

## FERC Issues Proposed Rule on Regional Transmission Planning and Cost Allocation

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On June 17, 2010, the Federal Energy Regulatory Commission (FERC) issued a Notice of Proposed Rulemaking (Proposed Rule) to revise the transmission planning and cost allocation requirements set forth in Order No. 890. Under the Proposed Rule, all public utility transmission providers would be required to make compliance filings and amend their Open Access Transmission Tariffs (OATTs) to demonstrate adherence to the new requirements. Transmission owners that are not public utilities would have to adopt the requirements of the Proposed Rule in order to maintain the status of their safe harbor tariffs and satisfy the reciprocity requirements of Order No. 888. Comments on the Proposed Rule are due 60 days from publication in the Federal Register.

### TRANSMISSION PLANNING

- **Regional Transmission Plan:** In Order No. 890, FERC required public utilities to coordinate with interconnected systems, but did not require the development of a comprehensive region-wide transmission plan. The Proposed Rule would require public utility transmission providers to engage in a regional planning process and develop a regional transmission plan that complies with the planning principles outlined in Order No. 890. The regional transmission planning process would need to consider and evaluate transmission facilities and non-transmission solutions and identify which transmission facilities are needed to meet the needs of transmission customers and other stakeholders in the region. Transmission customers and stakeholders must be provided an opportunity to participate meaningfully in the regional planning process.
- **Public Policy Requirements:** The Proposed Rule would require public utility transmission providers to amend their OATTs to explicitly provide for the consideration of state and federal public policy requirements, such as state renewable portfolio standards, in their local and regional transmission planning processes. FERC did not identify which public policy requirements must be considered by transmission providers, but would require each transmission provider to work with customers and stakeholders to identify relevant public policy considerations. Public utility transmission providers may also consider additional public policy objectives not specifically required by state or federal law.
- **Right of First Refusal:** The Proposed Rule would require tariff changes to eliminate any preference for incumbent transmission owners relative to independent transmission developers in the regional transmission planning process. FERC would require, for instance, the elimination of any federal right of first refusal, i.e., a right of an incumbent transmission owner to construct and own new projects selected for inclusion in a regional transmission plan. FERC, however, seeks comments on the relationship between the right of first



refusal and the incumbent utility’s obligation under the OATT to expand its transmission capacity upon request. FERC does not propose to change or preempt any state or local laws or regulations regarding rights to build and own transmission facilities.

- **Interregional Coordination:** The Proposed Rule would require neighboring transmission planning regions to enter into “interregional transmission planning agreements.” The interregional agreements would be filed with FERC and would require: (1) coordination and sharing of results of regional transmission plans; (2) annual exchange of planning data; (3) a formal procedure to jointly evaluate interregional facilities; and (4) maintenance of an online forum for the communication of all relevant information.

### COST ALLOCATION PRINCIPLES

The Proposed Rule states that uncertainty over the allocation of costs for new transmission facilities has proven to be a major impediment to needed expansion of the electrical grid, and observes that existing cost allocation methods do not always account for the full benefits of new transmission projects.

FERC, therefore, proposes that every public utility transmission provider establish a method, or a set of methods, for allocating the costs of new transmission facilities included in a regional planning process. In an RTO or ISO, these methods would be in the RTO or ISO tariff; in other areas, each public utility transmission provider in a transmission planning region would be required to set forth in the OATT the methods to be used in that region. Cost allocation methods may distinguish among facilities that are driven by needs associated with maintaining reliability, relieving congestion, and achieving public policy requirements.

In developing cost allocation methods, RTOs, ISOs, and planning regions must adopt methods that:

- (1) allocate costs in a manner that is at least roughly commensurate with estimated benefits;
- (2) do not involuntarily impose costs on entities that receive no benefits from transmission facilities;
- (3) do not preclude projects with significant net benefits from being included in a regional transmission plan;
- (4) do not involuntarily allocate costs for transmission facilities outside of the planning region in which the facilities are located;
- (5) provide stakeholders with transparent access to cost allocation methods and data requirements; and
- (6) allow the use of different cost allocation methods for different types of transmission facilities.

The Proposed Rule makes clear that FERC does not intend to prescribe a uniform approach to cost allocation for new transmission facilities, recognizing that regional differences may warrant distinctions in cost allocation methods among transmission planning regions. However, FERC indicates that relying exclusively on participant funding would not satisfy the Proposed Rule’s cost allocation principles. To the extent that a transmission planning region



could not come to agreement on an approach to cost allocation consistent with these principles, FERC would specify a methodology for cost allocation.

The Proposed Rule also would direct a transmission planning region to work with each neighboring region in the same interconnection to develop a methodology for allocating costs of any projects spanning the two regions.

### COMPLIANCE FILINGS

The Proposed Rule would require public utility transmission providers to submit compliance filings to revise their OATTs within six months of the effective date of a final rule. The deadline is extended to one year from the effective date of a final rule for requirements related to interregional transmission planning agreements and interregional cost allocation methods.

### FOR ADDITIONAL INFORMATION

For additional information regarding FERC's proposed transmission planning and cost allocation policies, or assistance in developing comments on the Proposed Rule, please contact Gary Bachman, Vincenzo Franco, Jay Ryan, Doug Smith or any other member of Van Ness Feldman's Electricity Practice at 202-298-1800. Additional information on the Electricity Practice can be found at <http://www.vnf.com/practices-17.html>.

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