

## Energy Regulatory Alert

### FERC Issues Final Rule on Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities

**Order No. 1000**

**(Docket No. RM10-23-000)**

August 4, 2011

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The Federal Energy Regulatory Commission (FERC or “the Commission”) issued its Final Rule on Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities (“Final Rule”) on July 21, 2011. Regional Transmission Organizations (RTOs), Independent System Operators (ISOs) and individual transmission providers, as applicable, will have to review and revise their Open Access Transmission Tariffs (OATTs) in order to comply with the Final Rule. Each public utility transmission provider must submit a compliance filing within 12 months of the effective date of this Final Rule revising its OATT or other document(s) subject to the Commission’s jurisdiction as necessary to demonstrate that it meets the requirements set forth in the Final Rule. The Commission also requires each public utility transmission provider to submit a compliance filing within 18 months of the effective date of this Final Rule revising its OATT or other document(s) subject to the Commission’s jurisdiction as necessary to demonstrate that it meets the requirements set forth in the Final Rule with respect to interregional transmission coordination procedures and an interregional cost allocation method or methods. The Final Rule is applicable to all new transmission facilities developed after the compliance filings.

The following summarizes the major provisions of the Final Rule and provides initial comments on the Final Rule and its potential impacts, and on the issues it raises with respect to transmission planning and cost allocation.

### Introductory Matters

#### Transmission Facilities

The Final Rule distinguishes between: (1) a transmission facility in a regional transmission plan and (2) a transmission facility selected in a regional transmission plan for purposes of cost allocation. Transmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have 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 because they are more efficient or cost-effective solutions to regional transmission needs.

Transmission facilities selected in a regional transmission plan for purposes of cost allocation may include: (1) regional transmission facilities, which are located solely within a single transmission planning region and are determined to be a more efficient or cost-effective solution to a regional transmission need, and (2) interregional transmission facilities, which are located within two or more neighboring transmission planning regions and are determined by each of those regions to be a more efficient or cost-effective solution to a regional transmission need.



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## Application of Final Rule

The Final Rule will apply to the evaluation or reevaluation of any transmission facility that occurs after the effective date of the public utility transmission provider's filing adopting the transmission planning and cost allocation reforms of the pro forma OATT required by the Final Rule.

The Commission directs public utility transmission providers 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 this Final Rule. In this regard, the transmission providers are required to determine at what point a previously approved project is no longer subject to reevaluation and, as a result, is not subject to the requirements of the Final Rule.

**Comment:** There will be significant debate over the extent to which transmission facilities that have been evaluated should be reevaluated under the Commission's new regional transmission facilities. Also, there is sure to be an impact on the evaluation of new transmission facilities pending the filing by public utility transmission providers of compliance filings adopting the transmission planning and cost allocation reforms required by the Final Rule.

## No Requirement or Approval to Build

For purposes of the Final Rule, the designation of a transmission project as a "transmission facility in a regional transmission plan" or a "transmission facility selected in a regional transmission plan for purposes of cost allocation" only establishes how the developer may allocate the costs of the facility in Commission-approved rates if such facility is built. 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. Also, nothing in the Final Rule relieves any developer from having to obtain all approvals required to build such facility.

## Transmission Planning Requirements

### Regional Transmission Planning Process

The Final Rule requires that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan and that complies with the transmission planning principles of Order No. 890.

Through the regional transmission planning process, public utility transmission providers will be required to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process. This could include transmission facilities needed to meet reliability requirements, address economic considerations, and/or meet transmission needs driven by Public Policy Requirements, as discussed further below. When evaluating the merits of such alternative transmission solutions, public utility transmission providers in the transmission planning region also must consider proposed nontransmission alternatives on a comparable basis.

Specifically, the requirements of the Final Rule build on the following transmission planning principles in Order No. 890: (1) coordination, (2) openness, (3) transparency, (4) information exchange, (5) comparability, (6) dispute resolution and (7) economic planning.<sup>1</sup> In Order No. 890, the Commission required that each public utility transmission provider adopt these transmission planning principles as part of its individual transmission planning process. In this Final Rule, the Commission expands the Order No. 890 requirements by directing public utility transmission providers to adopt these requirements with respect to the process used to produce a regional transmission plan.

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<sup>1</sup> The Commission does not include the regional participation transmission planning principle and the cost allocation transmission planning principle here, because it addresses interregional transmission coordination and cost allocation for transmission facilities selected in a regional transmission plan for purposes of cost allocation elsewhere in the Final Rule.

A merchant transmission developer who does not seek to use the regional cost allocation process would not be required to participate in the regional transmission planning process, although such a developer would be required to comply with all reliability requirements applicable to transmission facilities in the transmission planning region in which its transmission project would be located. Merchant transmission projects are defined as those for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates. A merchant transmission developer would not be prohibited from participating—and, indeed, is encouraged to participate—in the regional transmission planning process.

Because a merchant transmission developer assumes all financial risk for developing its transmission project and constructing the proposed transmission facilities, the Commission does not require such a developer to participate in a regional transmission planning process for purposes of identifying the beneficiaries of its transmission project that would otherwise be the basis for securing eligibility to use a regional cost allocation method or methods. However, a merchant transmission developer must provide adequate information and data to allow public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.

According to the Commission, the Final Rule in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning, or authority over siting, permitting or construction of transmission solutions.

### **Transmission Needs Driven by Public Policy Requirements**

The Commission requires public utility transmission providers to amend their OATs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements, i.e., by state or federal laws or regulations, in the local and regional transmission planning processes.<sup>2</sup> This requirement is intended to ensure that the local and regional transmission planning processes support the development of more efficient or cost-effective transmission facilities to meet the transmission needs driven by state or federal laws or regulations that drive transmission needs.

By considering transmission needs driven by Public Policy Requirements, the Commission means: (1) the identification of transmission needs driven by Public Policy Requirements and (2) the evaluation of potential solutions to meet those needs.

First, public utility transmission providers must establish, in consultation with stakeholders, procedures under which public utility transmission providers and stakeholders will identify those transmission needs driven by Public Policy Requirements for which potential transmission solutions will be evaluated. Such procedures must allow stakeholders an opportunity to provide input and offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements. To the extent that such procedures identify no transmission needs driven by a Public Policy Requirement, the relevant public utility transmission providers are under no obligation to evaluate potential transmission solutions.

Second, the Final Rule requires public utility transmission providers to post on their websites an explanation of which transmission needs driven by Public Policy Requirements will be evaluated for potential solutions in the local or regional transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated.

While a public utility transmission provider is required under this Final Rule to evaluate in its local and regional transmission planning processes those identified transmission needs driven by Public Policy Requirements, that obligation does not establish an independent requirement to satisfy such Public Policy Requirements. In other words,

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<sup>2</sup> By “local” transmission planning process, we mean the transmission planning process that a public utility transmission provider performs for its individual retail distribution service territory or footprint pursuant to the requirements of Order No. 890. To the extent that public utility transmission providers within a region do not engage in local transmission planning, such as in some ISO/RTO regions, the requirements of this Final Rule with regard to Public Policy Requirements apply to only the regional transmission planning process.

the requirements established herein do not convert a failure of a public utility transmission provider to comply with a Public Policy Requirement established under state law into a violation of its OATT.

The Final Rule does not preclude any public utility transmission provider from considering in its transmission planning process transmission needs driven by additional public policy objectives not specifically required by state or federal laws or regulations.<sup>3</sup> If public utility transmission providers, in consultation with stakeholders, do identify public policy objectives not specifically required by state or federal laws or regulations, transmission facilities designed to meet these objectives may be eligible for cost allocation under the transmission planning process.

**Comment:** This requirement of the Final Rule should further incent states, and perhaps the federal government, to enact statutes and implement regulations that implicate transmission needs. Again, the regional and interregional transmission planning processes may be delayed or otherwise impacted as states and the federal government debate or otherwise engage in the consideration of such statutes and regulations. In addition, to what extent will transmission projects be reevaluated as the result of the subsequent enactment or adoption of such statutes and regulations?

The fact that, according to the Commission, these requirements in the Final Rule do not convert a failure of a public utility transmission provider to comply with a Public Policy Requirement established under state law into a violation of its OATT is important. Otherwise, state representatives and/or other interested parties could file a Federal Power Act (FPA) section 206 complaint at the FERC challenging the public utility transmission provider's determinations regarding transmission facilities eligible for cost allocation under the transmission planning process.

However, Public Policy Requirements include "*state or federal laws or regulations that drive transmission needs.*"<sup>4</sup> The Commission states in the Final Rule that "the requirements established herein do not convert a failure of a public utility transmission provider to comply with a Public Policy Requirement established under *state law*"<sup>5</sup> into a violation of its OATT." There is no mention of state "regulations" or "federal laws or regulations." It remains to be seen whether these omissions were oversights or were intentional on the part of the Commission.

## Nonincumbent Transmission Developers

The Final Rule addresses the removal from Commission-jurisdictional tariffs and agreements of provisions that grant a federal right of first refusal to construct transmission facilities selected in a regional transmission plan for purposes of cost allocation. To implement the elimination of such rights, the Commission adopts a framework that requires the development of qualification criteria and protocols to govern the submission and evaluation of proposals for transmission facilities to be evaluated in the regional transmission planning process. The Commission further requires that any nonincumbent developer of a transmission facility selected in the regional transmission plan have an opportunity comparable to that of an incumbent transmission developer to allocate the cost of such transmission facility through a regional cost allocation method or methods. For purposes of this Final Rule, "nonincumbent transmission developer" refers to two categories of transmission developer: (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. An "incumbent transmission developer/provider" is an entity that develops a transmission project within its own retail distribution service territory or footprint.

The Commission directs public utility transmission providers to 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. "Federal rights of first

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<sup>3</sup> For example, a public utility transmission provider and its stakeholders are not precluded under this Final Rule from choosing to plan for state public policy goals that have not yet been codified into state law, which they nonetheless consider to be important long-term planning considerations.

<sup>4</sup> Emphasis supplied.

<sup>5</sup> Emphasis supplied.

refusal” in the Final Rule are those rights of first refusal that are created by provisions of Commission-jurisdictional tariffs or agreements.<sup>6</sup>

First, the Commission requires each public utility transmission provider to 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.

Second, the Commission requires that each public utility transmission provider revise its OATT to identify: (1) 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 (2) the date by which such information must be submitted to be considered in a given transmission planning cycle.

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. This process must comply with the Order No. 890 transmission planning principles, ensuring transparency, and the opportunity for stakeholder coordination. The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.

The Commission also requires that a nonincumbent transmission developer have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation. More specifically, each public utility transmission provider must participate in a regional transmission planning process that provides that the nonincumbent developer has an opportunity comparable to that of an incumbent transmission developer to allocate the cost of such transmission facility through a regional cost allocation method or methods.

The Commission’s focus here is 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.<sup>7</sup> The Commission does not, in this Final Rule, require removal from Commission-jurisdictional tariffs and agreements of a federal right of first refusal as applicable to a local transmission facility.

Nothing in the Final Rule restricts an incumbent transmission provider from developing a local transmission solution that is not eligible for regional cost allocation to meet its reliability needs or service obligations in its own retail distribution service territory or footprint.

The Final Rule does not affect the right of an incumbent transmission provider to build, own and recover costs for upgrades to its own transmission facilities, such as in the case of tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. In other words, an incumbent transmission provider would be permitted to maintain a federal right of first refusal for upgrades to its own transmission facilities. In addition, the Commission affirms that the Final Rule does not alter an incumbent transmission provider’s use and control of its existing rights of way. That is, the Final Rule does not remove or limit any right an incumbent may have to build, own and recover costs for upgrades to the facilities owned by an incumbent, nor does this Final Rule grant or deny transmission developers the ability to use rights of way held by other entities,

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<sup>6</sup> Nothing in the Final Rule is intended to limit, preempt or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including, but not limited to, authority over siting or permitting of transmission facilities. The Final Rule does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements.

<sup>7</sup> In order for a transmission facility to be eligible for the regional cost allocation methods, the region must select the transmission facility in the regional transmission plan for purposes of cost allocation. For those facilities not seeking cost allocation, the region may nonetheless have those transmission facilities in its regional transmission plan for information or other purposes; then, having such a facility in the plan would not trigger regional cost allocation.

even if transmission facilities associated with such upgrades or uses of existing rights of way are selected in the regional transmission plan for purposes of cost allocation. The retention, modification or transfer of rights of way remain subject to relevant law or regulation granting the rights of way. Nothing in the Final Rule is intended to limit, preempt or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including, but not limited to, authority over siting or permitting of transmission facilities.

The Final Rule does not diminish the significance of an incumbent transmission provider's reliability needs or service obligations. Currently, an incumbent transmission provider may meet its reliability needs or service obligations by building new transmission facilities that are located solely within its retail distribution service territory or footprint. The Final Rule continues to permit an incumbent transmission provider to meet its reliability needs or 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. Alternatively, an incumbent transmission provider may rely on transmission facilities selected in a regional transmission plan for purposes of cost allocation. The Final Rule does not prevent an incumbent transmission provider from continuing to propose transmission projects for consideration in the regional transmission planning process and to receive regional cost allocation if those projects are selected in a regional transmission plan for such purposes, even if they are located entirely within its retail distribution service territory or footprint.

Given that incumbent transmission providers may rely on transmission facilities selected in a regional transmission plan for purposes of cost allocation to comply with their reliability and service obligations, delays in the development of such transmission facilities could adversely affect the ability of the incumbent transmission provider to meet its reliability needs or service obligations. To avoid this result, the Commission requires each public utility transmission provider to amend its OATT to describe the circumstances and procedures under which public utility transmission providers in the regional transmission planning process will reevaluate the regional transmission plan to determine whether delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions, including those the incumbent transmission provider proposes, to ensure that the incumbent can meet its reliability needs or service obligations.

The Commission recognizes that there may be circumstances in which an incumbent transmission provider may be called upon to complete a transmission project that it did not sponsor. For example, a situation may arise where an incumbent transmission provider is called upon to complete a transmission project that another entity has abandoned. There also may be situations in which an incumbent transmission provider has an obligation to build a project that is selected in the regional transmission plan for purposes of cost allocation but has not been sponsored by another transmission developer. According to the Commission, both of these situations would be a basis for the incumbent transmission provider to be granted abandoned plant recovery for that transmission facility upon the filing of a petition for declaratory order requesting such rate treatment or a request under section 205 of the FPA.

**Comment:** This requirement is likely to generate significant debate as incumbent transmission owners seek to preserve their right to build new transmission facilities in their service territories and nonincumbent developers seek to expand the opportunities they have to compete to build these facilities. There will be significant debate, and likely disagreement, between incumbent and nonincumbent transmission developers over the tariff revisions adopted to comply with this requirement of the Final Rule. In any event, despite the Commission's desire to "level the playing field" for nonincumbents, the Commission recognizes that there are many hurdles that such developers would have to overcome and that the Commission does not have the authority to address. The Commission recognizes that removing federal rights of first refusal in Commission-jurisdictional tariffs and agreements will not eliminate all obstacles to transmission development that may exist under state or local laws or regulations and therefore may not address all challenges facing nonincumbent transmission developers in those jurisdictions.

## Interregional Transmission Coordination

To accomplish these reforms, the Commission directs public utility transmission providers in each pair of transmission planning regions to work through their regional transmission planning processes to develop the same language to be included in each public utility transmission provider's OATT that describes the procedures that a particular pair of transmission planning regions will use to satisfy the foregoing requirements. Alternatively, if the public utility

transmission providers so choose, these procedures may be reflected in an interregional transmission planning agreement among the public utility transmission providers within neighboring transmission planning regions that is filed with the Commission.

### ***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 for the purpose of coordinating and sharing the results 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. Through adoption of this requirement, the Commission intends that neighboring transmission planning regions will enhance their existing regional transmission planning processes to provide for: (1) the sharing of information regarding the respective needs of each region, and potential solutions to 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.

The Final Rule requires each public utility transmission provider, through its regional transmission planning process, to develop and implement additional procedures that provide for the sharing of information regarding the respective needs of each neighboring transmission planning region, and potential solutions to those needs, as well as the identification and joint evaluation of interregional transmission alternatives to those regional needs by the neighboring transmission planning regions. On compliance, public utility transmission providers must describe the methods by which they will identify and evaluate interregional transmission facilities.

### ***Geographical Scope of Interregional Transmission Coordination***

The Commission requires each public utility transmission provider, through its regional transmission planning process, to coordinate with the public utility transmission providers in each of its neighboring transmission planning regions within its interconnection to implement the interregional transmission coordination requirements adopted in this Final Rule.

The Commission does not require joint evaluation of the effects of a new transmission facility proposed to be located solely in a single transmission planning region. Although the Final Rule requires each regional transmission planning process to identify the consequences of a proposed new transmission facility in other transmission planning regions, the Commission does not require that to be done interregionally.

While the Commission does not require multilateral or interconnectionwide coordination in this Final Rule, it encourages public utility transmission providers to explore the possibility of multilateral interregional transmission coordination among several, or even all, transmission planning regions within an interconnection.

### ***Implementation of the Interregional Transmission Coordination Requirements***

#### ***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. 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.

For an interregional transmission facility to receive cost allocation under the interregional cost allocation method or methods developed pursuant to this Final Rule, the transmission facility must be selected in both of the relevant regional transmission planning processes for purposes of cost allocation.

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.

The Commission expects public utility transmission providers to develop a timeline that provides a meaningful opportunity to review and evaluate, through the interregional transmission coordination procedures, information developed through the regional transmission planning process, and similarly provides a meaningful opportunity to review and use in the regional transmission planning process information developed in the interregional transmission coordination procedures.

#### ***Data Exchange***

The Commission requires each public utility transmission provider, through its regional transmission planning process, to adopt interregional transmission coordination procedures that provide for the exchange of planning data and information at least annually.

#### ***Transparency***

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 procedures. The Commission requires that the information be posted in such a way that stakeholders are able to distinguish between information related to interregional transmission coordination and information related to regional transmission planning.

#### ***Stakeholder Participation***

The Final Rule 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). Because the Final Rule requires that an interregional transmission facility be selected in each relevant regional transmission plan for purposes of cost allocation to be eligible for interregional cost allocation, stakeholders will have the opportunity to participate fully in the consideration of interregional transmission facilities during the regional transmission planning process.

To facilitate stakeholder involvement, the Final Rule requires the public utility transmission providers to make transparent the analyses undertaken and determinations reached by neighboring transmission planning regions in the identification and evaluation of interregional transmission facilities.<sup>8</sup>

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.

#### ***Tariff Provisions and Agreements for Interregional Transmission Coordination***

The Commission requires that the public utility transmission providers in each pair of neighboring transmission planning regions, working through their regional transmission planning processes, develop the same language describing the interregional transmission coordination procedures for that particular pair of regions and include the language in their OATTs. Alternatively, 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.<sup>9</sup>

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<sup>8</sup> This information must be made available subject to appropriate confidentiality protections and Critical Energy Infrastructure Information requirements.

<sup>9</sup> However, even if a public utility transmission provider voluntarily enters into such an agreement, its OATT must still provide enough description for stakeholders to follow how interregional transmission coordination will be conducted, with links included



According to the Commission, no public utility transmission provider in a transmission planning region should be permitted to force transmission projects or costs onto another region contrary to the agreed-upon interregional transmission coordination procedures incorporated into the relevant public utility transmission providers' OATTs pursuant to this Final Rule.

**Comments:** The provision in the Final Rule to the effect that no public utility transmission provider in a transmission planning region should be permitted to force transmission projects or costs onto another region contrary to the agreed-upon interregional transmission coordination procedures incorporated into the relevant public utility transmission providers' OATTs pursuant to this Final Rule is contrary to recent Commission precedent. In Docket No. ER11-1844, the Commission accepted an FPA section 205 filing by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and International Transmission Company (ITC) that would allocate the costs of Phase Angle Regulating facilities constructed by ITC upon the New York Independent System Operator, Inc. (NYISO) and PJM Interconnection, L.L.C. (PJM) in the absence of such agreement. In that proceeding, both NYISO and PJM filed requests for rehearing, which remain pending before the Commission.

## Transmission Cost Allocation Requirements

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 an ISO, then the cost allocation method or methods must be set forth in the RTO or ISO OATT. In a non-RTO/ISO transmission planning region, each public utility transmission provider located within the region must set forth in its OATT the same language regarding the cost allocation method or methods used in its transmission planning region. In either instance, such cost allocation method or methods must be consistent with the regional cost allocation principles in the Final Rule.<sup>10</sup>

With respect to cost allocation for a proposed transmission facility located entirely within one public utility transmission owner's service territory, a public utility transmission owner may not unilaterally apply the regional cost allocation method or methods developed pursuant to this Final Rule. However, a proposed transmission facility located entirely within a public utility transmission owner's service territory could be determined by public utility transmission providers in the region to provide benefits to others in the region, and, thus, the cost of that transmission facility could be allocated according to that region's regional cost allocation method or methods.

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.<sup>11</sup> The cost allocation method or methods used by the pair of neighboring transmission regions can differ from the cost allocation method or methods used by each region to allocate the cost of a new interregional transmission facility within that region.

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to the actual agreement where the details can be found. *See United States Dep't of Energy-Bonneville Power Admin.*, 124 FERC ¶ 61,054 at P 65 (2008) (requiring Avista, Puget and Bonneville Power "to provid[e] additional detail in their Attachment Ks on the WECC's [Transmission Expansion Planning Policy Committee's] process or providing direct links (i.e., URLs) to the appropriate documents on the WECC website where the processes to coordinate information and planning efforts [between several regional planning groups] are discussed").

<sup>10</sup> The Final Rule sets forth the Commission's requirements regarding the development of regional and interregional cost allocation methods and does not address matters of cost recovery.

<sup>11</sup> A group of three or more transmission planning regions within an interconnection—or all of the transmission planning regions within an interconnection—may agree on and file a common method or methods for allocating the costs of a new interregional transmission facility. However, the Commission does not require such multiregional provisions among more than two neighboring transmission planning regions.

An interregional transmission facility must be selected in both of the relevant regional transmission planning processes for purposes of cost allocation in order to be eligible for interregional cost allocation pursuant to a cost allocation method required under this Final Rule.

The requirement to coordinate with neighboring regions applies to public utility transmission providers within a region as a group, not members within an RTO or ISO acting individually. Therefore, within an RTO or ISO, the RTO or ISO would develop an interregional cost allocation method or methods with its neighbors on behalf of its public utility transmission owning members.

The Commission requires each public utility transmission provider to show on compliance that its method or methods for regional and interregional cost allocation are just and reasonable, and not unduly discriminatory or preferential, by demonstrating that each method satisfies the six cost allocation principles.

The six regional cost allocation principles apply to, and only to, a cost allocation method or methods for new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. The six analogous interregional cost allocation principles apply to, and only to, a cost allocation method or methods for a new transmission facility that is located in two neighboring transmission planning regions and accounted for in the interregional transmission coordination procedure in an OATT.

In the event of a failure to reach an agreement on a cost allocation method or methods, the Commission will use the record in the relevant compliance filing proceeding as a basis to develop a cost allocation method or methods that meets its proposed requirements.

**Comment:** The fact that, if the public utility transmission provider and stakeholders do not reach an agreement, the Commission will develop a cost allocation method or methods that satisfies the requirements of the Final Rule, may encourage the transmission provider and stakeholders to agree. On the other hand, this would give stakeholders the opportunity to plead their cases to the Commission and force it to act, subject to appellate review. In that case, it will be critically important that the stakeholders ensure that the record clearly explains and fully supports their positions.

***Cost Allocation Principle 1—Costs Allocated in a Way that is Roughly Commensurate with Benefits.***

The Commission adopts the following 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 the 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.

and

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.<sup>12</sup>

According to the Commission, requiring a “beneficiaries pay” cost allocation method or methods is fully consistent with the cost causation principle as recognized by the Commission and the courts. As the Commission stated in Order No. 890, the one factor that it weighs when considering a dispute over cost allocation is whether a proposal fairly assigns costs among those who cause the costs to be incurred and those who otherwise benefit from them.<sup>13</sup> Therefore, it adopts a cost allocation principle that includes as beneficiaries those that cause costs to be incurred or that benefit from a new transmission facility.

The Commission is not prescribing a particular definition of “benefits” or “beneficiaries” in this Final Rule but will further consider these matters in its review of compliance the compliance filings.

As discussed in adopting Cost Allocation Principle 4 below, 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 pursuant to this Final Rule 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.

**Comments:** This principle is, as the Commission notes, consistent with the well-established cost causation principle recognized by both the Commission and the federal courts. However, the Commission has accepted the allocation of transmission costs to alleged beneficiaries in the absence of substantial evidence that they benefit from the transmission facilities, indeed, despite evidence to the contrary. Thus, while the principle on its face should not be controversial, the Commission’s going-forward application of the principle will require careful scrutiny.

In addition, presumably in response to the Midwest ISO’s multivalue project cost allocation proposal, which is pending at the Commission on rehearing, the principle provides that 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 costs savings and congestion relief, and/or meeting Public Policy Requirements. Whether the Commission has the authority to permit the allocation of the costs of a transmission facility to a party that does not benefit from the facility is currently pending on rehearing in the MVP proceeding<sup>14</sup> and certainly will be challenged on appeal. In any event, evaluating such benefits on a transmission facility-by-facility basis will be controversial enough. Attempting to do this on an aggregate basis certainly will be much more difficult and compound the controversy.

#### *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.

and

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.

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<sup>12</sup> According to the Commission, the phrase “individually or in the aggregate” is not contained in Interregional Cost Allocation Principle 1, because interregional transmission facilities are considered facility by facility by pairs of transmission planning regions, unless pairs of transmission planning regions choose to do otherwise.

<sup>13</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.

<sup>14</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, Order Granting Rehearing for Further Consideration, issued Feb. 11, 2011, Docket No. ER10-1791-001; *see generally* Docket No. ER10-1791.

Cost Allocation Principle 2 requires that costs be allocated in a way that is roughly commensurate with the benefits received. This precludes an allocation where the benefits received are trivial in relation to the costs to be borne. Any beneficiaries that believe that the application of the cost allocation method or methods would assign to them costs for benefits, which are trivial, in relation to those costs are free to make an FPA section 205 or 206 filing.

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, although they are not required to do so. To the extent that they propose a cost allocation method or methods that considers the benefits and costs of a group of new transmission facilities, and adequately support their proposal, Cost Allocation Principle 2 would not require a showing that every individual transmission facility in the group of transmission facilities provides benefits to every beneficiary allocated a share of costs of that group of transmission facilities. However, it is required that the aggregate cost of these transmission facilities be allocated roughly commensurate with aggregate benefits.

**Comments:** Note that the Commission has put the burden on any beneficiary that believes that the application of the cost allocation method or methods would assign to them costs for benefits, which are trivial, in relation to those costs to make an FPA section 205 or section 206 filing. The nature of the section 205 filing contemplated by the Commission is not clear from the Final Rule. To the extent that the alleged beneficiary is required to make a section 206 filing, it, and not the public utility transmission provider that allocated the costs, would have the burden of demonstrating which the allocation is unjust and unreasonable, and unduly discriminatory and preferential.

### *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.

and

Interregional Cost Allocation Principle 3: If a benefit to 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.<sup>15</sup> 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.

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, the principle limits the threshold to one that is not so high as to block inclusion of many worthwhile transmission projects in the regional transmission plan. Further, it allows public utility providers in a transmission planning region to use a lower ratio without a separate showing and to use a higher threshold if they justify it and the Commission approves a greater ratio.

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<sup>15</sup> The phrase “net benefits to qualify for interregional cost allocation” differs from the language in regional Cost Allocation Principle 3, because there is no plan at the interregional level for which projects would be selected.

Allowing for a transparent benefit to cost ratio may help certain transmission planning regions to determine which transmission facilities have sufficient net benefits to be selected in the regional transmission plan for purposes of cost allocation.

**Comments:** Cost Allocation Principle 3 does not appear to relate in any way to cost allocation. Rather, as the Commission notes, the cost benefit ratio may help certain transmission planning regions determine which transmission facilities have sufficient net benefits to be selected in the regional transmission plan for purposes of cost allocation. While unstated, this principle may have been included to address a Commission concern that projects would be excluded from the regional transmission plan for purposes of cost allocation in order to avoid the consequences resulting from inclusion in the plan. For example, a nonincumbent developer would not be able to recover its costs pursuant to the cost allocation method or methods applicable to transmission facilities included in the regional transmission plan for purposes of cost allocation.

*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.

and

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.<sup>16</sup> 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.

Regarding the allocation of the cost of a transmission facility that is located entirely within one transmission planning region and that is intended to export electric energy from that transmission planning region to another transmission planning region, the public utility transmission providers in the exporting transmission planning region may not have a regional cost allocation method or methods pursuant to this Final Rule 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. The public utility transmission providers in such transmission planning regions may, however, negotiate an agreement to share the transmission facility's costs with the beneficiaries in another transmission planning region, as they always have been free to do. Doing so is not inconsistent with Regional Cost Allocation Principle 4.

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<sup>16</sup> The first two sentences of Interregional Cost Allocation Principle 4 differ from Regional Cost Allocation Principle 4, because, at the interregional level, there may be a scenario in which a transmission facility is located in one transmission planning region but provides benefits to another transmission planning region. For example, if regions A and B plan an interregional transmission facility that they believe benefits region C, regions A and B cannot allocate costs of that facility to region C involuntarily.

Regarding the allocation of the cost of 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 transmission planning region to the other transmission planning region, the Final Rule requires that the public utility transmission providers in each pair of transmission planning regions have an interregional cost allocation method or methods for sharing the cost of such transmission facilities. However, Interregional Cost Allocation Principle 4 does not permit the cost allocation method or methods for those two transmission planning regions to assign the cost of the transmission facility to beneficiaries in a third transmission planning region, except where the beneficiaries in the third transmission planning region voluntarily reach an agreement with the two transmission planning regions in which the transmission line is located.<sup>17</sup>

**Comments:** The regional and interregional transmission planning processes must identify the consequences for other transmission planning regions. As noted, such consequences might include the need for upgrades in the other planning regions. Also, it could include increased congestions and resulting congestion costs in the other planning regions. However, the beneficiaries in the planning region or regions in which the transmission facility is located will be responsible for the consequential costs only if they agree to bear the costs. The Final Rule is silent as to the cost responsibility in the absence of such agreements. In these circumstances, a joint operating and cost allocation agreement, such as the Midwest ISO and PJM Joint Operating Agreement, would seem to be the appropriate way to proceed.

***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 regional transmission facility.

and

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.

**Comments:** While seemingly simple and straightforward, Cost Allocation Principle 5 is important, particularly in light of the burden placed on alleged beneficiaries to make an FPA section 205 or section 206 filing to demonstrate that the cost allocation of a regional or interregional transmission facility is unjust and unreasonable, and unduly discriminatory and preferential. In those circumstances, it will be critical for the alleged beneficiary, and the Commission, to have the cost allocation method and data requirements for determining benefits and identifying beneficiaries so that the beneficiary, and the Commission, can determine how they were applied to the transmission facility. The effectiveness of this principle will depend on the Commission's willingness to ensure compliance through its various enforcement mechanisms.

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<sup>17</sup> Because the Midwest ISO and PJM developed their cross-border allocation method in response to Commission directives related to the Midwest ISO and PJM's intertwined configuration, the Commission finds that the Midwest ISO and PJM are not required by this Final Rule to revise their existing cross-border allocation method in response to Cost Allocation Principle 4. If the Midwest ISO and PJM believe their existing cross-border cost allocation method fulfills other principles discussed herein, they may explain that in the filings they make in compliance with this Final Rule.

### *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.

and

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.

Cost Allocation Principle 6 permits, but does not require, the public utilities in a transmission planning region to designate different types of transmission facilities, and it permits, but does not require, the public utilities in a transmission planning region that choose to designate different types of transmission facilities to have a different cost allocation method for each type. However, if the public utilities choose to have a different cost allocation method for each type of transmission facility, there can be only one cost allocation method for each type of facility.

#### *Miscellaneous Comments*

The Commission will not accept participant funding as a cost allocation method for regional or interregional transmission facilities that are selected in a regional transmission plan for purposes of cost allocation.

Nothing in this Final Rule applies to existing transmission facilities with existing cost allocations or to transmission facilities currently under development.

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.

## **Compliance**

Each public utility transmission provider must submit a compliance filing within 12 months of the effective date of this Final Rule revising its OATT or other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the requirements set forth in the Final Rule.<sup>18</sup>

The Commission also requires each public utility transmission provider to submit a compliance filing within 18 months of the effective date of this Final Rule revising its OATT or other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the requirements set forth in the Final Rule with respect to interregional transmission coordination procedures and an interregional cost allocation method or methods.

To the extent that existing transmission planning processes satisfy the requirements of the Final Rule, public utility transmission providers need not revise their OATTs and, instead, should describe in their compliance filings how the relevant requirements are satisfied by reference to tariff sheets already on file with the Commission.

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<sup>18</sup> See Appendix C to the Final Rule for the pro forma Attachment K consistent with this Final Rule.

## CONTACT INFORMATION

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