



FERC ISSUES ORDER ON TRANSMISSION PLANNING AND COST ALLOCATION

On July 21, 2011, the Federal Energy Regulatory Commission issued its long-awaited transmission planning and cost allocation Final Rule, Order No. 1000, which enhances the current planning process under Order No. 890 by ordering improvements in several areas.¹ While the Commission's rule mandates development of regional plans and regional and interregional costs allocation methods and provides general guidance regarding allocating costs to beneficiaries, the Commission allows much regional flexibility, and transmission providers and stakeholders must work together to develop regional plans and regional cost allocation methodologies. Thus, active participation in regional stakeholder meetings over the next 12 to 18 months to inform the transmission providers' compliance filings will be key to influencing how regional transmission projects will be evaluated, including those driven by state renewable energy portfolio requirements, and who will pay for them.

Expanded Regional and Interregional Planning. The Final Rule requires transmission providers to evaluate whether regional solutions are more efficient and cost-effective than solutions identified in the local transmission providers' planning process by mandating participation in a regional process that results in a regional plan.² While neighboring transmission planning regions coordinate reliability impacts of transmission in their regions, they do not evaluate interregional solutions, so the Final Rule directs improved coordination through procedures for joint evaluation and sharing of information annually and identification of cost-effective interregional facilities.

Consideration of Public Policy Driven Transmission Needs. To remedy the lack of any requirement to consider public policy requirements (such as renewable energy portfolio standards), the Final Rule requires consideration of

¹ The Final Rule is available at: [Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 136 FERC ¶ 61,051 \(2011\)](#). Commissioner Philip Moeller issued a partial dissent to the Final Rule.

² The Final Rule defines local transmission planning as transmission planning a transmission provider performs for its individual retail distribution footprint pursuant to Order No. 890. A local transmission facility is defined as a facility located solely within the Transmission Provider's retail distribution service territory or footprint.



transmission needs driven by public policy requirements established by enacted state or federal laws or promulgated regulations.

Encouraging Investment in New Transmission. To encourage new investment in transmission by nonincumbent transmission developers, the Final Rule eliminates the current incumbent’s “right of first refusal” to build new transmission facilities in federal Open Access Transmission Tariffs (“OATTs”) for certain new transmission projects.³

Regional and Interregional Cost Allocation for Certain New Transmission Projects. The cost allocation mechanisms in the Final Rule only apply to new transmission facilities. For regional cost allocation, the facilities must be selected in a regional transmission process for regional cost allocation because they are determined pursuant to a Commission-approved regional plan to be more efficient or cost-effective than facilities being planned locally or within a single transmission planning region. For interregional cost allocation, the facilities must be new interregional transmission facilities located in two neighboring transmission planning regions which are determined by each region to be more cost-effective and efficient means to satisfy each region’s needs. Noting that cost allocation within regions currently fails to account for beneficiaries of new transmission, and cost allocation for interregional projects is largely non-existent, the Final Rule requires that costs be allocated to the beneficiaries in a manner roughly commensurate to the benefits received. The Commission does not prescribe a cost allocation method, but notes that if a ratio of benefits to costs is adopted, it may not exceed 1.25 without Commission approval.

Cost Allocation Reforms Do Not Modify Existing OATT Mechanisms. The Commission clarified that nothing in the Final Rule modifies the existing *pro forma* OATT mechanisms for individual transmission service requests or interconnection service.

³ The Final Rule adds a backstop procedure to ensure that regional planning does not interfere with the transmission providers’ ability to timely construct facilities needed for reliable service.



Compliance Timeline and Involvement of Commission Staff

Order No. 1000 takes effect 60 days after publication in the Federal Register. Public utility transmission providers are required to make a compliance filing with the Commission within 12 months of the effective date of the Final Rule.⁴ Compliance filings for interregional transmission coordination and interregional cost allocation are required within 18 months of the effective date.

To facilitate compliance, Commission Staff will hold informational conferences within 60 days and the Commission encourages stakeholders and transmission providers to hold frequent dialogues with Staff during the stakeholder process to develop their compliance filings.

The general requirements of Order No. 1000 are as follows:

Transmission Planning

Participate in Regional Transmission Planning and Adopt Regional Plan. Each public utility transmission provider must participate in a regional transmission planning process which produces a single regional transmission plan that satisfies the principles under Order No. 890;⁵

Include Public Policy Driven Transmission Needs. Each transmission provider must amend its OATT to describe procedures that consider transmission needs driven by public policy requirements in the local and regional transmission planning process; and

Participate in Interregional Coordination and Identify Cost-Effective Interregional Transmission Projects. Public utility transmission providers in

⁴ This summary does not cover the Commission's discussion of its legal basis for ordering additional enhancements to its transmission planning requirements, but rather, focuses on compliance obligations.

⁵ Order No. 890 included transmission planning principles regarding: (1) coordination, (2) openness, (3) transparency, (4) information exchange, (5) comparability, (6) dispute resolution, and (7) economic planning. The Commission noted that while Order No. 890's requirement for economic planning provided stakeholders with a right to demand a number of high priority studies annually that could relieve transmission or integrate new resources, including on a regional basis, this approach is inadequate because there is no affirmative duty to find cost-effective and efficient solutions absent a stakeholder request to do so.



neighboring transmission planning regions must coordinate and evaluate efficient or cost-effective interregional facilities.

Transmission Cost Allocation

Regional. 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 are selected in a regional transmission plan. The cost allocation must satisfy six regional cost allocation principles.⁶

Interregional. Public utility transmission providers in neighboring planning regions must have a common interregional cost allocation method for the costs of certain new interregional transmission facilities that are located in two or more neighboring transmission planning regions and are jointly evaluated by the regions in the interregional coordination processes. The cost allocation must satisfy six interregional regional cost allocation principles.

Merchant Transmission Projects. Merchant transmission projects must participate in regional plan to qualify for regional cost allocation.

ISOs/RTOs and their Transmission-Owning Members. The Commission also determined that transmission providers and the ISOs/RTOs will be permitted, in their compliance filings, to demonstrate that their existing tariffs already satisfy some or all of the requirements of Order No. 1000. If the Commission agrees that the new requirements are already satisfied, it will accept such a compliance filing without requiring any revision to the filer's OATT. Further, the Commission clarified that public utility transmission providers that are part of a jurisdictional ISO/RTO demonstrate compliance through the applicable ISO/RTO's compliance filing, thus avoiding the need to make a filing of their own.

Non-Public Utility Transmission Providers and "Safe Harbor" Tariffs. Despite requests by non-public utility transmission providers that they be largely

⁶ Participant funding of new transmission facilities is permitted but does not qualify as a regional or interregional cost allocation method.



excluded from Order No. 1000's compliance requirements, the Commission determined that it would require such entities that seek to maintain a safe harbor tariff to revise their OATT so that it substantially conforms to, or is superior to, the *pro forma* OATT. The Commission was careful, in its rejection of one commenter's suggestion, to note that it is not requiring non-public utility transmission providers to revise their safe harbor tariffs. Rather, non-public utilities that prefer not to make such revisions will lose their safe harbor status but may continue to otherwise qualify for reciprocal treatment in their dealings with public utility transmission providers.

Removal of Federal Rights of First Refusal

Eliminated Only for New Facilities Selected in Regional Plan for Cost Allocation. The Commission emphasizes in the Final Rule that it draws an important distinction between a transmission facility included in a regional plan and a transmission facility that is selected in a regional plan for cost allocation. The requirement to eliminate the right of first refusal does not apply to a transmission facility unless it is selected in a regional transmission plan for purposes of cost allocation.

Not Eliminated for Upgrades. The requirement would not apply to upgrades to transmission facilities (e.g., tower change outs or reconductoring).

Competitive Bidding Optional. The rule would allow, but not require, competitive bidding to solicit transmission projects or developers.

No Impact on Siting or Permitting. Nothing in this requirement impacts state or local laws concerning construction of transmission facilities, including siting or permitting.

Backstop Requirement. Each public utility transmission provider must add a tariff provision that requires the transmission 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 needed for reliability or service obligations. Such alternative solutions may include those proposed by the incumbent.



TRANSMISSION PLANNING

The Commission's requirements with respect to transmission planning are divided into three areas: (A) participation in the regional transmission planning process; (B) nonincumbent transmission developers; and (C) interregional transmission coordination.

Regional Transmission Planning Process

Evaluation of Alternative Cost-Effective and Efficient Regional Solutions in a Regional Plan. The Commission noted that RTOs produce regional transmission plans currently, but that outside RTOs, transmission providers only use regional planning to confirm simultaneous feasibility of transmission projects. The Commission stated that it believes the Final Rule ensures that public utility transmission providers in every transmission planning region, in consultation with stakeholders, evaluate proposed alternative solutions at the regional level that may resolve the region's needs more efficiently or cost-effectively than solutions identified in the local transmission plans (*i.e.*, within its retail distribution territory of footprint) of individual public utility transmission providers. When evaluating such alternative transmission solutions, non-transmission alternatives (such as generation, demand response, and efficiency options) must be considered on a comparable basis, and transmission providers must identify how they will evaluate and select from such options.

Selection of Transmission Facilities for Cost Allocation. If an alternative solution is determined to be more efficient, or cost-effective than the transmission facilities in the local transmission provider's plan, then the transmission facilities associated with that solution can be selected in the regional plan for cost allocation. The Commission does not specify the analysis that must be performed to make such selection (*e.g.*, scenario analyses, production costs, or power flow simulations), but rather allows flexibility. The Final Rule notes that the Commission will review such mechanisms on compliance and issue further guidance as needed.

Timing of Implementation of Final Rule and Planning Cycles. The Commission clarified that the requirements of the Final Rule regarding evaluation and reevaluation apply to new transmission facilities, which it defined as facilities subject to evaluation after the effective date of the transmission provider's filing adopting the reforms to the OATT required by this rule, but noted that this date



might occur during the middle of a planning cycle, and the Commission does not intend to delay planning, so regions may determine the point at which a previously approved project is no longer subject to reevaluation and thus, not subject to this rule.

Scope of Region. The Commission clarified that a region is one in which transmission providers, in consultation with stakeholders and states, have agreed to participate in for regional planning. The Commission noted that all transmission providers already belong to a region for purposes of Order No. 890 and that such regions should provide some guidance, but, at a minimum, a single transmission provider cannot be its own region.

Merchant Transmission Providers. The Commission does not require merchants to participate in regional planning for cost allocation because merchants assume all the financial risks of their own projects; however, the Commission requires them to share sufficient information with the regional transmission providers to evaluate the operational and reliability impacts of the developers' proposal on the region. The Commission, in a footnote, also notes that such merchants will be subject to NERC jurisdiction to the extent that they become subject to Section 215 of the FPA.

Public Policy Driven Transmission Needs

Transmission providers must coordinate with stakeholders to establish procedures to identify public policy requirements and to amend their OATTs to describe procedures for addressing public policy requirements in the local and regional planning processes (including state or federal mandates to promote renewable generation or demand-side management programs). The procedures included in the OATT must address both: (1) the identification of transmission needs driven by public policy requirements (including allowing stakeholder input and proposals); and (2) the evaluation of potential solutions to meet those needs.

Procedures to Identify Public Policy Requirements Must Include Stakeholder Input. Transmission providers may develop the list of public policy requirements based on consultation with stakeholders, or through stakeholder committees. Transmission providers must post on their website an explanation of which needs will be evaluated for potential solutions and which will not be evaluated. The Commission declined to describe any specific public policy requirements nor how transmission providers must evaluate those requirements, instead leaving that to the transmission provider and other stakeholders;



however, the Commission noted that the scope of requirements must be flexible enough to include possible requirements under EPA regulations.⁷

Obligation to Evaluate Impact of Public Policy Requirements Identified through Procedures. To the extent that the procedures for identification do not result in suggested public-policy driven transmission needs being evaluated, the transmission provider has no obligation to evaluate the potential effect of the associated public policy requirement on transmission development. Transmission costs for new transmission development generated by public policy requirements will be subject to the cost allocation principles discussed below. Moreover, the transmission providers may consider transmission needs for public policy requirements separate from reliability driven or economic driven facilities. Finally, a transmission provider that already addresses public policy needs in resource planning may reflect that in its transmission planning process.

Nonincumbent Transmission Developers

The Commission ordered the removal from Commission-jurisdictional tariffs and agreements any provisions that grant a federal right of first refusal to construct transmission facilities for new transmission projects selected in a regional plan for cost allocation.

Definition of Nonincumbent Transmission Developer. The term “nonincumbent transmission developers” 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 outside of its existing retail distribution service territory or footprint, where it is not the incumbent for purposes of that project.

The Commission determined that 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.

⁷ The Commission is allowing transmission providers to include in their compliance plans 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 plan over successive cycles.



Focus on New Facilities Selected for Cost Allocation. 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 Final Rule is not intended to alter an incumbent transmission provider's use and control of existing rights-of-way.

Establishment of Appropriate Criteria to Submit Transmission Proposals for Evaluation in Regional Planning Process in OATT. 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 that each potential transmission developer demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.

The Commission rejected uniform criteria requirements and allows a range of criteria, such as commitments to be responsible for operation and maintenance ("O&M") of a facility. Or alternatively, the developer could contract with third parties, including the incumbent transmission provider, for O&M.

Specification of Information Required to be submitted by Transmission Developers. The OATT must specify: (a) the information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional planning process and (b) the date by which such information must be submitted to be considered in a given transmission planning cycle (this could be a rolling or flexible date). Each public utility transmission provider that has its own OATT must have in that OATT the same information requirements as other public utility transmission providers in the same transmission planning region.

The information required must provide sufficient detail to allow the proposal to be evaluated (e.g., relevant engineering studies and cost analysis may be required), but not be unfairly burdensome as to establish a barrier to entry.



The transmission provider and stakeholders will have flexibility to develop the criteria, but the Commission will review and provide further guidance, if required.

Process for Evaluating Projects for Regional Cost Allocation. Each transmission provider must 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 meet Order No. 890 principles, such as transparency, allow for stakeholder coordination, and result in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission was selected or not selected.

Backstop. The OATT must identify circumstances or a procedure whereby the transmission provider will reevaluate the regional plan to determine if delays in development of the facility selected for cost allocation require alternative solutions, including ones proposed by the transmission provider, to ensure it can meet reliability or service obligations.

Requirement for Same Eligibility for Cost Allocation for Nonincumbents. 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 transmission that is not submitted to a regional planning process and selected for cost allocation may not be recovered through a transmission planning region's cost allocation method(s). A region may establish competitive bidding procedures for selecting projects.

Rejection of Sponsorship Right to Build for Defined Period. Finally, the Commission declined to include two additional requirements: (1) requiring transmission providers to revise their OATTs to contain a regional transmission planning process that provides 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. The Commission found that the selection process for cost allocation allows a developer to rely on the relevant cost allocation method if it decides to go forward with the project. With regard to sponsorship, the Commission found that it adversely affected transmission planning and could result in phantom projects being placed in the queue just to acquire development rights.



Interregional Transmission Coordination

The Final Rule 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 with neighboring planning regions of potential interregional transmission facilities that address those needs.

Geographic Scope of Interregional Coordination and Facilities Covered.

The Commission requires transmission providers to coordinate with each neighboring transmission planning region within its interconnection. Consistent with regional planning regions, the Commission refuses to further revisit how each transmission region defines itself. The Commission only requires joint evaluation as regards transmission facilities that will be physically located in both transmission planning regions.⁸ However, with respect to data sharing, the Commission finds that exchange of data between regions will assist planners to understand the impacts of transmission facilities built in one region on another. As regards RTOs, the regional coordination with neighbors would occur between transmission providers in two neighboring planning regions.

Annual Exchange of Planning Information and Transparency. Third, the Commission requires adoption of formal procedures to ensure the exchange of planning data and information between neighboring planning regions occurs at least annually. These procedures must contain an obligation to share planning information, not just an agreement to do so. While the Commission is not dictating what the obligation should entail, the Commission anticipates it would include the type and frequency of meetings that will accommodate each pair of regions' planning cycles. 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 planning and also to post planning information on the transmission providers' or regional planning website, separately identifying information for regional planning and interregional planning.

⁸ The Commission was concerned that interregional planning for facilities located in one region that impacted another region would require interconnection-wide planning. The Commission encourages interconnection-wide planning through ARRA-funded planning. Moreover, if an entity attempts coordination with a transmission provider that is not located in this country and fails, the transmission provider is not out of compliance with the rule.



Interregional Coordination Procedures

Formal Procedures to Identify Possible Interregional Facilities that Are More Cost-Effective than Separate Regional Facilities. 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 to coordinate and share the result of their respective regional transmission plans to identify possible interregional transmission facilities that could address transmission needs more efficiently or cost-effectively than separate regional facilities.⁹

Achieved through Sharing Information and Joint Identification and Evaluation. 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 solution for regional needs.

No Uniform Methods for Information Sharing or Evaluation Studies. 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. On compliance, public utility transmission providers must describe the methods by which they will identify and evaluate interregional transmission facilities, and pairs of 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.

The Planning Process does not require Particular Transmission Investments to Occur. 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 the regional plan in addition to the underlying transmission plans and related transmission studies.

⁹ The Commission rejected a requirement for formalized planning entities or plans.



These information requirements apply to the portions of the interregional facilities within each individual region's transmission plans.

Implementation of Interregional Coordination

Adoption of Formal Procedures for Evaluation of Facilities Located in Both Regions. 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 evaluations must be conducted on the same general timeframe in both regions. Moreover, the Final Rule indicates that the timeline must allow sufficient time to review and evaluate information produced in the interregional process through the regional planning process and *vice versa*.

Developer Requirement to Apply in Both 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. The Commission expects that each region's review be closely coordinated with the interregional process and be informed by it.

Procedures for Resolution of Different Study Criteria. 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.

Matching Interregional Coordination OATT Provisions for Neighbors. 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, but such agreement is not required.

Stakeholder Input. The Final Rule does not require interregional coordination procedures to meet the requirements of Order No. 890 for local planning and regional planning under this rule. Because the Commission requires



that an interregional facility must be selected in each relevant regional plan for purposes of cost allocation to be eligible for interregional allocation, stakeholders will have the opportunity to participate fully in the consideration of interregional facilities during the regional planning process. To facilitate stakeholder involvement, the Final Rule requires the transmission provider to make transparent, subject to CEI, its analysis and the determinations reached by neighboring regions. Stakeholders are to be involved in developing the interregional coordination procedures and to have the opportunity to provide input into the development of the coordination procedures and the commonly agreed to language in the OATT.

Cost Allocation for Interregional Projects. In addition to following the principles for cost allocation stated below, the Final Rule emphasizes that for an interregional project to be selected for cost allocation, it must be selected in both regions.

COST ALLOCATION

Order No. 1000 also requires each public utility transmission provider to include in its OATT methods for allocating the costs of new transmission facilities selected in the regional transmission plan for cost allocation as well as methods for allocating the costs of interregional transmission facilities located in two neighboring transmission planning regions and accounted for in interregional coordination.

All public utility transmission providers in a single region must have a common cost allocation methods and also have a common cost allocation method with its neighboring transmission planning region for interregional cost allocation. However, each public utility may have different regional and interregional cost allocation methods.¹⁰

Order No. 1000 does not specify exactly how costs should be allocated, but rather requires that the allocation methodology satisfy certain principles. This

¹⁰ For example, Region A and Region B may have a cost allocation method for the cost of an interregional facility between Regions A and B that could differ from the respective regional cost allocation methods of either Region A or Region B to further allocate its share of the costs of the interregional facilities in its region.



approach is intended to increase flexibility across regions, including non-RTO/ISO transmission planning regions.

Six Cost Allocation Principles for Regional Costs Allocation and Analogous Interregional Cost Allocation Principles

The regional cost allocation approaches must satisfy six principles and there are six analogous (but not identical) cost allocation principles for interregional allocation of costs.

Principle 1: Costs must be allocated to entities in a region or to each region in a way that is roughly commensurate with benefits. That is, to eliminate cross-subsidization, regional and interregional cost allocation methodologies must ensure that costs are allocated in a way that is roughly commensurate with benefits, so the parties benefiting from a particular transmission development properly shoulder the costs of it. The Commission acknowledged that there were practical difficulties with devising such a standard, but the consideration of, and determination of, what constitutes “benefits” and “beneficiaries” will be explored more fully through the stakeholder process and in compliance filings. In determining the beneficiaries, the region may consider benefits such as, but not limited to, the degree to which the facilities maintain reliability, enable reserve sharing, provide production costs savings, relieve congestion, and/or meet public policy goals.

For principle 1, the difference between interregional and regional cost allocation principles is that for regions, the principle considers whether new transmission facilities “individually, or in the aggregate” provide benefits. However, in the interregional cost allocation principle the language does not appear because interregional facilities are evaluated facility-by-facility, unless the pairs of transmission planning regions agree otherwise.

If a non-public utility transmission provider decides to participate in regional planning and is determined to be a beneficiary, it must be allocated costs commensurate with such benefits.

Principle 2: No involuntary allocation of costs to non-beneficiaries. Consistent with principle 1 above, the second principle requires that entities that receive no benefit from a regional or interregional transmission development “either at present or in a likely future scenario” must not be allocated the costs of such transmission.



Principle 3: Benefit-to-cost threshold ratio. The Commission's third principle does not mandate that regions adopt a threshold benefit-to-cost ratio for projects, but if adopted, that the benefit-to-cost ratio cannot exceed 1.25 to 1, absent requesting Commission approval.¹¹ This threshold ensures that meritorious projects are not left out of the process, while projects that are too expensive for the benefits they deliver are not developed.

The difference between this principle for interregional and regional plans is that in the regional plan there must be significant net benefits to be selected in a regional plan, but in the interregional principle there is no interregional plan, so the principle for interregional requires significant net benefits to qualify for interregional cost allocation as determined by each pair of regions.

Principle 4: Allocation to be solely within transmission planning regions unless those outside voluntarily assume costs.

Regional Version of 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 original region must identify consequences for other regions, and, if there is an agreement for the original region to bear such costs, then a cost allocation method for allocating such costs to entities in the original region must be provided.

Interregional Version of Principle 4: For interregional cost allocation, the costs must be assigned only to the transmission planning region where the transmission facility is located, and no costs may be assigned by that region to a region where the facility is not located absent agreement by that region. However, the interregional coordination must identify consequences for other transmission planning regions, such as upgrades in a third planning region and, if the providers in the regions in which the transmission facility is located agree to

¹¹ The Midwest ISO's sliding cost benefit ratio can require up to a 3 to 1 ratio of benefits to costs. The Commission refused to answer the question from the Midwest ISO Transmission Owners about whether any benefit-to-cost ratio threshold for an interregional cost allocation may supersede the ratio for a transmission planning region's regional cost allocation method and indicated they must present the issue on compliance, and the Commission will determine the issue based on the facts presented in the compliance filing.



bear costs associated with such upgrades, they must include a provision for allocating the costs of such third region's upgrades among the beneficiaries in the planning regions where the facilities are located.

This principle is intended to prevent regions from assigning costs to entities outside the region. For interregional projects that span more than two regions, the Commission noted that it may be possible for more than two regions to develop cost allocation methods, or to have the third region voluntarily agree to allocate costs across the regions. While the Commission noted that this requirement may lead to some beneficiaries of transmission facilities escaping cost responsibility by being outside the planning region where the facility is located, this approach was better than the alternatives and appropriate in the Final Rule.

Principle 5: Transparent method for determining benefits and identifying beneficiaries. This principle requires that the cost allocation methods be clear and transparent, so that stakeholders can determine how the rules were applied to proposed facilities. The Commission declined to rule on whether any current RTO/ISO processes were transparent enough, and stated that such a determination would be made upon the submittal of the required compliance filings.

Principle 6: Different methods for transmission facilities based on transmission drivers (e.g., reliability, congestion relief, or public policy). The final cost allocation principle allows regions to choose different cost allocation methods for different types of facilities, specifically including those transmission facilities needed for reliability, congestion relief, or to achieve public policy requirements. Each cost allocation method must be clearly set out in advance for each type of facility in the compliance filing and there must only be one method for each type (i.e., the costs allocation method cannot be project specific). This principle does not require public utilities to designate different types of transmission facilities, but provides the option.

Rejection of Rebuttable Presumption Based Upon Voltage Levels. Order No. 1000 also spoke to several specific issues, declining to adopt a rebuttable presumption that the costs of extra-high voltage facilities should be allocated widely across a transmission planning region, as well as finding that participant funding is still permitted, but is not a cost allocation method.

Interregional and Regional Cost Allocations May Differ. Additionally, Order No. 1000 confirmed that regional and interregional cost allocation methods



could differ, as long as both methods were consistent with the six planning principles.

COMMISSIONER MOELLER'S DISSENT

Commissioner Moeller dissented in part from the Final Rule, arguing that the rule only addressed a subset of the issues inhibiting needed investment. For example, the rule did not address delays caused by other federal agencies, which was outside the Commission's jurisdiction. The rule also did not address whether a transmission provider could thwart competitive options by refusing to upgrade its transmission system.

Commissioner Moeller argued that transmission providers should have been entitled to maintain their right of first refusal to build transmission facilities that are (1) located entirely within their franchised service territory, and (2) identified by the provider as needed to satisfy NERC reliability standards. He also emphasized that he believed the Commission should have clarified that the right of first refusal is not a license to block or endlessly delay efficient and cost-effective transmission developments. He also supported the adoption of a 90-day time frame for transmission providers to determine whether to exercise their right to build a project.

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