

Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities
Summary of Order 1000-A
Issued May 17, 2012

Overview

- Order 1000-A affirms the Order 1000 transmission planning reforms that:
 - Require that each public utility transmission provider participate in a regional planning process that produces a regional transmission plan
 - Require that local and regional transmission planning processes provide an opportunity to identify and evaluate transmission needs driven by Public Policy Requirements
 - Improve coordination between neighboring transmission planning regions for consideration and evaluation of new interregional transmission facilities
 - Mandate removal from FERC-approved tariffs and agreements a federal right of first refusal (“ROFR”) for incumbent transmission providers to build projects selected in the regional transmission plan for purposes of cost allocation
 - Require public utility transmission providers to participate in a regional transmission planning process that has:
 - A regional cost allocation method for the cost of new transmission facilities selected in the regional transmission plan for purposes of cost allocation; and
 - An interregional cost allocation method for the cost of new transmission facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission coordination process.
 - Establish six principles for cost allocation of regional and interregional transmission facilities
- Order 1000-A affirms Order 1000 in all respects, including the filing deadlines for regional and interregional compliance filings
- FERC reiterates that Order 1000 is intended to encourage the development of more efficient and cost-effective transmission solutions to regional transmission needs, which will promote considerable economic benefits in the form of lower congestion, greater reliability, and greater access to generation resources [P 586]
- Order 1000-A continues to find that matters related to generation interconnection processes and interconnection cost recovery are outside the scope of Order 1000 [PP 425, 680]
- FERC defines “stakeholder” to be consistent with the definition in Order 890, to include any party interested in the regional transmission planning process, including LSEs [P 637]
- FERC believes that issuing Order 1000-A now will allow public utility transmission providers and stakeholders adequate time to address the clarifications in their compliance processes [P 751]

Regional Planning

- Order 1000-A affirms the Order 1000 regional planning reforms of Order 1000, including providing for regional flexibility to determine appropriate regional planning processes [P 263-266]
 - Regional planning process are required to comply with Order 890 transmission planning principles,¹ but otherwise regions have the flexibility to ensure that their regional transmission planning process is designed to accommodate the unique needs of the particular region [P 266]
 - Each public utility transmission provider is required 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 [P 267]
 - The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission facility was selected or not selected in the regional transmission plan for purposes of cost allocation [P 267]
 - Public utility transmission providers should both explain and justify the nondiscriminatory evaluation process proposed in their compliance filings [P 268]
 - RTO membership is and remains voluntary [P 270]
 - Order 1000's transmission planning requirements involve the consideration of whether more efficient or cost-effective alternatives to solutions identified in local transmission plans exist and whether they will be selected in a regional transmission plan for purposes of cost allocation [P 270]
 - In defining the planning region for Order 1000 compliance, utilities may look to the transmission planning regions that were accepted by FERC in the Order 890 compliance phase [P 273]
 - FERC indicates that "regions already have defined themselves for purposes of transmission planning" and "a transmission planning region 'is one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate in for purposes of regional transmission planning and development of a single regional transmission plan'" [P 712]
- Nothing in Order 1000 is intended to preempt or otherwise conflict with state authority over siting, permitting, and construction of transmission facilities or over integrated resource planning and similar processes [PP 186, 189]
- The transmission planning and cost allocation requirements of Order 1000 are focused on the transmission planning process and not on any substantive outcomes of that process [P 99]

¹ The relevant Order 890 principles are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning.

- Order 1000 transmission planning reforms are concerned with process and are not intended to dictate substantive outcomes, such as what transmission facilities will be built and where [PP 188, 285]
- Order 1000's transmission planning reforms are intended to ensure that there is an open and transparent regional transmission planning process that produces a regional transmission plan; if public utility transmission providers' regional transmission processes satisfy these requirements, they will be in compliance with the Order 1000 regional transmission planning requirements [P 188]
- FERC recognizes that a regional transmission planning process may not identify any transmission facilities that are more efficient and cost-effective, and even where such facilities are identified and selected in a regional plan for purposes of cost allocation, such solutions may not ultimately be constructed should the developer not secure the necessary approvals from the relevant state regulators [P 190]
 - Nothing in Order 1000 explicitly or implicitly requires that any transmission facilities be sited, permitted, or constructed [P 191]
 - Local transmission plans do not need to be subject to approval at the regional or interregional level unless the transmission provider seeks to have any of those facilities selected in the regional transmission plan for purposes of cost allocation [P 190]
 - Order 1000-A reiterates that Order 1000 does not require the filing of regional transmission plans or associated cost allocation determinations for FERC approval [PP 231, 286]
- FERC clarifies that Order 1000 does not require anything more than considering non-transmission alternatives as compared to transmission solutions, similar to what was developed in Order 890 compliance filings [P 193]
- Order 1000-A reaffirms Order 1000's statement that many public utility transmission providers may need to make only modest changes to their regional transmission planning processes to comply with Order 1000 [P 280]
- Consistent with Order 890, public utility transmission providers should provide sufficient information to "enable customers, other stakeholders, or an independent third party to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory manner [P 281]
 - Public utility transmission providers should provide the basic methodology, criteria, and processes used to develop transmission plans sufficient for stakeholders to be able to replicate its transmission plans, and describe the methods it will use to disclose the criteria, data, and assumptions that underlie its transmission system plans [P 281]
 - Transmission providers are required under Order 890 to provide information regarding the status of transmission upgrades on their websites, but Order 1000-A declines to prescribe specific timing parameters for website postings [P 288-289]
- FERC encourages state participation in the regional planning process, but does not mandate any one formal method for such participation [PP 290, 337]

- FERC is not prescribing a state participation role because state commission authority and responsibility are established by individual state laws [P 294]
- FERC reiterates its strong support for regional state committees [P 295]
- FERC encourages public utility transmission providers to propose a mechanism for recovery of planning costs in their compliance filings, including relevant cost recovery for state regulators to the extent requested, consistent with Order 890 [PP 296, 649]
- FERC affirms the Order 1000 language authorizing regions to propose information and data requirements for merchant transmission facilities that are not part of the regional planning process and cost allocation [P 297]
 - This includes information regarding reliability and operational impacts, so that the regional planning process knows the impact of potential merchant transmission facilities in their regions [P 298]
 - Merchant transmission developers are those for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates [P 299]
 - Order 1000-A reiterates that Order 1000 found that merchant transmission developers may be required to pay for upgrades on neighboring systems necessitated by the interconnection of the merchant facility [P 300]
- FERC upholds its determination in Order 1000 that public utility transmission providers define what constitutes a “new” facility for determining when the requirements of Order 1000 become applicable to the facility (i.e., which facilities are no longer subject to evaluation or reevaluation after the effective date), and parties that disagree with the region’s definition may protest this determination in the compliance proceeding [P 301]

Public Policy Requirements

- Order 1000-A clarifies that Order 1000 requires transmission providers to consider in local and regional processes transmission needs driven by Public Policy Requirements, rather than consideration of the Public Policy Requirements themselves [PP 318, 326]
 - FERC is not requiring that any federal or state laws or regulations themselves be considered as part of the transmission planning process, only that transmission needs driven by Public Policy Requirements be considered in the same manner as transmission providers consider transmission needs driven by reliability or economic concerns [PP 204, 209, 210]
 - The process can identify what parties are subject to the Public Policy Requirements and whether such parties have a need for a transmission solution to meet the Public Policy Requirements [P 334]
- FERC acknowledges that some regions may already be in compliance with the Public Policy Requirement mandates of Order 1000 and may need to make only modest changes to comply; compliance filings must explain how the process gives all stakeholders a meaningful opportunity to submit what they believe are transmission needs driven by Public Policy Requirements, and

allow an open and transparent transmission planning process to determine whether to move forward regarding those needs [P 335]

- Order 1000-A clarifies that “Public Policy Requirements established by state or federal laws or regulations includes duly enacted laws or regulations passed by a local government entity, such as a municipal or county government” [P 319]
 - The use of the term “within” a state in Order 1000 encompasses other relevant jurisdictions in the states [P 319]
- “Consideration” of transmission needs driven by Public Policy Requirements includes: (1) the identification of transmission needs driven by Public Policy Requirements; and (2) the evaluation of potential solutions to meet those identified needs [P 320]
 - Not every suggested transmission need proposed by stakeholders must be selected for further evaluation [PP 320, 321]
 - Order 1000-A requires that there be a sufficient record for FERC and the stakeholders to review to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential [P 321]
- Order 1000-A does not prescribe how active the public utility transmission provider should itself be in indentifying the transmission needs driven by Public Policy Requirements, although it may certainly take a proactive approach if it, in consultation with stakeholders, so chooses [P 322]
 - Public utility transmission providers are not required to research and post on their websites what they perceive to be every transmission need that is conceivably driven by a Public Policy Requirement and then explain why it will not evaluate each one [P 325]
 - Public utility transmission providers are only obligated to: (a) post an explanation of those transmission needs driven by Public Policy Requirements that have been identified for evaluation; and (b) post an explanation of how other transmission needs driven by Public Policy Requirements introduced by stakeholders were considered during the identification stage and why they were not selected for further evaluation [P 325]
 - Public utility transmission providers are not required to make any substantive determinations as to what Public Policy Requirements may qualify or to identify them in the OATT [P 328]
- If a public utility transmission provider engages in local transmission planning, regardless of whether it is in an RTO region, then the requirements of Order 1000 regarding Public Policy Requirements apply to both the local and regional transmission planning processes, and utilities must revise their local planning processes accordingly [P 324]
- Order 1000-A affirms that FERC will not prescribe any statutes or regulations as Public Policy Requirements for purposes of Order 1000, including section 217 of the FPA; rather, it will be up to the individual regions to develop a process that considers transmission needs driven by Public Policy Requirements [P 176]
 - FERC emphasizes that it is not advocating for any particular environmental or other public policy [P 209]

- Order 1000's requirements regarding consideration of transmission needs driven by Public Policy Requirements does not mandate fulfillment of those requirements or that transmission providers consider the Public Policy Requirements themselves [P 203]
- It is not the function of regional planning processes to reconcile differing state policies, but instead to help various utilities comply with state laws they each face by considering in the planning process, the new transmission facilities needed by stakeholders to meet their obligations, and determine if diverse objectives can be met more efficiently or cost-effectively through regional transmission planning rather than through individual utility planning [P 327]
- The planning necessary to consider transmission needs driven by Public Policy Requirements is not different in substance from the planning required to address reliability or economic needs [P 208]
 - Order 1000 reforms are intended to create a path to allow public utility transmission providers, in consultation with stakeholders, to assess what transmission needs are being driven by Public Policy Requirements, just as they currently look to whether transmission needs are driven by reliability or economic concerns [PP 210, 329]
- Order 1000-A clarifies that Order 1000 requires only the consideration of transmission needs driven by Public Policy Requirements but neither requires nor prohibits the consideration of public policy goals [P 333]
 - For example, if a state legislature mandates a 10% renewable energy standard and the state's governor urges utilities to meet a 20% standard, Order 1000 would require the planning process to consider transmission needs to meet the 10% standard but neither requires nor prohibits the consideration of transmission needs to meet the 20% goal [P 333]
- FERC leaves it to regions and their state regulators to determine the appropriate role of state regulators in the transmission planning process generally and in the consideration of transmission needs driven by Public Policy Requirements in particular [P 338]
- Facilities that were first advanced to meet the transmission needs driven by a particular state's Public Policy Requirements may also provide reliability or economic benefits to entities located outside of the state [P 214]

Nonincumbent Participation and ROFR

Requirement to eliminate federal ROFR

- Order 1000-A affirms the definition of incumbent transmission developer/provider as "an entity that develops a transmission project within its own retail distribution service territory or footprint" and a nonincumbent is any entity that is not an incumbent transmission developer/provider [P 416]
 - In order for a non-public utility to be considered a nonincumbent transmission developer, it must satisfy the enrollment requirement (see section below summarizing FERC's findings regarding non-public utility participation) if it or an affiliate has load in

the transmission planning region where it proposes a transmission project for selection in the regional transmission plan for purposes of cost allocation as would any other potential transmission developer [P 417]

- Order 1000-A finds that it would be fundamentally unfair and thereby may lead to an unjust and unreasonable or unduly discriminatory or preferential result to allow a transmission developer (whether a public or non-public utility) to seek regional cost allocation for a proposed transmission project in a regional transmission planning region in which it or an affiliate has load, but where neither it, nor its affiliate has enrolled in that region where the load is located [PP 418-419]
- If the non-public utility and its affiliates do not have load in the region, it may propose a transmission project for selection in the regional planning process for purpose of cost allocation without enrolling in the region, as long as it satisfies all of the transmission planning region's requirements for participating [P 419]
- The term "footprint" was intended to include, but not be limited to, the location of the transmission facilities of a transmission-only company that owns and/or controls the transmission facilities of formerly vertically-integrated utilities, as well as the location of the transmission facilities of any other transmission-only company [P 420]
 - The phrase "retail distribution" in the definition of incumbent transmission developer/provider, non-incumbent, and local transmission facility was not intended to modify the term "footprint" [P 420]
 - Order 1000-A clarifies that a nonincumbent will have a "footprint" at the time that its transmission facility becomes energized, and the nonincumbent will become an incumbent for that energized facility and will thereafter have all the applicable rights and obligations [P 421]
- Order 1000-A clarifies that ROFR does not need to be eliminated for new transmission facilities if the regional cost allocation method results in 100% of the facility's costs being allocated to the public utility transmission provider in whose retail distribution service territory or footprint the facility is to be located [P 423]
 - The term "selected in the regional plan for purposes of cost allocation" excludes a new transmission facility if the costs of that facility are born entirely by the public utility transmission provider in whose retail distribution service territory or footprint that the new transmission facility is to be located [P 423]
 - Generally, any regional allocation of the costs of a new transmission facility outside of 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 and the new transmission facility is not a "local transmission facility" [P 424]
 - FERC will consider arguments on a case-by-case basis, however, regarding situations where a transmission provider has within its borders one or more smaller utilities that largely depend on its transmission system but nevertheless "own a little transmission of their own" and are therefore also transmission

providers – such situations may not necessarily constitute “a zone consisting of more than one transmission provider” as that term is used in Order 1000-A [P 424]

- FERC gives a continuum of examples, from (a) one small municipality with a single small transmission facility located within a transmission provider’s footprint to (b) a “zone” consisting of many public utility and non-public utility transmission providers [P 424]
 - Order 1000-A clarifies that 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 facilities, except as provided in Orders 1000 and 1000-A [P 430]
- Order 1000-A reiterates that the nonincumbent reforms are focused solely on public utility transmission provider tariffs and agreements subject to FERC jurisdiction and is not intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to the construction of transmission facilities, including but not limited to authority over siting and permitting of transmission facilities [P 377, 381]
 - Order 1000 does not address transmission construction or address which entity may ultimately construct any transmission facilities [P 378]
 - Order 1000 seeks to ensure that nonincumbents have a comparable opportunity to submit transmission projects for evaluation and potential selection in the regional transmission plan for purposes of cost allocation [P 378]
 - ROFR based on a state or local law or regulation would still exist under state or local law even if removed from the FERC-jurisdictional tariff or agreement [P 381]
 - Nothing in Order 1000 creates any new authority for FERC nor public utility transmission providers acting through the regional transmission planning process to site or authorize the construction of transmission projects [P 382]
- The purpose of the minimum requirements for nonincumbent transmission developers is to provide objective criteria that can help ensure that the lack of nonincumbent participation will not be attributable to a lack of equal treatment or some other reason identified in Order 1000 as an impairment to the identification and evaluation of more efficient or cost-effective alternatives [P 67]
- Selection criteria for project developers are an appropriate means of providing assurances that all project developers will be in a position to fulfill their commitments [P 95]
- Order 1000-A reiterates that Order 1000 did not eliminate federal ROFR for local transmission facilities and upgrades to an incumbent’s own transmission facilities, and it did not alter an incumbent’s use and control of an existing right of way [PP 357, 360, 379]
 - Nothing in Order 1000 prevents an incumbent from choosing to meet reliability needs or service obligations by building new transmission facilities located solely within its retail distribution service territory or footprint that are not submitted for regional cost allocation [PP 85, 366, 368, 425, 428]

- Order 1000-A clarifies that a “local transmission facility” is one that is located within the geographical boundaries of a public utility transmission provider’s retail distribution service territory, if it has one, or otherwise in the area defined by the public utility transmission provider’s footprint [P 429]
 - Thus, a facility that a public utility transmission provider decides to build within its retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation may be considered a local transmission facility [P 430]
 - In the case of an RTO, it is the retail distribution service territory or footprint of the underlying transmission owners that is relevant [P 429]
- Order 1000-A clarifies that the term “upgrade” means an improvement to, addition to, or replacement of a part of, an existing transmission facility and does not refer to an entirely new transmission facility [P 426]
 - Order 1000-A states that it is not feasible to list every type of improvement or addition, or name all of the parts of lines, towers, and other equipment that may be replaced or otherwise upgraded and that FERC did not do so [P 426]
 - The requirement to eliminate ROFR does not apply to an upgrade, even when the upgrade requires expansion of an existing right of way [P 427]
 - The issue is not whether the upgrade would be located in an existing right of way, but whether the new transmission facility is an upgrade to an incumbent transmission provider’s own facilities [P 427]
 - FERC reiterates that ROFR reforms were not intended to alter an incumbent’s use and control of its existing rights of way under state law [P 427]
- Order 1000-A affirms the decision in Order 1000 to require the elimination of ROFR for reliability projects, finding that the fact that a particular facility is intended to meet reliability needs does not change FERC’s responsibility to eliminate practices that result in unjust and unreasonable or unduly discriminatory or preferential rates [P 428]
- FERC continues to believe that an obligation to build in relation to membership in an RTO is not necessarily dependent on an incumbent transmission provider having a corresponding federal ROFR to prevent other entities from constructing and owning new transmission facilities located in that region [P 367]
 - Order 1000-A continues to reject arguments that eliminating ROFR will discourage RTO membership [P 367]
- FERC denies requests that it stay the requirement to remove federal ROFR because the parties seeking a stay have failed to demonstrate that they will suffer irreparable injury [P 390]

Mobile-Sierra Arguments

- Entities seeking to assert a *Mobile-Sierra* argument in response to Order 1000 must still submit the tariff and agreement revisions that are necessary to comply with Order 1000 [P 389]

- FERC will first determine whether an agreement is protected by a *Mobile-Sierra* provision, and, if so, whether FERC has met the applicable standard of review such that it can require modification of the agreement [P 389]
 - If FERC determines that the agreement is protected by a *Mobile-Sierra* provision and that it has not met its burden, it will not consider the revisions submitted in the compliance filing [P 389]
 - If FERC determines that an agreement is not protected by *Mobile-Sierra* or that it has met its burden under *Mobile-Sierra*, then it will consider the revisions submitted in the compliance filing to determine whether they comply with Order 1000 [P 389]

Qualification Criteria

- Order 1000-A affirms the requirement that public utility transmission providers in each transmission planning region establish, in consultation with stakeholders, 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 [P 439]
 - Criteria must not be unduly discriminatory or preferential and must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities [P 439]
 - Public utility transmission providers themselves, in consultation with stakeholders, are responsible for complying with Order 1000 and must develop qualification criteria for FERC review on compliance [P 439]
 - FERC declines to adopt standardized criteria, stating that there may be legitimate differences between regions that may justify differences in the qualification criteria [P 440]
 - Order 1000-A reiterates that the qualification criteria should not be applied to an entity proposing a transmission project for consideration in the regional transmission planning process if that entity does not intend to develop the proposed project [P 439 n.520]
 - Qualification criteria do not need to be limited only to financial and technical matters; instead, Order 1000 provides flexibility for regions to formulate qualification criteria that best fit the region's transmission planning process and particular needs [P 440]
- Order 1000-A states that 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 state public utility status and the right of eminent domain, to be eligible to propose a transmission facility [P 441]
 - FERC will review on compliance whether any proposed qualification criteria is unreasonably stringent when applied to nonincumbent transmission developers so as to constitute a barrier to entry [P 441]
 - FERC clarifies that a transmission developer of a selected transmission facility must submit a development schedule that indicates the required steps, such as granting of

state approvals, necessary to develop the transmission facility so that it meets the transmission needs of the region [P 442]

- As part of the ongoing monitoring process of the transmission project once it is selected, the transmission planning region must establish a date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address [p 442]
- If the critical steps have not been achieved by the date, the transmission planning region may remove the project from the selected category and proceed with reevaluating the regional transmission plan to seek an alternative solution [P 442]
- This approach provides a number of benefits [P 443]:
 - It ensures that transmission developers have the technical and financial capability to build a transmission facility and meet other nondiscriminatory and non-preferential criteria
 - It gives nonincumbent transmission developers the opportunity to propose a transmission facility while they seek to obtain the necessary state approvals or otherwise seek to comply with applicable state law or regulation
 - It provides the public utility transmission providers in the region the ability to monitor the development of a transmission facility and to remove that facility if the developer is unable to meet established dates
- Order 1000-A also rejects a qualification criterion that an entity must be registered with NERC as a precondition to being assigned a reliability project [P 444]

Project Evaluation

- Order 1000-A affirms the decision in Order 1000 to require 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 a regional transmission plan for cost allocation [P 452]
 - FERC also affirms its decision in Order 1000 not to require public utility transmission providers to use an independent third party observer to oversee the regional planning process, but regions may choose to adopt such an approach, which FERC will review on compliance [P 452]
 - If disputes arise in the planning process, entities may take advantage of existing Order 890 dispute resolution processes [P 452]
- Public utility transmission providers must use the same process to evaluate a new transmission facility proposed by a nonincumbent as is used for evaluating facilities proposed by an incumbent [454]

- However, the regional planning process may take into consideration the particular strengths of either an incumbent or nonincumbent during the evaluation process [P 454]
- Criteria for evaluation must be transparent and not unduly discriminatory [P 455]
- FERC clarifies that when cost estimates are part of the selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or a nonincumbent [P 455]

Reevaluation of Regional Transmission Plan and Abandoned Plant Recovery

- Order 1000-affirms the Order 1000 decision to require that public utility transmission providers amend their OATTs 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 if 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 solutions proposed by the incumbent transmission provider, to ensure that the incumbent transmission provider can meet its reliability needs or service obligation [P 477]
 - FERC believes that if these procedures are followed, incumbent transmission providers should be able to meet reliability related requirements [P 477]
 - FERC rejects arguments that the reevaluation requirement does not protect against the need to implement operational adjustments, stating that NERC's present reliability standards require functional entities to operate so that the portion of the system that is in service at the time will be capable of delivering the output of generation to firm demand and transfers within the applicable performance criteria regardless of whether a transmission project is delayed or abandoned [P 478]
- FERC emphasizes that Order 1000 does not change any obligations an incumbent, as a NERC Functional Entity, may have under the NERC reliability standards to monitor a nonincumbent transmission developer's progress in developing a transmission facility [P 479]
 - NERC Functional Entities remain responsible for complying with all applicable reliability standards, such as studying performance of their systems and deciding when to develop corrective plans to ensure that their systems respond reliably as prescribed by the standards [P 479]
 - FERC notes that transmission providers already routinely communicate regarding the status of construction of transmission projects [P 479]
 - Order 1000-A indicates that FERC is not deciding whether or how an incumbent may recover the costs that result from complying with a reliability standard if a nonincumbent transmission developer delays or abandons a needed project [P 491]
- FERC affirms its decision in Order 1000 not to subject an incumbent to a penalty for a violation of a NERC reliability standard [P 480]
 - Order 1000-A clarifies that Registered Entities are required to mitigate any NERC reliability standard violations; although FERC will not seek to impose penalties, it will ensure that Registered Entities implement appropriate mitigation plans [P 480]

- FERC clarifies that it will not subject a Registered Entity to penalties for violations of reliability standards caused by a nonincumbent transmission developer's abandonment of a project, whether the Registered Entity is an incumbent transmission provider or some other Registered Entity [P 481]
- Order 1000-A clarifies that FERC will continue to grant abandoned plant recovery on a case-by-case basis in accordance with Order 679 [P 489]
- FERC clarifies that nothing in Order 1000 requires an incumbent transmission provider to construct a nonincumbent transmission developer's abandoned transmission project [P 490]
 - However, FERC acknowledges that some RTOs have the authority under their tariffs or membership agreements to direct a member to build a transmission facility under certain circumstances [P 490]
- Order 1000 neither requires an incumbent to or precludes an incumbent from purchasing the facilities, materials, or assets related to a nonincumbent's abandoned project that the incumbent determines that it must complete to meet its reliability needs or service obligations [P 492]

Interregional Transmission Coordination

- Order 1000-A clarifies that Order 1000 does not require or prohibit consideration of transmission needs driven by Public Policy Requirements as part of interregional coordination; however, such considerations are required through the regional transmission planning process, which is an integral part of the interregional transmission coordination [P 500]
 - Consideration of transmission needs driven by Public Policy Requirements is an essential part of the evaluation of an interregional transmission project, not as part of interregional transmission coordination, but rather as part of the relevant regional transmission planning processes [P 500]
 - The decision of whether and how to address transmission needs driven by Public Policy Requirements with regard to interregional transmission facilities is a matter for the public utility transmission provider to work out with their stakeholders in the development of compliance proposals [P 500]
- Order 1000-A clarifies that Order 1000 only 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 to determine whether they may more efficiently or cost-effectively meet transmission needs than regional transmission facilities, and does not require any particular type of studies to be conducted [P 501]
- FERC declines to expand the definition of interregional transmission facility to include facilities proposed in one region that provide benefits in a neighboring region [P 502]
 - Expanding the definition could result in mandating interconnectionwide planning [P 502]
 - Allowing one region to unilaterally allocate costs to entities in another region would effectively impose an affirmative burden on stakeholders to actively monitor

- transmission planning processes in numerous other regions, which would essentially result in interconnectionwide transmission planning [PP 503, 557, 707]
- FERC also rejects arguments that the definition needs to be expanded to ensure that costs are allocated commensurately with benefits, because the Order 1000 cost allocation principles already establish a closer link between transmission planning and cost allocation to ensure that costs and benefits are allocated commensurately [P 503]
 - Parties remain free to negotiate an agreement to share costs of a particular transmission facility with beneficiaries in another transmission planning region, and may voluntarily develop and propose interregional coordination procedures providing for the joint evaluation by more than one region of a transmission facility located solely within one transmission planning region [PP 504, 711]
- FERC reiterates that Order 1000 does not require MISO and PJM to revise their existing cross-border cost allocation method in response to Cost Allocation Principle 4 [P 505]
 - FERC denies requests for rehearing of Order 1000's requirement that an interregional transmission facility must be selected in each region's transmission plan for purposes of cost allocation, because Order 1000 provides for stakeholder involvement in the consideration of interregional transmission facilities primarily through the regional transmission planning processes [P 509]
 - Public utility transmission providers are not required to provide for stakeholder participation in the interregional coordination process because such participation will occur in each region's consideration of an interregional transmission facility; however, public utility transmission providers must allow for stakeholder input into the development of the interregional transmission coordination procedures before those procedures are submitted to FERC in the compliance filings [PP 518-519]
 - Much of the interregional coordination may involve sharing of computer models and study results, which may make it more difficult for a broad community of stakeholders to participate, or could result in a cumbersome interregional coordination process [P 519]
 - Public utility transmission providers must make transparent the analyses undertaken and determinations reached by neighboring transmission planning regions, subject to confidentiality protections and CEI requirements [P 520]
 - Order 1000-A clarifies that each public utility transmission provider must describe in its OATT how its regional transmission planning process will enable stakeholders to provide meaningful and timely input with respect to the consideration of interregional transmission facilities, and public utility transmission providers must explain in their OATTs how stakeholders and transmission developers can propose interregional transmission facilities for the public utility transmission providers in neighboring transmission planning regions to evaluate jointly, along with the methods by which the public utility transmission providers will identify and evaluate interregional transmission facilities [P 522]

- FERC reiterates that Order 1000 requires each public utility transmission provider, through its transmission planning region, to develop procedures by which differences in data, models, assumptions, planning horizons, and criteria used to study a proposed interregional transmission project can be identified and resolved for purposes of jointly evaluating an interregional transmission project [P 510]
 - Joint evaluation cannot be effective without some effort to harmonize differences in data, models, assumptions, planning horizons, and criteria [P 510]
- FERC declines to require the preparation and approval of an interregional transmission plan or to adopt mechanisms for FERC review of neighboring regions' disagreements about or failure to act on a proposed interregional transmission facility [P 511]
- Order 1000-A reaffirms that it is appropriate for each region to determine for itself whether it receives any benefits from a proposed interregional transmission facility [P 512]
- Order 1000-A clarifies that while FERC provides flexibility for public utility transmission providers to craft interregional coordination agreements that take into account their needs and the needs of their stakeholders, FERC notes that it will review each compliance filing to ensure that the agreements are just and reasonable and not unduly discriminatory or preferential [P 223]
- FERC clarifies that regions must develop common OATT language that implements the Order 1000 interregional transmission coordination reforms, but that Order 1000 allows regions alternatively to reflect interregional coordination procedures in an agreement filed with FERC [P 224]
 - Interregional coordination agreements must be filed with FERC [P 226]

Cost Allocation

- Order 1000-A affirms the Order 1000 requirement that each public utility transmission provider has 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 [P 613]
 - Without clear cost allocation rules, there is a greater potential that public utility transmission providers and nonincumbent transmission developers may be unable to develop transmission facilities that are determined by the region to meet its needs [P 613]
 - All tariffs will be required to contain an appropriate cost allocation method(s) [P 618]
 - FERC affirms that a principles-based approach is appropriate to provide public utility transmission providers flexibility to develop cost allocation methods that best suit regional needs [P 647]
 - Public utility transmission providers and their stakeholders are intimately familiar with the transmission needs of their region and are therefore in the best position to develop, and submit to FERC for review, a cost allocation method(s) that complies with the six cost allocation principles and best meets the transmission planning region's needs [P 648]
 - FERC also affirms that in the event of a failure to reach agreement on a cost allocation method or methods, FERC will use the record in the relevant compliance proceedings as

a basis to develop a cost allocation method or methods that meet(s) Order 1000's cost allocation principles [PP 650-652]

- Order 1000 requires public utility transmission providers to document in their compliance filings the steps they have taken to reach consensus on cost allocation methods [P 653]
- FERC reiterates its Order 1000 finding declining to mandate veto rights for state committees, but notes that Order 1000 does not preclude regions from proposing such mechanisms, provided that the mechanisms are consistent with the goals of Order 1000 [P 614]
- FERC affirms its decision in Order 1000 that cost recovery is a separate issue that is not addressed in Order 1000; however, cost recovery may be considered as part of a region's stakeholder process in developing a cost allocation method(s) to comply with Order 1000 [P 616]
 - When FERC concluded in Order 1000 that participant funding cannot serve as a regional cost allocation method, it did not make a conclusion regarding cost recovery mechanisms [P 619]
- Order 1000-A finds that the cost allocation requirements do not infringe on state authority over the siting and permitting of transmission facilities or integrated resource planning, nor do they seek to regulate bundled retail rates [PP 620-621]
- FERC also affirms its finding that the lack of *ex ante* cost allocation methods that identify the beneficiaries of proposed regional and interregional transmission facilities may be impairing the ability of public utility transmission providers to implement more efficient or cost-effective transmission solutions [PP 566, 576, 634]
 - One of FERC's reasons for adopting the cost allocation requirements is to address free rider issues, and free riders are defined as entities that do not bear cost responsibility for benefits they receive in their use of the transmission grid, specifically benefits they receive from new transmission facilities selected in a regional transmission plan for purposes of cost allocation [P 576]
 - Individual complaint proceedings will not suffice to address free rider problems because litigating complaints burdens and unduly delays the transmission planning process [P 576]
 - The purpose of an *ex ante* cost allocation method(s) is to be clear upfront about who is benefitting so that disputes are minimized and projects are more likely to be constructed [P 678]
- The list of possible benefits in Cost Allocation Principle 1 is not intended to be exhaustive [P 574]
- The cost allocation method is required to explain how the costs of new transmission facilities selected in a regional transmission plan for purposes of cost allocation are to be allocated, consistent with the Order 1000 cost allocation principles [P 286]
 - Each regional transmission planning process must provide entities who will receive regional or interregional cost allocation an understanding of the identified benefits on which the cost allocation is based [P 624]

- Order 890 dispute resolution processes may be used to address disagreements regarding identification of benefits and beneficiaries [P 624]
 - For cost allocation methods to be accepted by FERC as Order 1000-compliant, they will have to clearly and definitively specify the benefits and class of beneficiaries [PP 678-679]
- If one region does not select an interregional transmission facility to receive interregional cost allocation, then neither the other region nor the transmission facility developer may allocate costs of the interregional transmission facility to the region that did not select the project [P 635]
- FERC clarifies that Order 1000 interregional cost allocation requirements are not intended to alter the section 205 rights of transmission owners and RTOs [P 636]
- Cost allocation methods can consider the costs and benefits of a *group* of new transmission facilities, which would not require a facility-by-facility showing, so long as the aggregate cost of the transmission facilities in the group is allocated roughly commensurate with aggregate benefits [P 682]
- FERC declines requests to prohibit a postage stamp cost allocation methodology, finding that such a method may be appropriate where all customers within a specified transmission planning region are found to benefit from the use or availability of a transmission facility or class or group of transmission facilities, especially if the distribution of benefits associated with a class or group of transmission facilities is likely to vary considerably over the long depreciation life of the transmission facilities amid changing power flows, fuel prices, population patterns, and local economic considerations [PP 683, 735]
- Order 1000-A states that the cost allocation reforms represent a significant advance over current practices, and it is important to balance the possibility that some beneficiaries could escape cost responsibility against the larger goal of linking cost allocation with transmission planning for the purposes of improving the planning process [P 710]
- FERC upholds the Order 1000 finding that participant funding cannot be the regional or interregional cost allocation method because it does not comply with the cost allocation principles and increases the incentive of individual beneficiaries to defer investment in transmission in hopes that other beneficiaries will value it more [P 726]
 - Participant funding provides no opportunity to a transmission developer to allocate costs to beneficiaries identified in the regional transmission planning process, even if the developer's transmission facility is identified as a more efficient or cost-effective solution and is selected in the regional transmission plan for purposes of cost allocation [P 726]
 - FERC does not prohibit the use of participant funding, however, and it may be appropriate in some cases, but not as the regional or interregional cost allocation method [PP 728-729, 733]
- Cost allocation for non-transmission alternatives identified in the regional transmission plan is beyond the scope of Order 1000 [P 745]

- FERC declines to address any asserted link between formula rates and cost allocation as beyond the scope of the Order 1000 rulemaking proceeding [P 746]

Cost Allocation Principles

- Order 1000-A affirms the six regional and interregional cost allocation principles articulated in Order 1000 [P 647]
 - Costs must be allocated in a way that is roughly commensurate with benefits
 - There must be no involuntary allocation of costs to non-beneficiaries
 - If a benefit/cost ratio is used, it must not exceed 1.25
 - Costs must be allocated solely within a transmission planning region (for regional facilities) or pair of regions (for interregional facilities), unless there is a voluntary agreement to allocate costs outside of the region/pair of regions
 - There must be a transparent method for determining benefits and identifying beneficiaries
 - There may be different methods for different types of facilities
- Order 1000-A affirms the determination of Order 1000 not to prescribe a particular definition of “benefits” or “beneficiaries” [P 674]
 - FERC will review the cost allocation method(s) including how benefits and beneficiaries are defined, to determine whether it complies with Order 1000 [P 675]
 - FERC declines to adopt a one-size-fits-all approach to defining benefits and beneficiaries, in order to permit regions to account for regional differences [PP 676, 678]
 - Regions, in consultation with stakeholders, may consider proposals to allocate costs to generators as beneficiaries that could be subject to regional or interregional cost allocation; however, any effort to do so must not be inconsistent with the Order 2003 generator interconnection process [P 680]
- FERC rejects generic arguments that RTOs act primarily in the interests of their transmission owning members compared to captive ratepayers [P 675]
- Order 1000-A clarifies that public utility transmission providers may rely on scenario analyses in the preparation of a regional transmission plan and in the selection of transmission facilities; if a project or group of projects is shown to have benefits in one or more scenarios identified by the public utility transmission providers in their FERC-approved Order 1000-compliant cost allocation methods, then Principle 2 would be satisfied [P 690]
- The transparency requirements of Principle 5 apply to any benefit/cost analysis adopted under Principle 3, such that all data relating to the benefit/cost ratio must be transparent [P 695]
- FERC clarifies that Principle 4 does not preclude an RTO from allocating to a withdrawing RTO member the cost of eligible transmission upgrades located solely within the RTO and approved before the withdrawal pursuant to a FERC-approved RTO agreement [P 714]

Applicability to Non-Public Utilities

- Consistent with Orders 888 and 890, Order 1000 is not intended to abrogate tax-exempt status of public power entities or otherwise cause such entities to violate a private activity bond rule [P 230]
- Public utility transmission providers in each transmission planning region must have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region [P 275]
 - Each public utility transmission provider (or regional transmission planning entity acting for all public utility transmission providers in its region) must include in its OATT a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in the transmission planning region [P 275]
 - A non-public utility that makes the choice to enroll in a planning region is subject to the regional and interregional cost allocation methods for that region [P 275]
 - If a non-public utility transmission provider is a customer of a public utility transmission provider in the region, the public utility transmission provider must plan for that customer's needs as it would for any other customer, regardless of whether the non-public utility enrolls in the region, and the non-public utility should be permitted to participate in the stakeholder process as any other stakeholder [PP 276, 278]
- To the extent a non-public utility transmission provider exercises its discretion to enroll as a transmission provider in a regional transmission planning process, it may be allocated costs roughly commensurate with the benefits that it is determined to receive from new transmission facilities selected in a regional transmission plan for purposes of cost allocation [P 622]
 - The choice to enroll remains with the non-public utility transmission provider [P 622]
 - The non-public utility transmission provider will have a voice in the process of determining the cost allocation method [P 622]
 - Non-public utility transmission providers could exercise any right it has in the regional transmission planning process to withdraw rather than accept the allocation of costs [P 622]
 - To accommodate the participation of non-public utility transmission providers, the relevant tariffs or agreements governing the regional transmission planning process could establish the terms and conditions for an orderly withdrawal for non-public utility transmission providers that are unable to accept the allocation of costs pursuant to a regional or interregional cost allocation method [P 622 n.734 (citing Order 1000 at P 820)]
 - Non-public utility transmission providers that choose to remain in the transmission planning region notwithstanding dissatisfaction with a particular application of the cost allocation method may file a FPA section 206 challenge to the continued justness and reasonableness of the cost allocation method [P 622]
- FERC clarifies that a public utility transmission provider will not be deemed to be out of compliance with Order 1000 if it demonstrates that it made a good faith effort, but was ultimately unable, to reach resolution with neighboring non-public utility transmission providers

on a regional transmission planning process, interregional transmission coordination procedures, or regional or interregional cost allocation methods [P 752]

- Order 1000-A clarifies that the reciprocity requirement for non-public utility transmission providers remains unchanged from Orders 888 and 890; non-public utility transmission providers may continue to satisfy reciprocity requirements in one of three ways: (1) by providing service under a tariff that has been approved by FERC under the voluntary “safe harbor” provision of the OATT; (2) through a bilateral agreement with the public utility transmission provider that satisfies the reciprocity requirement; or (3) by obtaining a waiver of the reciprocity condition from the public utility transmission provider [P 771]
 - To maintain a reciprocity tariff under the safe harbor provision, non-public utility transmission providers must ensure that the provisions of their tariff substantially conform, or are superior, to the *pro forma* OATT as revised by Order 1000 [P 772]
 - Those that take advantage of open access, including improved transmission planning and cost allocation under Order 1000, should be expected to follow the same requirements as public utility transmission providers [P 773]

Legal Challenges to Order 1000

Several parties on rehearing challenged whether FERC had the legal authority and satisfied the legal requirements for rulemaking in issuing Order 1000. FERC denied all requests for rehearing regarding its legal authority.

Order 1000 Reforms in General:

- FERC denies rehearing requests that challenge whether the Order 1000 reforms are needed, citing changes in the electric industry that have created the need for new transmission infrastructure [P 50]
 - The narrow focus of current transmission planning requirements and the shortcomings of current cost allocation represent a threat that justifies the Order 1000 requirements, which FERC cannot remedy effectively through individual proceedings [P 51]
 - The reforms are designed to, among other things, ensure that existing processes do not create unnecessary barriers to the consideration of good ideas or the selection of the most advantageous transmission solutions, regardless of whether the developer is an incumbent or nonincumbent [P 52]
 - Effective planning also should recognize that there may be more efficient and cost-effective interregional transmission solutions [P 52]
 - Clear up-front cost allocation rules are needed, otherwise the likelihood that selected facilities will be implemented is diminished [P 52]
- FERC disagrees with arguments that it failed to demonstrate that the identified problems exist in all regions sufficient to justify a generic rulemaking [PP 53-54], stating that:
 - FERC is not required to make individualized findings when proceeding under section 206 of the FPA (citing *Associated Gas Distributors v. FERC and National Fuel Gas Supply Corp. v. FERC*) [PP 56-57]

- FERC may proceed on the basis of a “theoretical threat” as long as it follows the guidance in *National Fuel* [P 58]
 - Court precedent only requires that a theoretical threat be “plausible” rather than empirical evidence [P 72]
 - The rulemaking record includes the type of evidence that courts have found appropriate, such as the comments of the Federal Trade Commission (citing *Tenneco Gas v. FERC*) [P 76]
- FERC’s findings in Order 1000 were not based on speculation, and arguments that they were misconstrue the holding in *National Fuel* that FERC can act on the basis of a theoretical threat and can act on the basis of “factual inferences,” “legislative facts,” or “factual predictions” [PP 60-65]
- FERC did not ignore evidence that disproved its reasoning [P 64]
 - The fact that some regions may already comply with certain aspects does not mean that the reforms are not needed [P 66]
- The type of principles that FERC relied upon in Order 1000 are fully commensurate with those that the court in *Associated Gas Distributors* said FERC could utilize when addressing matters that fall within its area of expertise [P 70]
- FERC’s task is to assess current circumstances and form a judgment on the steps necessary to avoid adverse effects on rates that it concludes are likely to arise; FERC is not required to act only on current failures that are traceable to inadequate transmission planning and cost allocation [P 74]
- The substantial evidence standard does not require scientific certitude; it only requires evidence that a reasonable mind might accept as adequate to support a conclusion [P 71]
- The potential benefits of improved planning for new transmission facilities outweigh the burdens involved in complying with Order 1000 [P 75]
 - FERC finds that there is a reasonable expectation that removal of a barrier to entry in the area of transmission development will have benefits of the type that competition creates in most industries [P 77]
- Barriers to entry can adversely affect rates, and FERC’s action is to ensure that federal ROFRs do not adversely affect rates [P 78]
 - Barriers to entry can discourage innovation [P 82]
- FERC cannot act through individual complaint proceedings because ROFR is a barrier to entry and requiring nonincumbents to overcome these barriers solely through individual compliant proceedings would create expense, delay, and uncertainty that would serve as further disincentive to participate in the regional planning process [P 79]
 - FERC also refutes arguments that FERC did not identify an instance of a ROFR leading to adverse effects on rates, stating the more important point is that the practical effect of a federal ROFR is to discourage nonincumbent participation – it is not surprising that there is limited evidence of exclusion of nonincumbents because ROFR discourages them from participating [P 80]

- Order 888 dealt with instances of undue discrimination involving entities that were already connected to the grid; in contrast, Order 1000 deals with the effect on rates when entities are excluded from becoming involved in the planning process [P 80]
- The fact that no state in the SPP region would stand for anticompetitive behavior by incumbents does not ensure that potentially more efficient or cost-effective solutions offered by nonincumbents will be considered [P 84]
- The fact that transmission may have characteristics of a natural monopoly does not mean that determining who will be the owner or group of owners of a particular line with natural monopoly characteristics cannot be done on a competitive basis or that competition in connection with such facilities would not promote benefits that are similar to benefits competition produces elsewhere in the economy [P 86]
 - FERC seeks to make it possible for nonincumbents to compete in the proposal of more efficient or cost-effective transmission solutions [P 87]
- The fact that an incumbent may possess certain capabilities does not imply that the incumbent is more capable than any possible nonincumbent in all situations [P 88]
- The existence of vertical integration does not imply that vertically integrated utilities must be a monopoly; for example, the emergence of competitive generation markets makes it no longer possible to argue that vertically integrated utilities are natural monopolies in all respects [P 90]
- There is no contradiction between transmission planning for native load and ensuring that transmission plans are consistent with regional and interregional needs; in fact, native loads may benefit from improved regional planning and interregional coordination [P 94]
- FERC's statutory justification for Order 1000 is that it is required to address matters that can affect transmission rates in a way that could cause them to become unjust and unreasonable, or unduly discriminatory or preferential [P 98]

Regional Planning and Public Policy Requirements

- FERC rejects arguments that the language in section 202 of the FPA addressing voluntary coordination prohibits the planning reforms in Order 1000 because section 202 addresses coordination of operation of existing facilities, not planning of new facilities [PP 121-158]
- FERC also rejects arguments that the planning reforms of Order 1000 ignore or run counter to the requirements of FPA section 217 requiring planning for the long-term transmission needs of load-serving entities, finding that the enhanced transmission planning process will benefit all entities, including load-serving entities [PP 168-179]
 - Nothing in Order 1000's transmission planning reforms conflicts with existing requirements of Order 681 regarding the availability of long-term firm transmission rights [P 172]
 - Order 1000 allows but does not require that coordination of reliability and economic transmission planning include identifying optimal solutions to congestion to ensure that load-serving entities' needs are met under FPA section 217 [P 173]

- FERC indicates that its authority arises from the fact that planning is a practice that affects rates, and FERC has a duty under sections 205 and 206 of the FPA to ensure that rates are just and reasonable and not unduly discriminatory or preferential [P 151]
- FERC rejects arguments that Order 1000 reforms will encourage incumbents to favor local planning and projects over regional planning and projects because there are a variety of factors that incumbents must consider when deciding whether to propose a local facility instead of relying on a regional facility, and the ROFR reforms will lead to more competition, which in turn will lead to the identification of more efficient and cost-effective solutions [P 179]
- FERC rejects arguments that its regional planning reforms infringe on state authority over integrated resource planning [PP 186-194]
- FERC rejects arguments regarding its authority to require consideration of transmission needs driven by Public Policy Requirements and refutes arguments that the Public Policy Requirement mandate conflicts with or supersedes state law [PP 203-216]

Nonincumbent Participation and ROFR

- Order 1000-A affirms that FERC has the authority under FPA section 206 to order the elimination of federal ROFR as a practice that has the potential to lead to FERC-jurisdictional rates that are unjust and unreasonable or unduly discriminatory or preferential [P 357]
 - FERC meets the section 206 standard because Order 1000 is focused on the effect that federal ROFR has on competition and in turn rates for FERC-jurisdictional services [P 358]
 - Federal ROFR can have the effect of limiting the identification and evaluation of potential solutions to regional transmission needs, which can directly increase the cost of new transmission development that is recovered from jurisdictional customers through rates [P 358]
- Order 1000-A affirms on a separate basis that the decision to eliminate federal ROFR is necessary to address opportunities for undue discrimination and preferential treatment against nonincumbent transmission developers in regional planning processes [P 361]
 - Order 1000-A argues that the courts have not found that FERC's authority to address undue discrimination is limited to discrimination against customers [P 362]
 - In any event, FERC did not base its decision solely on competition concerns, because Order 1000 is also focused on the impact on rates for FERC-jurisdictional services [P 363]
- FERC rejects arguments that Order 1000 creates discrimination against incumbent transmission owners because it treats dissimilarly situated entities (incumbents vs. nonincumbents) comparably [P 364]
 - Nonincumbents that build a transmission facility in an RTO and become members of the RTO are subject to the same rights and obligations as incumbents, including an obligation to build as directed by the RTO in the future [P 364]
 - Nonincumbents will also be subject to reliability obligations once their facilities are completed [P 365]

Mobile-Sierra Arguments

- Order 1000-A affirms the decision in Order 1000 to address arguments regarding the applicability of *Mobile-Sierra* in individual compliance proceedings rather than in the generic rulemaking [P 388]
 - The rulemaking record is not sufficient to address issues regarding individual agreements [P 388]

Cost Allocation

- FERC rejects challenges to its legal authority to adopt the cost allocation requirements of Order 1000, indicating that the cost allocation reforms are grounded in FERC's determination that it is necessary to establish a closer link between regional transmission planning and cost allocation, both of which involve the identification of beneficiaries of new transmission facilities, including assessing how such facilities will affect the existing transmission grid and how they will benefit users of the grid within the relevant region [P 556]
 - FERC's legal authority arises from section 201(b)(1) and sections 205 and 206 of the FPA [P 558]
 - FERC's action is not based directly on section 201 of the FPA, but is instead based on section 206, which applies to matters that are within the scope of FERC's jurisdiction under FPA section 201 [P 577]
 - Cost allocation is a practice that affects rates for jurisdictional services [PP 588, 592]
 - Because of the way electricity flows over the grid, transmission service essentially is service over the entire grid, and entities cannot choose to affect only the transmission facilities for which they have entered into a contract and cannot claim that they are not using or benefitting from a transmission facility simply because they did not enter into a contract to use them [PP 560, 561]
 - Given the nature of transmission operations, it is possible that an entity that uses part of the transmission grid will obtain benefits from transmission facility enlargements or improvements in another part of the grid regardless of whether they have a contract for service on that part of the grid and regardless of whether they pay for those benefits [P 562]
 - For this reason, FERC rejects arguments that suggest that only preexisting contracts define jurisdictional transmission service or define or limit the benefits that an entity receives from its use of the transmission grid [P 564]
 - Such legalistic arguments ignore the findings of court precedent including *Illinois Commerce Commission v. FERC* [PP 565-566]
 - Voluntary use of the grid also entails voluntary acceptance of the terms and conditions of use set forth in the tariff, including applicable cost allocation [P 568]
 - Use of the transmission grid necessarily requires the use of transmission facilities owned by multiple owners, and the FPA permits a public utility

transmission provider to charge for the costs of using its transmission facilities [P 570]

- The importance the U.S. Supreme Court ascribed to contracts in *Morgan Stanley v. FERC* and other *Mobile-Sierra* precedents does not imply that entities that use the transmission grid are entitled to structure their contractual arrangements so that they are shielded from paying costs that are roughly commensurate with the benefits that they receive [P 567]
 - The cost allocation principles do not violate *Mobile-Sierra* because they do not require revisions to contracts but instead require OATT revisions to address new transmission facilities (i.e., not facilities that are already in service)
- FERC rejects arguments that the cost allocation principles could be extended to “third party beneficiaries” such as steel producers, crane operators, and wind turbine manufacturers that may benefit commercially from expansion of the transmission system [PP 574-575]
- The cost allocation requirements do not allow an entity to unilaterally impose costs on other entities, because in order for facilities to be allocated through the regional or interregional cost allocation method, they must be selected in the regional transmission plan for purposes of cost allocation [P 579]
- FERC rejects challenges to the cost allocation mandates on the basis of the *AEP* case wherein FERC required entities to address operational and loop flow issues first by mutual agreement, finding that Order 1000’s requirements relate to allocating the costs associated with benefits of new transmission facilities rather than dealing with operational problems on existing facilities [P 583-584]
- Order 1000-A rejects arguments that FERC must first find existing cost allocation mechanisms to be unjust and unreasonable or unduly discriminatory or preferential before requiring changes to current OATTs, reiterating its findings that it can act generically rather than only on a case-by-case basis when issuing a rulemaking under section 206 [P 587]
 - Additionally, FERC is not “imposing” any rates, but rather is requiring that all public utility transmission providers have a cost allocation method or methods for certain new transmission facilities that comply with a broad set of general principles [P 590]