

Order 1000-A

Overview & Summary

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**Presentation to the SPP Strategic Planning
Committee Task Force on Order 1000
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Order 1000-A

- Denies rehearing of and affirms Order 1000 in all aspects
- Provides clarification of certain aspects of Order 1000
- No change in compliance filing deadlines

Key Clarifications Affecting SPCTF Decisions



- Any costs allocated outside an entity's retail territory/footprint is considered regional
 - Must be allocated 100% to the entity to be considered local
- State certification is an impermissible barrier
- Allocation to multi-owner zones is regional, but entities can argue for case-by-case determination
- No exception for reliability projects

- FERC denied requests for rehearing that challenged its determination of the need for the reforms mandated by Order 1000
- FERC denied requests for rehearing that address FERC's legal authority or factual basis to mandate the Order 1000 reforms

[PP 50-51, 56-90, 121-158, 168-179]

Nonincumbent Participation

- Reforms are aimed at removing provisions from FERC-jurisdictional agreements; are not intended to limit, preempt, or otherwise affect state/local laws
 - The reforms do not speak to which entity may ultimately construct any transmission facilities
 - Does not affect ROFR established by state law

- Incumbents may continue to meet their reliability needs or service obligations by constructing facilities in their retail distribution service territory or footprint that are not selected for regional cost allocation

[PP 377-381]

Nonincumbent Participation_(cont'd)



- FERC affirmed the definition of “incumbent” as an entity that develops a transmission project within its own retail distribution service territory or footprint
- “Retail distribution service territory” and “footprint” are intended to be different terms – “footprint” applies, for instance, to entities that do not have a retail distribution service territory (i.e., transcos)

[PP 416-420]

Nonincumbent Participation_(cont'd)



- Does not require elimination of ROFR if the regional cost allocation method results in 100% of the costs being allocated to the public utility transmission provider in whose retail service distribution territory or footprint the facility is to be located
 - Clarifies that the term “selected in a regional transmission plan for purposes of cost allocation” excludes a new transmission facility if the costs of the facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that the new facility is to be located

[P 423]

Nonincumbent Participation_(cont'd)



- 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]

- Multi-Owner Zones:
 - 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
 - Case-by-case exception for zones where there is one public utility transmission provider with one or more smaller utilities that largely depend on its transmission system but may own "a little transmission of their own"

[P 424]

Nonincumbent Participation_(cont'd)



- No Carve-Out for Reliability Projects:
 - Order 1000-A affirms the decision in Order 1000 to require elimination of federal ROFR for all projects selected in the regional transmission plan for cost allocation, including reliability projects

[P 428]

Nonincumbent Participation_(cont'd)



- “Upgrade” means improvement to an existing facility; it does not mean an entirely new transmission facility
 - Upgrades requiring expansion of an existing right-of-way are not subject to the requirement to eliminate ROFR

- “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
 - In RTOs, it is the territories/footprints of the underlying transmission owners that determines whether a facility is local

[PP 426-429]

Nonincumbents – Qualification Criteria

- Clarifies that qualification criteria do not need to be limited to financial and technical
- Criteria cannot require that the developer demonstrate that it has registered with NERC
- State certification (including public utility status or eminent domain authority) would be an impermissible barrier as a qualification criterion (has or can obtain)
 - Can require entity to submit a development schedule with milestones, including obtaining state approvals, and reevaluate the project if the entity fails to meet milestones
 - Can set deadline for state approvals tied to when construction must begin

[PP 440-444]

Project Reevaluation

- Order 1000-A affirms the reevaluation requirements:
 - If there is a delay, region can reevaluate the project and can entertain alternative solutions, including those proposed by incumbents
 - If a delay occurs, incumbents can submit a mitigation plan, and FERC will not seek penalties if the incumbent follows the mitigation plan
 - Order 1000-A affirms this approach, and clarifies that the incumbent must follow the mitigation plan to avoid reliability penalties
 - The mitigation process applies to any NERC Registered Entity that may be subject to penalties

[PP 480-481]

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- Entities that believe that their FERC-jurisdictional agreement is protected by the *Mobile-Sierra* doctrine may make such arguments in their compliance filings, but still must propose revisions to their tariffs or agreements that FERC will review if it determines that *Mobile-Sierra* does not apply or if it determines that it has met the requirements of *Mobile-Sierra*

[PP 383-392]

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- Order 1000 is concerned with process and not with outcomes; it is not intended to dictate the outcome of the regional planning process
 - Thus, Order 1000 respects the jurisdictional authority of states regarding siting, permitting, and construction of transmission facilities and does not preempt such authority
 - The regional planning process may not identify any facilities that are more efficient or cost-effective, and the facilities that are identified may not be built

[P 188-190]

Non-Jurisdictional Utilities

- The regional planning process 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
 - A non-public utility transmission provider that “enrolls” in a region would be subject to the regional/interregional cost allocation methods of the region for load located in the region
 - Entity cannot seek regional cost allocation if it has load in the region but has not subjected its load to the regional cost allocation for other projects

[PP 275, 417-418]

Public Policy Requirements

- All regional and local transmission planning processes must allow for consideration of “transmission needs driven by Public Policy Requirements”
 - FERC is not prescribing any specific statutes or regulations as a “Public Policy Requirement” nor mandating fulfillment of any public policy
 - Must consider transmission needs driven by public policy requirements just as transmission needs driven by reliability or economic concerns are considered
 - Not required to consider every need proposed by stakeholders

[PP 176, 204-208, 320-321]

Public Policy Requirements_(cont'd)

- Does not require that Public Policy Requirements themselves be considered – must consider transmission needs driven by Public Policy Requirements
- Public Policy Requirements includes duly enacted laws or regulations passed by a local or county government entity (and arguably public power boards)
- Does not prescribe how active the RTO must be identifying needs

[PP 318-319, 322]

Public Policy Requirements_(cont'd)

- Posting Requirement:

1. An explanation of those transmission needs driven by Public Policy Requirements that have been identified for evaluation; and
2. 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.

- It is not the function of regional planning processes to reconcile different state policies

[PP 325-327]

Interregional Coordination

- Interregional coordination does not require nor prohibit consideration of transmission needs driven by Public Policy Requirements
 - Implicitly included in interregional coordination through the regional planning process
- FERC declined to expand the definition of “interregional facility” to include facilities built solely in one region that benefit another region
- Must describe in the OATT how the regional planning process will enable stakeholders to provide timely and meaningful input on interregional facilities

Cost Allocation

- Purpose is to eliminate practices that may be impairing the ability to implement more efficient and cost-effective transmission solutions and to address free-rider issues
- Reiterates that a postage stamp cost allocation methodology may satisfy the cost allocation principles of Order 1000
- Clarifies that each region must clearly and definitively specify the benefits and class of beneficiaries
- Facilities may be considered individually or in a group to determine benefits

[PP 678-679, 682, 683, 735]

Cost Allocation_(cont'd)

- Reiterates that generation interconnection and interconnection cost allocation are beyond the scope of the order
- Clarifies that if a region does not select an interregional transmission facility in its own regional transmission plan, the other region cannot allocate costs for the facility to the region
- Affirms that if regions cannot mutually agree to interregional cost allocation mechanisms, then FERC will use the compliance records to develop a cost allocation mechanism(s)

[PP 635, 650, 683]

Additional Review

- Request for rehearing or clarification are due June 18, 2012
- Appeals of Orders 1000 and 1000-A are due July 16, 2012
 - To date, three appeals have been filed: 7th Circuit and DC Circuit

Conclusion

QUESTIONS?