the aggregate” refers only to cost allocation for new transmission facilities. This language is not intended to be a finding that the benefits of existing transmission facilities in and of itself may justify cost sharing for new transmission facilities, but the Commission is not ruling on that matter in this Final Rule. Final Rule at P 627.



- § The Commission declines to expand the scope of beneficiaries for new transmission facilities such that costs may be involuntarily allocated to those within an adjacent planning region that benefit from those facilities. The Commission clearly states that the allocation of the cost of a transmission facility that is located entirely within one transmission planning region may not be subject to a regional cost allocation method or methods that assigns some or all of the cost of that transmission facility to beneficiaries in another transmission planning region without reaching an agreement with those beneficiaries. Final Rule at P 628.
- § However, if a non-public utility transmission provider makes the choice to become part of the transmission planning region, then it would be responsible for the costs associated with any benefits if the transmission planning process determines that it is a beneficiary of certain transmission facilities selected in the regional transmission plan. Final Rule at P 629.

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

- § The Commission adopts the following Cost Allocation Principle 2 for both regional and interregional cost allocation:
 - § Regional Cost Allocation Principle 2: Those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities.
 - § Interregional Cost Allocation Principle 2: A transmission planning region that receives no benefit from an interregional transmission facility that is located in that region, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of that transmission facility. Final Rule at 637.
- § The Commission finds that this is a central tenet of cost causation and is thus essential to proper cost allocation. Final Rule at P 637.
- § The Commission declines to establish a threshold voltage level to define which benefits would be ineligible for cost allocation in the Final Rule. However, the Commission notes that this principle does require careful consideration and application to avoid free rider problems. Final Rule at P 638.
- § The Commission finds that Principle 1's requirement that costs be allocated in a way that is roughly commensurate with the benefits received precludes an allocation where the benefits received are trivial in relation to the costs to be borne. Furthermore, any beneficiaries that believe that the application of the cost allocation method or methods would assign to them costs that outweigh trivial benefits may make a section 205 or 206 filing with the Commission. Final Rule at P 639.
- § Every cost allocation method or methods must provide for allocation of the entire prudently incurred cost of a transmission project to prevent stranded costs. Under Principle 2, parties may not opt out of a Commission-approved cost allocation for a specific transmission project if they merely assert that they receive no benefits from it, because such a policy would not minimize the regional free rider problem. Final Rule at P 640.
- § All cost allocation principles apply the allocation of costs to all new transmission facilities selected in the regional transmission plan for purposes of cost allocation, including RTO and ISO regions. Furthermore, the rule provides that the 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. Final Rule at P 641.



4. Cost Allocation Principle 3—benefit to cost threshold ratio

- § The Commission adopts the following Cost Allocation Principle 3 for both regional and interregional cost allocation:
- § Regional Cost Allocation Principle 3: If a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, it must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. A public utility transmission provider in a transmission planning region may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies and the Commission approves a higher ratio.
 - § Interregional Cost Allocation Principle 3: If a benefit-cost threshold ratio is used to determine whether an interregional transmission facility has sufficient net benefits to qualify for interregional cost allocation, this ratio must not be so large as to exclude a transmission facility with significant positive net benefits from cost allocation. The public utility transmission providers located in the neighboring transmission planning regions may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the pair of regions justifies and the Commission approves a higher ratio. Final Rule at P 646.
- § Cost Allocation Principle 3 does not require the use of a benefit to cost ratio threshold. However, if a transmission planning region chooses to have such a threshold, then the Commission finds that a benefit to cost ratio of 1.25 to one is a reasonable ratio that will not act as a barrier to the development and construction of valuable new transmission projects. Public utility providers in a transmission planning region also may use a lower ratio without a separate showing and use a higher threshold if they justify it and the Commission approves a greater ratio. Requiring public utility transmission providers to obtain Commission approval for any benefit to cost ratio that exceeds 1.25 to 1 ensures that the ratio is not so high that transmission facilities with significant positive net benefits are not excluded from the regional transmission plan. Final Rule at PP 647-649.
- § The Commission declines to 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 this final rule. Instead, the Commission will address this issue in compliance filings based on specific facts presented. Final Rule at P 650.

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

- § The Commission adopts the following Cost Allocation Principle 4 for both regional and interregional cost allocation:
- § Regional Cost Allocation Principle 4: The allocation method for the cost of a transmission facility selected in a regional transmission plan must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation



method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.

- § Interregional Cost Allocation Principle 4: Costs allocated for an interregional transmission facility must be assigned only to transmission planning regions in which the transmission facility is located. Costs cannot be assigned involuntarily under this rule to a transmission planning region in which that transmission facility is not located. However, interregional coordination must identify consequences for other transmission planning regions, such as upgrades that may be required in a third transmission planning region and, if the transmission providers in the regions in which the transmission facility is located agree to bear costs associated with such upgrades, then the interregional cost allocation method must include provisions for allocating the costs of such upgrades among the beneficiaries in the transmission planning regions in which the transmission facility is located. Final Rule at P 657.
- § For a transmission facility that is located entirely within one transmission planning region and is intended to export electric energy to another transmission planning region, public utility transmission providers in the exporting region must first negotiate an agreement with the importing region before adopting a regional cost allocation method that assigns any of the costs of the transmission facility to beneficiaries in the importing region. Final Rule at 658.
- § For an interregional transmission facility that is located in two or more neighboring transmission planning regions and that is intended to export electric energy from one such region to the other, the public utility transmission providers in each region must have an interregional cost allocation method or methods for sharing the cost of such transmission facilities. However, Interregional Cost Principle 4 does not allow such a cost allocation method to assign the cost 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 regions in which the facility is located. Final Rule at 659.
- § Public utility transmission providers in one transmission planning region may not unilaterally allocate costs to beneficiaries in another transmission planning region even though the Commission acknowledges that this approach may lead to some beneficiaries of transmission facilities to escape cost responsibility. Final Rule at P 660.
- § The Midwest ISO and PJM are not required to revise their existing cross-border allocation method in response to Cost Allocation Principle 4. Final Rule at P 662.
- § A non-public utility transmission provider seeking to maintain a safe harbor tariff must ensure that the provisions of that tariff substantially conform, or are superior to, the *pro forma* OATT as it has been revised by this Final Rule. However, each non-public utility transmission provider may decide whether it wants to maintain its safe harbor status by meeting the transmission planning and cost allocation requirements of this rule. Final Rule at P 663.

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

- § The Commission adopts the following Cost Allocation Principle 5 for both regional and interregional cost allocation:
 - § Regional Cost Allocation Principle 5: The cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.
 - § Interregional Cost Allocation Principle 5: The cost allocation method and data requirements for determining benefits and identifying beneficiaries for an interregional



transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed interregional transmission facility. Final Rule at P 668.

- § The Commission finds that requiring cost allocation methods and their corresponding data requirements for determining benefits and beneficiaries to be open and transparent ensures that such methods are just and reasonable and not unduly discriminatory or preferential. The Commission further finds that greater stakeholder access to cost allocation information will help aid in the development and construction of new transmission, and may avoid contentious litigation or prolonged debate among stakeholders. Final Rule at 669.
- § Cost Allocation Principle 5 requires that the method or methods be known and transparent to allow for greater stakeholder participation. The Commission declines to address specific suggestions for methodology of cost allocation or to 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. Final Rule at PP 670-672.

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

- § The Commission adopts the following Cost Allocation Principle 6 for both regional and interregional cost allocation:
 - § Regional Cost Allocation Principle 6: A transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief, or to achieve public policy requirements. Each cost allocation method must be set out clearly and explained in detail in the compliance filing for this rule.
 - § Interregional Cost Allocation Principle 6: The public utility transmission providers located in neighboring transmission planning regions may choose to use a different cost allocation method for different types of interregional transmission facilities, such as transmission facilities needed for reliability, congestion relief, or to achieve public policy requirements. Each cost allocation method must be set out clearly and explained in detail in the compliance filing for this rule.
- § The Commission determined that transmission planning regions should be afforded the opportunity to develop a different cost allocation method for different types of transmission projects. Therefore the Commission permits, but does not require, public utilities in a transmission planning region to designate different types of transmission facilities and to develop a different cost allocation method for each type, as long as there is only one cost allocation method for each type and such methods are applied consistently. Final Rule at PP 686-687.
- § The Commission strongly encourages states to participate actively in the transmission planning processes, specifically in the identification of transmission needs driven by public policy requirements. Final Rule at P 688.
- § The Commission leaves it up to each transmission planning region to propose whether and how to distinguish between types of transmission facilities. A regional cost allocation method for one type of regional transmission facility or for all regional transmission facilities may include voting requirements for identified beneficiaries to vote on proposed transmission facilities. Final Rule at P 689.
- § A transmission facility proposed to address a public policy requirement must be eligible for selection in a regional transmission plan for purposes of cost allocation and must not be designated as a type of transmission facility for which the cost allocation method must be determined only on a project-specific basis. The regional cost allocation method for such a



transmission facility may take into account the transmission needs driven by a public policy requirement, who is responsible for complying with that requirement, and who benefits from the transmission facility. If a regional transmission plan determines that a transmission facility serves several functions, the regional cost allocation method must take the benefits of these functions into account in allocating costs roughly commensurate with benefits. Final Rule at P 690.

8. Whether To Establish Other Cost Allocation Principles

- § The Commission declines to adopt all of the other additional principles proposed by commenters to avoid limiting the flexibility for public utility transmission providers to propose the appropriate cost allocation method for their region. The Commission also notes that although cost containment is important, the Commission declines to establish a corresponding cost allocation principle addressing it because it would only address the amount of costs, not how those costs should be allocated among beneficiaries. However, each transmission planning region may propose in a compliance filing cost allocation methods that satisfy additional requirements that they deem necessary to meet the specific needs of that region, provided they are consistent with the principles in this rule. Final Rule at PP 704-705.

F. Application of the Cost Allocation Principles

1. Whether To Have Broad Regional Cost Allocation for Extra-High Voltage Facilities

- § The Commission declines to adopt a 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, likening such rules to a default cost allocation method the Commission rejects in the rule. Final Rule at P 713.
- § However, public utility transmission providers and their stakeholders in a transmission planning region may decide to allocate widely the costs of such high voltage facilities, if such an allocation would result in a distribution of costs that is at least roughly commensurate with the benefits received. Such a cost allocation method must be supported with evidence and submitted to the Commission in a compliance filing. Final Rule at P 500.

2. Whether To Limit the Use of Participant Funding

- § The Commission will not allow participant funding to be the cost allocation method for regional or interregional transmission projects selected in a regional transmission plan for purposes of cost allocation. If participant funding is proposed as a regional or interregional cost allocation method, the Commission states that it will not comply with the regional or interregional cost allocation principles adopted in the rule. However, these principles do not foreclose the opportunity for a transmission developer, a group of developers, or one or more individual transmission customers to voluntarily assume the costs of a new transmission facility. Final Rule at PP 723-726.
- § Nothing in this rule applies to existing transmission facilities with existing cost allocations or to transmission projects currently under development. Final Rule at P 728.
- § The Commission clarifies that the cost allocation reforms in this rule are not intended to modify existing *pro forma* OATT transmission service mechanisms for individual transmission service requests or requests for interconnection service. Final Rule at P 729.

3. Whether Regional and Interregional Cost Allocation Methods May Differ

- § The Commission finds that the method or methods for interregional cost allocation used by two transmission planning regions may be different from the method or methods used by either of them for regional cost allocation. Also, the method or methods for allocating a region's share of



the cost of an interregional transmission facility may differ from the method or methods for allocating the cost of a regional facility within that region. Final Rule at P 733.

- § Although the public utility transmission providers in a transmission planning region may choose to allocate their share of the costs of an interregional transmission facility using their regional cost allocation method or methods, the Commission does not require them to do so. Final Rule at P 734.
- § The Commission does not require the public utility transmission providers in a transmission planning region to accept the regional transmission planning method or methods of another transmission planning region with which it participates regarding interregional transmission coordination. Each transmission planning region will decide for itself how to allocate the costs of a new interregional transmission facility. Final Rule at P 735.

4. Recommendations for Additional Commission Guidance on the Application of the Transmission Cost Allocation Principles

- § The Commission declines to provide additional guidance regarding the development of an acceptable cost allocation method or methods to comply with the 6 cost allocation principles. The Commission wants to afford public utility transmission providers in individual transmission planning regions the flexibility necessary to accommodate unique regional characteristics. However, the Commission requires that any variations between regions must be consistent with the 6 cost allocation principles. Final Rule at PP 745-746.
- § The Commission is not requiring public utility transmission providers to use the same cost allocation method for public policy and other types of transmission facilities. Instead, the Commission permits different regional and interregional cost allocation methods for different types of transmission projects. Final Rule at P 747.
- § The Commission declines to find in advance that a “postage stamp” cost allocation may not be an acceptable cost allocation method. If such an allocation is submitted in a compliance filing, then the Commission will determine whether it meets the requirements of this rule. Final Rule at P 748.
- § The Commission states that it is not attempting to supersede the cost causation principle. Rather, the 6 principles serve as guidelines for public utility transmission providers to use to create cost allocation methods that are consistent with the cost causation principle. Final Rule at P 749.
- § The Commission believes that the dispute resolution processes in place under Order No. 890 will be adequate to address in the first instance, any disagreements that may arise regarding the allocation of transmission costs. The Commission will review any changes to those dispute resolution procedures in response to compliance filings submitted in response to this rule. Final Rule at P 750.

G. Cost Allocation Matters Related to Other Commission Rules, Joint Ownership, and Non-Transmission Alternatives

1. Whether To Reform Cost Allocation for Generator Interconnections

- § The Commission determines that issues related to the generator interconnection process and to interconnection cost recovery are outside the scope of this rulemaking, and the Commission declines to address those issues. Final Rule at P 760.

2. Pancaked Rates

- § The Commission declines to make new findings with respect to pancaked rates because it is beyond the scope of this rulemaking. The Commission does not make any modifications to its pancaked rate provisions for an RTO under Order No. 2000. If rate pancaking is an issue in a



particular transmission planning region, stakeholders may raise their concerns in the consultations leading to the compliance proceedings for this rule or make a separate filing with the Commission under section 205 or 206 of the FPA. Final Rule at P 764.

3. Transmission Rate Incentives

- § The Commission declines to revisit or modify its policy under Order No. 679 in this rule, as it is beyond the scope of this rulemaking. Final Rule at P 771.

4. Relationship of This Proceeding to the Proceeding on Variable Energy Resources

- § To the extent that utilities consider it necessary or appropriate to consider operational issues, such as those addressed in the Variable Energy Resources proceeding, in this rule, they may do so by making a separate section 205 filing rather than raise issues on compliance in this proceeding. Final Rule at P 774.

5. Joint Ownership

- § The Commission determines that specific financing techniques such as joint ownership are beyond the scope of this proceeding. Final Rule at P 776.

6. Cost Recovery for Non-Transmission Alternatives

- § Consistent with the approach taken in Order No. 890, the Commission requires that generation, demand resources, and transmission be treated comparably in the regional transmission planning process. However, while the consideration of non-transmission alternatives to transmission facilities may affect whether certain transmission facilities are in a regional transmission plan, the Commission finds that the issue of cost recovery for non-transmission alternatives is beyond the scope of this proceeding.

V. COMPLIANCE AND RECIPROCITY REQUIREMENTS

A. Compliance

- As detailed below, public utility transmission providers must submit a compliance filing within twelve months of the effective date of the Final Rule revising their OATT or other documents under the Commission's jurisdiction as necessary to meet requirements set forth in the Final Rule. In non-RTO/ISO regions, public utility transmission providers can make combined compliance filings, so long as each OATT includes the reforms in the Final Rule. Final Rule at PP 792, 798.
- Each public utility transmission provider must submit a compliance filing within eighteen months of the effective date of the Final Rule revising its OATT or other documents subject to the Commission's jurisdiction to demonstrate it meets requirements with respect to interregional transmission coordination procedures and an interregional cost allocation method or methods. Final Rule at P 792.
- The Commission clarifies that an RTO or ISO and its public utility transmission provider may make a compliance filing which demonstrates that its existing transmission processes (some or all) are in compliance with the Final Rule, and the Commission will consider it, along with any contrary views on compliance. The Commission declines to rule generically on whether an RTO or ISO is already in compliance with the Final Rule. Final Rule at P 795.
- Public utility transmission owners which are part of a Commission-jurisdictional RTO or ISO can demonstrate compliance through the RTO or ISO's filing, without making a separate compliance filing. This includes compliance with the interregional transmission coordinating requirements. Final Rule at P 797.



- The Commission encourages RTO and ISO members and non-members to work together with regional transmission planning. Non-members are not required to be admitted to an RTO/ISO's regional transmission planning process, nor are they prohibited from joining. Final Rule at P 797.

B. Reciprocity

- The Commission does not believe that it is necessary to invoke its authority under FPA section 211A, and require non-public utility transmission providers to provide transmission service on a comparable and not unduly discriminatory or preferential basis. If the Commission finds that non-public utility providers are not participating in the transmission planning and cost allocation process under the Final Rule, it may exercise its authority on a case-by-case basis. Final Rule at P 815.
- Each non-public utility transmission provider which has a safe harbor tariff can decide whether it wants to maintain that safe harbor status by fulfilling the transmission planning and cost allocation requirements of the Final Rule. The Commission is not modifying the reciprocity provision of the *pro forma* OATT. Final Rule at P 816.
- The Commission expects that all public utility and non-public utility transmission providers participate in the transmission planning and cost allocation processes set forth in the Final Rule. Final Rule at P 818.

VI. DISSENT OF COMMISSIONER MOELLER

- The owner of a transmission network should have been provided with greater flexibility to ensure the reliability of its own network. Specifically, the Final Rule should have allowed incumbent transmission owners to maintain their existing rights of first refusal for projects within its franchised service territory in order to maintain the reliability of its existing network and satisfy NERC reliability standards. Instead, the Commission had to create a blanket waiver of penalties in the event that a competitor fails to fix a reliability issue. As such, the Commission could be placing itself in a difficult position if a blackout results in widespread loss of power, and the Commission is unable to assess a penalty. Moeller dissent at 1-2.
- Additionally, local projects that have their costs assigned regionally generally cannot maintain a right of first refusal. This will discourage transmission owners from seeking regional cost allocation for their local projects and could ultimately discourage regional cooperation by encouraging more local transmission projects. Moeller dissent at 2-3.
- 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. This is especially important considering most projects will be allowed to retain their right of first refusal under the Final Rule. Moeller dissent at 3.
- Finally, the Commission should have clarified that the right of first refusal is not a right of “forever” refusal. While adopting a time frame – such as the 90-day time frame suggested in the record – did not need to have been mandated, the Commission should have encouraged every region to adopt a time frame that best reflects the needs and circumstances of that region. Moeller dissent at 1, 3-4.

VII. SPECIFIC COMPLIANCE REQUIREMENTS BY DATE

A. Within 12 months of the Effective Date of the Final Rule

- Each public utility transmission provider must amend its OATT to detail procedures which provide for consideration of transmission needs driven by public policy requirements in the local and regional transmission planning process. Final Rule at P 203.



- Public utility transmission providers may include in their compliance filings tariff revisions they believe are necessary to implement flexible transmission planning criteria, such as procedures to address alternating inclusion and exclusion of a single transmission project in a regional transmission plan over successive planning cycles. Final Rule at P 224 (emphasis added).
- Public utility transmission providers, subject to the framework in section II.B.3(d) of the Final Rule, must eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation. Final Rule at P 313.
- Each public utility transmission provider must revise its OATT to demonstrate that the regional transmission planning process in which it participates has established 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, whether that entity is an incumbent transmission provider or a non-incumbent transmission developer. Final Rule at P 323.
- Each public utility transmission provider must revise its OATT to identify: (a) 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 (b) the date by which such information must be submitted to be considered in a given transmission planning cycle. Final Rule at P 325.
- Each public utility transmission provider must amend its OATT to 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. Final Rule at P 329.
- A public utility transmission provider must have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation. If the public utility transmission provider is an RTO or ISO, then the cost allocation method(s) must be set forth in the RTO or ISO OATT. In a non-RTO/ISO transmission planning region, each public utility transmission provider in the region must set forth in its OATT the same language regarding the cost allocation method(s) used in its transmission planning region. The Commission does not specify how costs of an individual regional transmission facility should be allocated, but such methods should apply to all transmission facilities of the type in question. Final Rule at PP 558, 560.
- Each public utility transmission provider must show on compliance that 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: (1) costs allocated in a way that is roughly commensurate with benefits; (2) no involuntary allocation of costs to non-beneficiaries; (3) benefit to cost threshold ratio; (4) allocation to be solely within transmission planning region(s) unless those outside voluntarily assume costs; (5) transparent method for determining benefits and identifying beneficiaries; and (6) different methods for different types of facilities. Final Rule at PP 603, 622, 637, 646, 657, 668, 685.

B. Within 18 months of the Effective Date of the Final Rule

- Public utility transmission providers must describe the methods by which they will identify and evaluate interregional transmission facilities, and transmission providers in neighboring planning regions must include a description of the type of transmission studies they will conduct to determine if interregional transmission facilities would be more efficient or cost-effective than regional facilities. Final Rule at P 398.
- Each public utility transmission provider, through its transmission planning region, must 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. Neighboring transmission planning regions may use discretion in the way this requirement is designed and implemented. Final Rule at P 437.



- Each public utility transmission provider must adopt interregional transmission coordination procedures that provide for the exchange of planning data and information at least annually, which will ensure that neighboring transmission planning regions are aware of each others' transmission plans and the assumptions and analysis that support such plans. Final Rule at P 454.
- The Commission requires public utility transmission providers, either individually or through their transmission planning region, to maintain a website or e-mail list to communicate information related to interregional transmission coordination procedures. Information related to interregional transmission coordination may be maintained on an existing public utility transmission provider's website or a regional transmission planning website. Final Rule at P 458.
- The Commission requires that public utility transmission providers in each pair of neighboring transmission planning regions develop the same language to be included in each public utility transmission provider's OATT that describes the interregional transmission coordination procedures for that particular pair of regions. If the public utility transmission providers so choose, these procedures may be reflected in an interregional transmission coordination agreement filed on compliance for approval by the Commission. Final Rule at P 475.
- The Commission requires a public utility transmission provider in a transmission planning region to have, together with the public utility transmission providers in its own transmission planning region and a neighboring transmission planning region, 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. Final Rule at P 578.
- Each public utility transmission provider must show on compliance that 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: (1) costs allocated in a way that is roughly commensurate with benefits; (2) no involuntary allocation of costs to non-beneficiaries; (3) benefit to cost threshold ratio; (4) allocation to be solely within transmission planning region(s) unless those outside voluntarily assume costs; (5) transparent method for determining benefits and identifying beneficiaries; and (6) different methods for different types of facilities. Final Rule at PP 603, 622, 637, 646, 657, 668, 685.
- Note: the method or methods for interregional cost allocation used by two transmission planning regions may be different from the method or methods used by either of them for regional cost allocation. Also, the method or methods for allocating a region's share of the cost of an interregional transmission facility may differ from the method or methods for allocating the cost of a regional facility within that region. Final Rule at P 733.