

transmission planning and cost allocation requirements established in Order Nos. 888⁵, 890⁶, and 2000⁷ to ensure that Commission-jurisdictional services are provided on a basis that is just, reasonable, and not unduly discriminatory or preferential.

The transmission planning and cost allocation matters decided in the Commission's Order are vitally important to sustainability of investment in the electric transmission system and in the public interest. WIRES contends that the Commission's timely focus on the adequacy of the transmission system, the infrastructure platform upon which interstate bulk power transactions depend, reflects a continuation of the policies of open access and competition that will be the key to continued vibrancy and reliability of wholesale power markets in all parts of the country. Order No. 1000 does not constitute a departure from the pro-competitive federal policies of the past 15 years, but instead an extension of the Commission's rules required for the fulfillment of those policies. The case is amply made in the record of this proceeding and elsewhere that balkanization of power markets and the practices and regulations that govern them have long exacted a

⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats.& Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁷ *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 (1999), *order on reh'g*, Order No. 2000-A, 90 FERC ¶ 61,201 (2000), *aff'd sub nom., Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

cost on the American electricity consumer as a result of inefficiency, congestion and high prices, threats to reliability, and constraints on growth. A stronger electric transmission system is a critical part of the solution, as well as the physical link to new forms of electric generation that state policies have increasingly indicated will diversify the nation's energy mix in the years to come.

Order No. 1000 sets the table for a variety of important developments involving the high-voltage electric transmission system. It aligns transmission planning and cost allocation, incorporates consideration of public policy requirements in transmission planning, articulates straightforward cost allocation principles, and seeks to put regional and inter-regional transmission planning on firmer ground. WIRES takes this opportunity to express its support for the principal direction taken by the Order because effective and ubiquitous regional planning and the fact-based cost allocation which the Order sanctions will prove key to unlocking the capital investment needed for strengthening the nation's aging, inadequate, and often outmoded high-voltage transmission infrastructure.

For all that, the Order is remarkably non-prescriptive in the essential areas in which WIRES maintains the greatest interest – cost allocation and regional planning.⁸ In fact, it is WIRES' view that the Order's deference to the varying planning regions in the interest of regional flexibility may be excessive in some areas and underestimates the need for more federal guidance, namely in areas of inter-regional planning coordination. This means that Order No. 1000 may not significantly affect the evolution of power

⁸ WIRES takes no position in this proceeding on rights of first refusal.

markets in regions where states and utilities have not developed, and are not inclined to develop, a regionally viable collaborative framework for planning the grid or spreading costs of specific transmission projects in recognition of their real and identifiable benefits. Although judgment on this issue cannot be rendered entirely until the strength and quality of compliance filings are made, WIRES nevertheless registers its concern about whether regional flexibility is more likely to meet the Commission's objectives and the public interest than the certainty and expedition that would come from more specific procedural direction for coordination among separate groups of regional planners. Without such direction, Order No.1000 may instead permit, and even institutionalize, debate and delay at great cost to transmission providers.

WIRES therefore files for rehearing of Order No. 1000 to seek improvements in the Final Rule in one area where Commission guidance is uniquely required and could be extremely valuable – inter-regional planning and accompanying cost allocation.

II. REQUEST FOR REHEARING

Statement of Issues and Specification of Error Regarding Inter-regional Planning Processes

Whether the Commission's failure in Order No. 1000 to institute any of the common procedures, protocols, metrics, or planning assumptions proposed by commenters, and thereby to improve upon the planning criteria of Order No. 890 for purposes of advancing inter-regional planning and cost allocation, abdicates the Commission's responsibility under § 206(a) of the FPA, is arbitrary and capricious, and reflects a lack of reasoned decision making.

The Commission persuasively argued in its proposed rule and in the Order that planning the development, siting, and cost recovery for linear transmission projects that

cross regional and market boundaries is among the most difficult tasks for regulators and public utility transmission providers alike. However, the Order addresses this difficult issue by directing the stakeholders to develop workable inter-regional planning processes.⁹ The Commission finds unequivocally that “[o]ur review of the record demonstrates that existing transmission planning processes are unjust and unreasonable or unduly discriminatory or preferential.”¹⁰ It therefore has the responsibility under the FPA to establish solutions that meet the requirements of the statute.¹¹ Order No. 1000 requires transmission providers and other stakeholders to figure out procedural avenues that may, in their judgment, arrive at those solutions and then essentially to file under §205 to remedy the problem. Only then will the Commission decide if the procedures could possibly achieve just and reasonable results. The failure of the Order to affix any just and reasonable terms and conditions that address the core problems with current inter-regional planning processes that the Commission so clearly identifies constitutes an abdication of its statutory responsibility. WIRES contends that §206 of the FPA requires the Commission to indicate what measures will cure the practical and legal deficiencies in inter-regional planning and to order industry to make curative filings, not to ask industry to spend months in effect deciding what will satisfy the FPA. Moreover, ordering regulated entities to make filings under §205 is impermissible. WIRES

⁹ Order No. 1000, at PP 345-346.

¹⁰ Order No. 1000, at P 116

¹¹ The Commission, in the leading case on its authority over electric transmission, “explained that § 206 of the FPA explicitly required it to remedy the undue discrimination that it had found.” *New York v. Federal Energy Regulatory Commission*, 535 U.S. 1, 122 S. Ct. 1012, 1013 (2002), *citing* Order No. 888-A, which relies on *Associated Gas Distributors v. FERC*, 824 F. 2d 981, 998 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988).

therefore contends that Order No. 1000 lacks substantial evidence for this approach and is not the result of reasoned decisionmaking.

The Order is clear that the reforms adopted are intended “to facilitate the identification and evaluation of interregional transmission facilities that may resolve the individual needs of neighboring transmission planning regions more efficiently and cost-effectively.”¹² In addition, the Commission claims that, by requiring all transmission providers to undertake interregional transmission coordination, “the Commission and transmission customers will have greater certainty that the transmission facilities in each regional transmission plan are more efficient or cost-effective solutions to meeting [a] transmission planning region’s needs.”¹³

WIRES notes that it supports the position stated by the Commission in the Notice of Proposed Rulemaking that a “more holistic approach to meeting the needs of the region as a whole” is in the public interest. Moreover, we agree that the complex planning process must be sufficiently flexible and transparent to accommodate the operational and public policy needs of individual regional power markets. Regions and sub-regions, whether defined electrically or geographically,¹⁴ are the basic units relied on by Order No. 1000 for the planning of transmission projects because electricity markets

¹² Order No. 1000, at P 346.

¹³ Order No. 1000, at P 396.

¹⁴ The Commission purposefully declines to define what constitutes a “region”, even with respect to existing FERC-approved regional processes, despite its insistence that transmission be planned *regionally* and that adjacent *regions* devise procedures to identify and jointly evaluate projects that are of mutual interest. Order No. 1000 at P 420. If individual transmission providers can self-define as “regions” under the Order, or if designated regions bear no relationship to the electrical boundaries of power markets, planning could devolve into attempts to fence out competition or avoid creating more seamless and the most efficient markets.

tend to operate in coordinated fashion over multiple states, and even over an entire electrical interconnection. Order No. 1000 nevertheless appears to conclude that providing encouragement for development of inter-regional processes that could lead to plans for constructing inter-regional projects and allocating their costs fairly will be more successful in promoting transmission investment this time around than similar efforts at addressing “seams” issues have been in the past. WIRES is concerned that Order No. 1000 might not achieve this goal.

WIRES points out that, contrary to many comments in the record of this proceeding, the Commission declined to seriously consider setting out the metes and bounds of the inter-regional planning and coordination procedures that form the basis for achieving the “greater certainty” for which the Order stands. The Order does not adopt proposals for mandating development of a formal inter-regional planning agreement.¹⁵ Proposals for more uniform planning horizons and scenario analyses are rejected. The Commission does provide a reason for not adopting WIRES' proposal that the Commission create greater procedural and analytic commonality within inter-regional transmission negotiations and agreements,¹⁶ despite its express recognition of the importance of harmonizing differences between regions on data, modeling, planning assumptions and horizons, and criteria for project evaluation. Despite the Order's large ambitions for better coordination of transmission planning and development, the Commission chooses not to provide more specifics about a viable framework within

¹⁵ Order No. 1000, at PP427, 475-476.

¹⁶ Order No. 1000, at P 430 and P 437.

which transmission providers and other stakeholders should work together to achieve a more robust and productive planning process.¹⁷ WIRES believes the record in this case, and the planning experiences of various RTOs,¹⁸ contains numerous proposed procedures and planning criteria that are suitable for application in virtually all cases where two regions are striving to coordinate planning and transmission outcomes. Establishing fixed timelines for decision, data exchange requirements, planning assumptions, and standard modeling techniques – with clear opportunities for exceptions where necessary – would shorten and rationalize planning processes without dictating outcomes. Technical conferences could be useful for developing a consensus on these matters.

In sum, WIRES believes the Order fails to match the Commission’s reasonable concerns about the difficulties of planning development of, and cost recovery for, multi-jurisdictional, multi-region projects with practical and concrete guidance that would move these processes ahead in real time, and lead to actual construction of infrastructure. The Commission has not supported its conclusions in any of these specific regards except to encourage transmission proponents and stakeholders in adjacent regions to develop procedures to address the challenges of coordination and to file those changes in compliance with this Order in early 2013.

WIRES urges the Commission to take this opportunity to strengthen this aspect of the Final Rule and to assist the industry with new standard procedures for regional

¹⁷ Order No.1000, at P 399.

¹⁸ *See, e.g.*, Comments of Primary Power LLC in this docket (esp. Section B) with respect to workable procedural frameworks and evaluative criteria for regional planning established by law and regulation in New York, Texas, and in the Midwest ISO and the California ISO.

planning, including criteria for evaluating both major backbone projects and transmission upgrades that have a relatively short planning and construction cycle and that can be adapted to fill economic or reliability needs as they arise in the ordinary course of system operations. WIRES emphasizes that it is not a supporter of having the Commission dictate outcomes or override successful inter-regional processes, wherever they may exist today. However, given the collective desire of many commenters to have transmission planning proceed expeditiously under clearly understood processes and not to have a “cumulative assembly of isolated plans from each region and planning entity” as an end result, to paraphrase one commenter, the Order does not fully attain what we contend the industry needs at this moment in its evolution.

III. CONCLUSION

WIRES respectfully requests that the Commission revisit this critical aspect of its Order and provide the kinds of guidance that will ensure that the compliance filings submitted to it advance, in timely fashion, the national goal of a stronger transmission infrastructure and competitive wholesale power markets.

Respectfully submitted,

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