

Order No. 1000-A

High-Level Overview – Nonincumbent Participation

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- On May 17 2012, FERC issued Order No. 1000-A
 - Denies Rehearing of Order No. 1000
 - Provides clarification of certain aspects of Order No. 1000
 - Effective date is 30 days from publication in the *Federal Register*
 - Does not change the compliance filing deadlines

- Nonincumbent Participation
 - Any regional allocation of the cost of a new transmission facility outside a single transmission provider's retail distribution service territory or footprint, including an allocation to a zone consisting of more than one transmission provider, is an application of the regional cost allocation method and that new facility is not a local transmission facility. [P 424]

- Nonincumbent Participation
 - “Upgrade” means improvement to an existing facility. It does not mean an entirely new transmission facility. [P 426]
 - Upgrades requiring expansion of an existing right-of-way are not subject to the requirement to eliminate ROFR [P 427]
 - “Local” facility is one that is located within the geographic boundaries of an incumbent’s retail service territory and is not selected in the regional plan for cost allocation [P 429]

- Nonincumbent Participation
 - If any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be no federal ROFR associated with such transmission facility (unless it meets one of the ROFR exceptions) [P 430]

- Qualification Criteria

- Order No. 1000-A clarifies that qualification criteria do not need to be limited to financial and technical [P 440]
- However, it would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain, state approvals necessary to operate in a state, including public utility status and the right of eminent domain to be eligible to propose a transmission facility [P 441]

- Sponsorship Rights
 - Affirms Order 1000 that there is no requirement for ongoing sponsorship rights [P 456]

- Qualification Criteria
 - Criteria cannot require that the developer demonstrate that it has registered with NERC [P 444]