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FERC's Order No. 1000 From a Historical Perspective: Restructuring and Reorganization of Electric Transmission Markets From 1996 Until Present

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FERC’s Order No. 1000 from a Historical Perspective: Restructuring and Reorganization of Electric Transmission Markets from 1996 Until Present

By Nicolas Adrian McTyre

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1 Nicolas A. McTyre is a trial attorney in the Office of Administrative Litigation at the Federal Energy Regulatory Commission. The views expressed herein are not necessarily those of the Federal Energy Regulatory Commission, its Commissioners, or its Offices (including the Office of Administrative Litigation). This primer is for educational purposes only and does not set forth any official positions or opinions of the Federal Energy Regulatory Commission.
Order No. 1000 of the Federal Energy Regulatory Commission (Commission) has already, and will continue to substantially impact the electric transmission industry. This primer provides an overview of the requirements of the order and examines the process by which public utilities are demonstrating their compliance with its provisions.

I. BACKGROUND: PROGRESSION OF COMMISSION TRANSMISSION PLANNING POLICY FROM ORDER NO. 888 TO ORDER NO. 1000.

A. In Order No. 888 the Commission Indicated That Transmission Planning is Required to Address Undue Discrimination in Transmission Markets.2

Traditionally, the electric industry was characterized by vertically integrated utilities, owning distribution, transmission, and generation facilities and selling these services in a “bundle” to wholesale and retail customers within a given service area.3 Through a series of cases, the Commission found that these vertically-integrated utilities had an incentive to deny transmission service to others altogether (or offer transmission service on terms less favorable than those offered to themselves).4

In 1996, the Commission issued Order No. 888, which attempted to remedy this discrimination. Order No. 888 directed public utilities to provide non-discriminatory open access to their transmission networks, based on a pro forma open access tariff for

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4 Order No. 888 at 31,682.
the provision of transmission service.\textsuperscript{5} Because some owners and operators of interstate transmission facilities were not subject to the Commission’s jurisdiction (non-jurisdictional public utility transmission providers), the \textit{pro forma} Open Access Transmission Tariff adopted in Order No. 888 included a reciprocity provision.\textsuperscript{6}

As for transmission planning, the Commission encouraged joint planning between transmission providers and their customers, but Order No. 888 did not require such coordination.\textsuperscript{7} In addition, Order No. 888 required that public utilities account for the needs of their network customers on the same basis as they provided for their own needs (the so-called Comparability Standard).\textsuperscript{8} Order No. 888 also set forth the framework for voluntarily creating Independent System Operators (ISOs), which are independent companies that manage transmission facilities owned by member utilities.\textsuperscript{9} Order No.

\textsuperscript{5} Each public utility was required to file the \textit{pro forma} Open Access Transmission Tariff included in Order No. 888 without any deviation. Order No. 888 at 31,770.

\textsuperscript{6} That provision allowed non-jurisdictional public utilities to use open access services as long as they agreed to offer non-discriminatory transmission services in return. Order No. 888, 61 Fed. Reg. at 21,571, FERC Stats. & Regs. at 31,689; Order No. 888-A, 62 Fed. Reg. at 12,341-42, FERC Stats. & Regs. at 30,291-92. See also Section 35.28(e)(2), 61 Fed. Reg. at 21,695.

\textsuperscript{7} Order No. 888-A at 30,311.

\textsuperscript{8} See Sections 13.5,15.4, 27, 28.2 of the \textit{pro forma} Open Access Transmission Tariff (Order No. 888, App. D). Note that firm point-to-point service is transmission service reserved and/or scheduled between specified points of receipt and delivery.

888 was ultimately upheld in all substantive aspects by the United States Supreme Court in 2002.\textsuperscript{10}

\textbf{B. The Commission Developed Order No. 890 to Build on the Transmission Planning Requirements in Order No. 888}

Order No. 890, issued in early 2007, sought to remedy, among other things, certain inadequacies in the transmission planning regime of Order No. 888.\textsuperscript{11} The Commission found that the non-binding joint and regional planning in Order No. 888 was insufficient to induce transmission providers to eliminate opportunities for undue discrimination in transmission service.\textsuperscript{12} In addition, the Commission was concerned that a lack of transparency was leading to an inadequate level of investment in the grid and increasing transmission congestion.\textsuperscript{13} The Commission required changes to the transmission planning process, including requiring public utility “transmission planning meetings [to] be open to all affected parties, including . . . all transmission and interconnection customers, state commissions and other stakeholders.”\textsuperscript{14} More specifically, the Commission set forth the following transmission planning requirements:

\begin{itemize}
  \item \textsuperscript{10} \textit{New York v. FERC}, 535 U.S. 1 (2002).
  \item \textsuperscript{12} \textit{Id.} at P 422. (“While transmission providers may have an incentive to expand the grid to meet their state-imposed obligations, they can have a disincentive to remedy transmission congestion when it would reduce the value of their generation or encourage greater competition.”).
  \item \textsuperscript{13} \textit{Id.}
  \item \textsuperscript{14} \textit{Id.} at 460.
\end{itemize}
- **Coordination**: Transmission providers must eliminate the potential for undue discrimination in planning by opening communication between transmission providers and their transmission stakeholders.\(^{15}\)

- **Openness**: Transmission planning meetings must be open to all affected parties and stakeholders.\(^{16}\)

- **Transparency**: Transmission providers must disclose to all stakeholders the criteria, assumptions, and data underlying their transmission system plans.\(^{17}\)

- **Information Exchange**: Network transmission customers must submit projected load information on a comparable basis as used by transmission providers in planning their native load.\(^{18}\)

- **Comparability**: Transmission providers must develop a system that meets the service demands of its transmission customers, but also treats similarly-situated customers comparably in transmission system planning.\(^{19}\)

- **Dispute Resolution**: Transmission providers must state that ADR procedures are mandatory for disputes arising out of the requirements of Order No 890.

- **Regional Participation**: Each transmission provider must coordinate with interconnected systems to share system plans and to identify system enhancements that could relieve congestion or integrate new resources.\(^{20}\)

- **Economic Planning Studies**: The transmission planning process under *the pro forma* OATT must consider both reliability and economic considerations, for example, whether transmission upgrades or other investments can reduce the overall costs of serving native load.\(^{21}\)

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15 Order No. 890 at P 452.

16 *Id.* at P 460.

17 *Id.* at P 471.

18 *Id.* at P 480.

19 *Id.* at P 494.

20 *Id.* at P 504.

21 *Id.* at P 542.
• **Cost Allocation**: Transmission providers and stakeholders should develop a cost allocation principle for regional projects involving several transmission owners or economic projects that is based on “their own specific criteria which best fit their own experience and regional needs.”

The transmission planning reforms adopted in Order No. 890 applied to all public utility transmission providers.

**C. The Commission Recognizes The Need to Reform Order No. 890.**

The Commission found that the compliance process with Order No. 890 resulted in a significant improvement in the transmission planning processes, especially at the regional level. Nevertheless, in the Notice of Proposed Rulemaking for Order No. 1000 (Order No. 1000 NOPR), the Commission noted that significant changes in the nation’s electric power industry were occurring, including a “widely recognized . . . trend of increased investment in the country’s transmission infrastructure [that] has emerged in recent years.” These changes led the Commission to consider additional reforms.

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22 *Id.* at P 558.

23 *Id.* at P 425. While the Commission expected that all nonpublic utility transmission providers would participate in the planning processes, the Commission did not invoke its authority under section 211A of the Federal Power Act, 16 U.S.C. § 824j-1, which allows the Commission to require an unregulated transmission utility to provide transmission service on a comparable and not unduly discriminatory basis. Congress provided the Commission authority under section 211A in the Energy Policy Act of 2005. See 42 U.S.C. 149 § 15801.


25 *Id.* at P 33 n. 41.

26 *Id.*
In the Order No. 1000 NOPR, The Commission found four primary concerns with transmission planning processes and cost allocation methodologies developed in response to Order No. 890.

- First, the Commission determined that Order No. 890’s regional participation principle was insufficient because it was merely voluntary rather than mandatory.\(^{27}\) Without a mandatory regional transmission planning process transmission providers would not have enough information to determine which projects could most efficiently satisfy regional needs.\(^{28}\)

- Second, existing transmission planning processes failed to account for public policy requirements established by state or federal law, such as renewable energy standards,\(^{29}\) resulting in inadequate opportunity for transmission providers to integrate renewable generation resources into the transmission system.\(^{30}\)

- Third, Order No. 890 failed to address the potential for undue discrimination in favor of incumbent utilities in transmission planning.\(^{31}\) The Commission found that in recent years, non-incumbent developers have shown increasing interest in developing transmission projects,\(^{32}\) but, in some areas, have lost opportunities to construct proposed projects because incumbent transmission owners have exercise rights of first refusal to construct such transmission facility in that transmission providers service territory.\(^{33}\)

- Fourth, the planning processes developed in response to Order No. 890 generally failed to consider whether interregional transmission solutions would more efficiently meet the needs identified in individual regional transmission plans.\(^{34}\)

\(^{27}\) Order No. 1000 NOPR at P 35.

\(^{28}\) Id. at P 49.

\(^{29}\) Id. at P 37.

\(^{30}\) Id. at P 59.

\(^{31}\) Id. at P 71.

\(^{32}\) Id. at P 38.

\(^{33}\) Id. at P 72.

\(^{34}\) Id. at P 103.
D. Order Number 1000 Enhances the Transmission Planning Reforms of Order 890.

To address deficiencies associated with the implementation of Order No.890, the Commission issued Order No. 1000 on July 21, 2011.36

The final rule included the following three requirements for transmission planning:

- First, each public utility transmission provider37 must participate in a regional transmission planning process that satisfies the principles of Order No. 890.38 In addition, the planning process must produce a regional transmission plan.39

- Second, regional transmission planning processes must consider transmission needs driven by public policy requirements (as established by state, federal or local laws or regulations).40

- Third, public utility transmission providers in neighboring planning regions41 must coordinate if more efficient solutions to their collective transmission needs exist.42

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35 Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) (Order No. 1000), order on reh’g, Order No. 1000-A, 139 FERC ¶ 61,132, order on reh’g and clarification, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

36 Order No. 1000 adopted the NOPR’s proposals in all material respects. Order Nos. 1000-A and 1000-B, while providing some clarification, denied the requests for rehearing. See id.

37 Order No. 1000 defines the term “public utility transmission provider,” by reference to the same term in the Federal Power Act, which is defined as “any person who owns or operates facilities subject to the jurisdiction of the Commission,” i.e., “any person who owns or operates” facilities for “the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce,” 16 USC §824(e); See Order No. 1000 at P1.

38 Order No. 1000 at P 146.

39 Id.

40 Order No. 1000 at P 203.

41 See Order No. 1000 at P 63 (neighboring planning regions refers to transmission planning regions with shared borders).

42 Order No.1000-A at P 319.
In addition, the order established three requirements for transmission cost allocation.

First, each public utility transmission provider must participate in a regional transmission planning process that has a regional cost allocation method for new transmission facilities selected in the regional transmission plan for purposes of cost allocation. That method(s) must satisfy six regional cost allocation principles\(^{43}\) that are designed to assign the costs to the facility’s beneficiaries in a manner that is at “least roughly commensurate with estimated benefits,” among other requirements.\(^{44}\)

Second, neighboring transmission planning regions must have a common interregional cost allocation method for new interregional transmission facilities. The method must satisfy six interregional cost allocation principles, which are similar to the six regional principles. In addition, each individual transmission owner must adopt common language regarding interregional cost allocation in its respective tariff.\(^{45}\)

\(^{43}\) These cost allocation principles are that: (1) costs allocated must be roughly commensurate with benefits; (2) no involuntary allocation of costs goes to non-beneficiaries; (3) the threshold benefit-to-cost ratio be no less than 1.25, unless a lower ratio is approved by the Commission; (4) allocation occurs solely within transmission planning region(s) unless those outside voluntarily assume costs; (5) a transparent method for determining benefits and identifying beneficiaries exists and; (6) different cost allocation methods may be used for different types of transmission facilities.

\(^{44}\) Id. at PP 558, 585. The Commission adopted the “roughly commensurate” language used by the Seventh Circuit Court of Appeals in the case, Illinois Comm. Comm’n v. FERC, 576 F.3d 470 (7th Cir. 2009).

\(^{45}\) See Order 1000-A. at PP 578, 585.
Third, participant-funding of new transmission facilities, which includes the allocation of new transmission facility costs only to entities that voluntary bear those costs,\textsuperscript{46} is not permitted as a regional or interregional cost allocation method.\textsuperscript{47}

The Commission also directed public utility transmission providers to remove from their OATT’s and other Commission–jurisdictional tariffs and agreements any provisions that grant a federal right of first refusal (a RORF) to transmission facilities that are selected in a regional transmission plan for purposes of cost allocation.\textsuperscript{48} A RORF is defined as a right of an incumbent transmission owner to construct, own, or propose a cost recovery for a new transmission project located within its service territory.\textsuperscript{49}

According to the Commission, such tariff provisions

\begin{quote}
[A]llow practices that have the potential to undermine the identification and evaluation of a more efficient or cost-effective solution to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and unreasonable or otherwise result in undue discrimination by public utility transmission providers.\textsuperscript{50}
\end{quote}

Order No. 1000 “focused on the transmission planning process, and not on

\begin{footnotes}

\textsuperscript{46} Id. at P 715.

\textsuperscript{47} Id. at P 723.

\textsuperscript{48} Id. at P 7.

\textsuperscript{49} Id.

\textsuperscript{50} Order No. 1000-A at P7.
\end{footnotes}
any substantive outcomes that may result from this process.”51 Moreover, nothing in the order requires that any facility identified in, or selected in, a regional plan be built, nor does it give any entity permission to build a facility.52

In addition, Order No. 1000’s requirements do not directly apply to nonpublic utility transmission providers. Accordingly, “non-jurisdictional entities, unlike public utilities, may choose whether to join a regional transmission planning process and, to the extent they choose to do so, they may advocate for those processes to accommodate their unique limitations and requirements.”53

On rehearing, the Commission rejected various challenges to Order No. 1000 and affirmed the final rule in all substantive aspects.54 Various affected parties appealed the final rule in U.S. Circuit Courts of Appeal. The Judicial Panel on Multidistrict Litigation consolidated the multiple appeals, and selected the District of Columbia Circuit as the appropriate venue.55 Oral argument in the consolidated case, South Carolina Public

51 Order No. 1000-A at P 12 (emphasis in original).

52 Id. at P 66.

53 Id. at PP 117, 815. But, to maintain a safe harbor tariff (which assures service from public utility transmission providers) a non-public utility transmission provider must ensure that the provisions of that tariff conform with, or are superior than, the pro forma Open Access Transmission Tariff as revised by Order No. 1000. Id. at P 117.

54 See Order No. 1000-A at P 3; Order No. 1000-B at P 4.

Service Authority v. FERC, No. 12-1232 (D.C. Cir. May 23, 2012 and later), was held on March 20, 2014. A decision from the court of appeals is expected by later this year.

II. OVERVIEW OF THE ORDER NO. 1000 COMPLIANCE PROCESS:
DISCUSSION OF COMPLIANCE IN SELECTED REGIONS

Order No. 1000 directed public utilities to demonstrate that their tariffs complied with the new requirements of the final rule through a series of compliance filings. In the fall of 2012, compliance filings were submitted concerning regional planning and cost allocation provisions of Order No. 1000. The Commission issued orders on those compliances filings during the spring of 2013. Also during the spring of 2013, compliance filings concerning interregional planning were filed. The Commission has yet to issue orders on those filings to date.

A. Compliance in Transmission Planning Regions with Minimal RTO/ISO Involvement

Order No. 1000 required public utility transmission providers located outside of RTO/ISO dominated regions (e.g. ColumbiaGrid, SERTP, WestConnect, etc.) to agree on transmission planning and cost allocation. As indicated in the filings, entities in these

56 Id.
57 Order No. 1000 at P 780.
59 Order No. 1000 at P 485.
regions face unique challenges regarding the implementation Order No. 1000—an example of which can be seen in the ColumbiaGrid region.

The ColumbiaGrid transmission planning region consists of eight transmission providers, seven of which are public utilities, and one of which is a nonjurisdictional federal power marketing agency, the Bonneville Power Administration (Bonneville). Bonneville, which “has the largest transmission system in the Pacific Northwest and provides about 75 percent of the transmission service in the [ColumbiaGrid] region,” filed an Order No. 1000 reciprocity compliance filing in 2012.

In the filing, Bonneville failed to adopt binding regional cost allocation methods, which the Commission found was inconsistent with clear mandates of Order No. 1000. Bonneville claimed that its governing jurisdictional statute prohibits it from delegating its “transmission investment decisions or decisions whether to take transmission service over the facilities of others” to third parties. The ColumbiaGrid region agreed to a nonbinding cost allocation approach to accommodate Bonneville. To maintain


61 Bonneville Power Administration, OATT Order No. 1000 Compliance Filing, Docket No. NJ13-1 at 12-14 (Oct. 11, 2012).

62 Id.

63 Id. at 6-8 (Oct. 11, 2012) (“As discussed below, Bonneville may not delegate either its transmission investment decisions or its decisions whether to take transmission service over the facilities of others to a regional transmission planning and cost allocation process.”).

64 Id.
consistency within the region, the remaining jurisdictional members of ColumbiaGrid also adopted non-binding cost allocation methodology in their proposed tariff changes.65

The Commission rejected the non-binding cost allocation approach in a consolidated order on the ColumbiaGrid-member filings.66 With the Commission’s rejection of this approach, the burden is on ColumbiaGrid to develop a viable alternative approach. Interestingly, Commissioner Clark dissented from the Commission’s Bonneville Order, stating “[i]t is hard to contemplate an effective regional planning effort that ignores the reality of a region dominated by one non-jurisdictional transmission provider. . . .”67

B. Compliance in RTO/ISO Dominated Transmission Planning Regions

i. ISO-New England, Inc. (ISO-NE)

ISO-New England, Inc. (ISO-NE) submitted its compliance filings in Docket Nos. ER13-193 and ER13-196.68 ISO-NE’s filing proposed to address the regional planning, ROFR elimination, and cost allocation requirements of Order No. 1000. ISO-NE

65 E.g., Avista Corporation, Order No. 1000 Compliance Filing, Docket ER13-94, at 6-7 (October, 11 2012); e.g., Puget Sound Energy, Inc., Order No. 1000 Compliance Filing, Docket ER13-98, at 6-7 (October, 11 2012).

66 Avista Corporation, Puget Sound Energy Inc., Bonneville Power Administration, et. al., 143 FERC ¶ 61,255 at P 298 (June 20, 2013) (Consolidated Order on ColumbiaGrid member filings) (“It [Bonneville’s proposed non-binding cost allocation] fails to fully comply with this principle [Cost Principle 1- cost must be roughly commensurate to benefits] in part because a regional cost allocation method that is not binding on identified beneficiaries does not comply with the requirement that costs must be allocated in a manner that is roughly commensurate with estimated benefits.”).

67 143 FERC ¶ 61,255 (June 20, 2013) (Dissent of Commissioner Clark at 2).

introduced a competitive process into its transmission planning procedure.\(^69\) It argued that ROFRs its Transmission Owner’s Agreement are protected by the *Mobile-Sierra* doctrine,\(^70\) but that nonetheless, its revisions (the proposed tariff language) are conditioned upon FERC’s rejection of its *Mobile-Sierra* claims.\(^71\)

By a May 17, 2013 order, the Commission found ISO-NE’s filing partially compliant with the requirements of Order No. 1000.\(^72\) The Commission found ISO-NE’s “proposal to retain a federal right of first refusal and certain revisions to the public policy process” non-compliant with Order No. 1000.\(^73\) In a two-step approach, the Commission first found that section 3.09 and Schedule 3.09(a) of the ISO-NE Transmission Owners’ Agreement (TOA) (the ISO-NE ROFRs) were provisions of generally applicability, not freely negotiated rate contracts provisions, and therefore, the just and reasonable standard must apply in evaluating whether the such provisions could remain.\(^74\)

\(^{69}\) *Id.* at 2.

\(^{70}\) See *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm’n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*). The *Mobile-Sierra* doctrine generally protects the sanctity of certain contracts from undue modification by the Commission or by parties to the contract. The types of contracts that are afforded this additional protection are freely negotiated wholesale contracts. In practice, if the Commission finds that the contract qualifies for *Mobile-Sierra* “public interest” standard protection, the Commission must find that the subject contract, “seriously harms the public interest,” in order to modify the contract. *NRG Power Mktg., LLC v. ME. PUC*, 558 U.S. 165, 174 (2010)(emphasis added)(quoting *Morgan Stanley Capital Grp Inc. v. Public Util. Dist. No. 1*, 554 U.S. 527, 530 (2008)).

\(^{71}\) *Id.* at 2-5.


\(^{73}\) *Id.* at P 11.

\(^{74}\) 143 FERC ¶ 61,150 at P 166.
Next, the Commission distinguished, from the instant case, a certain 2004 order \(^{75}\) in which the Commission applied the *Mobile-Sierra* public interest standard to certain provisions in ISO NE’s TOA. The Commission found that even if it applied the public interest standard here, sufficient evidence existed to support a finding that the ISO-NE ROFRs “severely harm the public interest,” and must therefore, be removed from the ISO-NE TOA under the public interest standard.\(^{76}\)

Commissioners Moeller and Clark each dissented to the Commission’s Order. Both Commissioners expressed concerns regarding, among other things, the Commission’s explanation about how the public interest standard applied to protect certain provisions in the ISO-NE TOA in 2004, but failed to protect those same provisions in the instant case.\(^{77}\)

**ii. California Independent System Operator, Inc. (CAISO)**

CAISO submitted its regional compliance filing on local and regional planning and cost allocation requirements of Order No. 1000 in Docket No. ER13-103-000.\(^{78}\) CAISO explained that its Order No. 1000 compliance filing expands on recent internally-

\(^{75}\) *ISO New England Inc., et. al.*, 106 FERC ¶ 61,280, at P 127 (March 24, 2004) (“Under these circumstances, we generally think it reasonable, subject to the conditions discussed below, that the Filing Parties [ISO-NE et. al.] be permitted in return for their commitment to rely on the terms of their agreement with the contractual protection afforded by the Mobile-Sierra public interest standard of review.”).

\(^{76}\) *Id.* at PP 172-198.

\(^{77}\) *Id.*, Dissent of Commission of Moeller at 1-2; Dissent of Commissioner Clark at 1-2.

driven revisions to its tariff.\footnote{Id. at 1.} These revisions included a competitive solicitation (or bid-based) approach to soliciting proposals for the construction of new regional projects and an enhanced process for recognizing public policy needs.\footnote{Id.}

The Commission generally accepted CAISO’s October 11, 2012 compliance filing by an order dated September 20, 2013.\footnote{California Indep. Sys. Operator Inc., 143 FERC ¶ 61,057 (2013).} It accepted CAISO’s transmission planning reforms, including the CAISO’s competitive solicitation approach.\footnote{Id. at P 1.} The Commission found that CAISO’s proposal partially complies with the public policy requirements of Order No. 1000. It ordered CAISO to “revise its tariff to specifically state that municipal and county directives must be taken into account,”\footnote{Id. at PP 85, 218-228.} and remove language stating that CASIO should only account for public policy requirements or directives “that are not inconsistent with the Federal Power Act.”\footnote{Id. at P 86.}

The Commission partially accepted CAISO’s approach to nonincumbent developer reforms, including ROFR elimination, ordering it to, among other things, revise its tariff to reflect the consistent usage of the terms “project,” “solution,” “element,” “upgrade,” and “addition.”\footnote{Id. at P 118.} In addition, the Commission found that project

\footnote{Id. at 1.}
\footnote{Id.}
\footnote{Id. at P 1.}
\footnote{Id. at PP 85, 218-228.}
\footnote{Id. at P 86.}
\footnote{Id. at P 118.}
qualification criteria proposed by CAISO failed to “provide sufficient detail to prospective transmission developers about what information they must provide for CAISO to determine their eligibility to finance, own, and construct a regional transmission facility.”\textsuperscript{86}

\textbf{iii. PJM Interconnection, Inc. (PJM)}

The first Order No. 1000 compliance filings for PJM Interconnection, Inc. (PJM) included filings by the PJM’s Transmission Owners (PJM TOs) in Docket Nos. ER13-90-000 and ER13-195 on October 25, 2012.\textsuperscript{87} On October 25, 2012, PJM filed a separate Order No. 1000 compliance filing in Docket No. ER13-198, adopting and building on the revisions by the PJM TOs.\textsuperscript{88}

Among other things, the ER13-198 filing proposed tariff changes with the purpose of implementing regional planning, ROFR removal, and cost allocation requirements of Order No. 1000. PJM revised its cost allocation for Regional and Necessary Lower Voltage facilities subject to regional cost allocation, by introducing a 50\% postage stamp and 50\% use-based allocation method.\textsuperscript{89} In addition, PJM’s revisions proposed that 345

\textsuperscript{86} \textit{Id.} at P 146.


\textsuperscript{89} \textit{Id.} at 77.
kV projects, as well as those 500 kV and above, be eligible for inclusion as part of the 
regional transmission planning process.90

Further, PJM introduced a process of competitive solicitation, or bid-based 
system, for the selection of new transmission facilities. This process provides PJM with 
the opportunity to propose three types of projects subject to the competitive solicitation 
process: Long Lead Projects (in-service within five years); Short-Term Projects (in-
service within three to five years); and Immediate Need Projects (in-service within three 
years).91

Under the proposed changes, entities that are prequalified to propose solutions to 
build a given project are characterized as “Designated Entities.”92 Designated Entities 
may submit proposals for consideration by PJM during fixed “Proposal Windows,” (fixed 
times when PJM accepts proposals to meet a specific need).93 Such proposals would then 
be evaluated by PJM and a winning proposal would be selected by the PJM Board based 
on the “extent to which the proposal would address [the underlying problem], the 
“benefit/cost ratio,” any “secondary benefits,” and other factors including “the ability to 
timely complete the project.”94

90 Id.

91 PJM’s ER13-198 Filing at 65-68.
92 Id. at n. 144 (Designated Entities are defined as, “[t]he entity designated by the Office of the 
Interconnection with the responsibility to construct, own, operate, maintain and finance Immediate-need 
Reliability Projects, Short-term Projects and Long-lead Projects pursuant to section 1.5.8 of this Schedule 
6.”).
93 Id. at 70-73.
94 Id.
Under PJM’s tariff revisions, ROFR provisions in its tariff and related jurisdictional agreements would continue to apply where PJM determines that there is insufficient time for the project to undergo competitive solicitation (a so-called Immediate Need Exception”).

In a separate filing, certain PJM TOs contended that the Mobile-Sierra doctrine’s public interest standard protects certain ROFRs in PJM’s Consolidated Transmission Owner’s Agreement (CTOA), and such ROFRs should apply for all types of projects (including, for example Long-Lead and Short-Term projects). As for public policy requirements, PJM emphasized three distinct components of its planning process that would enhance its consideration of public policy requirements.

By a March 22, 2013 order, the Commission partially accepted PJM’s and the PJM TO’s filings. It accepted PJM’s transmission planning reforms, including the PJM competitive solicitation approach. It also approved the Immediate Need Exception. It rejected PJM’s proposal regarding public policy requirements as it “[does] not adequately address Order No. 1000’s requirement to describe a just and reasonable and not unduly discriminatory process through which PJM will identify those particular transmission

\[\text{In 49-52. (i.e., a ROFR could not apply to a Long-Lead Project).}\]

\[\text{Indicated PJM Transmission Owners submits Order No. 1000 Compliance Filing Concerning Mobile-Sierra Protections for Right of First Refusal in PJM Agreements, Docket No. ER13-195-000 (Oct. 25, 2012). As will be explained in the next section, the Commission rejected such arguments in its order on PJM’s regional compliance filing.}\]

\[\text{Id. at 36. (“The distinct components are summarized as follows: … PJM’s Integrated Market Design Reflecting Public Policy Requirements. … PJM’s Explicit Identification and Evaluation of Public Policy Requirements and Public Policy Objectives. … The Proposed “State Agreement” Mechanism for Identification of State Public Policy Requirements.”).}\]

\[\text{PJM Interconnection, Inc., 143 FERC ¶ 61,214 at P 33 (2013).}\]

\[\text{Id.}\]
needs driven by public policy requirements for which transmission solutions will be evaluated.”

The Commission partially accepted PJM’s approach to nonincumbent developer reforms. It rejected PJM’s Mobile-Sierra arguments regarding ROFRs in the PJM Consolidated Transmission Owners Agreement (CTOA), holding that because such provisions are generally applicable, and not freely negotiated wholesale rate provisions, the public interest standard does not apply. The Commission ordered that ROFRs in the PJM CTOA be removed, finding that such tariff language was not just and reasonable.

Both Commissioners Clark and Moeller dissented. Commissioner Moeller reiterated his concern from his earlier partial dissent from Order No. 1000 that local transmission projects would be built instead of much-needed regional projects, which, he claimed, runs counter to the policy objectives of Order 1000. Commissioner Clark dissented on numerous grounds, including, first, to Order No. 1000’s treatment of certain state and local laws the planning process, and, second, to the Commission’s ROFR

100 *Id.* at P 115.
101 *Id.* at PP 186-187.
102 *Id.*
103 *Id.*, Dissent of Commissioner Moeller at 2; Dissent of Commissioner Clark at 1.
104 *Id.*, Dissent of Commissioner Moeller at 2.
105 *Id.*, Dissent of Commissioner Clark at 1-2.
removal requirement, especially where the ROFR preserves the right of an incumbent to address a reliability need.106

iv. Midcontinent Independent System Operator, Inc. (MISO)

MISO submitted its regional compliance filing with two submissions in FERC Docket No. ER13-186 (revising the rules on Baseline Reliability Projects (BRPs)) and in ER13-187 (its primary Order No. 1000 filing).107 The filing in ER13-187 proposed tariff changes with the purpose of implementing the regional planning, ROFR elimination, and cost allocation requirements of Order No. 1000. MISO has several types of transmission projects that address a variety of needs, relating to reliability (e.g., through Baseline Reliability Projects (BRPs)), economics (e.g., through Market Efficiency Projects or (MEPs)), and reliability, economics, and public policy (through Multi-Value Projects (MVPs)). MISO proposed that MEPs and MVPs be eligible for MISO regional cost allocation, and therefore, be subject to the transmission planning requirements (including the ROFR removal requirement) of Order No. 1000.108 In contrast, under MISO’s revisions, BRPs would be entirely local and the cost of such facilities would be allocated to the MISO pricing zone in which they are

106 Id.


108 MISO’s ER13-186 Filing, at pp 3-5.
located, and as local projects BRPs would be exempt from the requirements of Order No. 1000.  

In addition, while MISO proposed its ROFR treatment on a contingent basis (by filing alternate sets of proposed tariff changes), it also contended that the *Mobile-Sierra* doctrine protects its Transmission Owners Agreement (MISO TOA) from modifications, including those contemplated by the ROFR removal requirement.  

By a March 22, 2013 order, the Commission partially approved MISO’s October 25, 2012 Compliance Filing. The Commission approved MISO’s BRP cost allocation revisions. It required MISO to submit an information filing in the year 2015, which would outline the number of MVPs, MEPs, and BRPs approved during the 2014 and 2015 planning cycles.  

The Commission partially accepted MISO’s approach to nonincumbent developer reforms. It rejected MISO’s *Mobile-Sierra* arguments regarding ROFRs in the MISO TOA, holding that the subject provisions are generally applicable, and therefore, are not

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109 MISO’s ER13-186 Filing, at pp 8-10.


112 *Id.* at P 519 (2013).

113 *Id.* at P 519.
contract rate provisions set between parties.\textsuperscript{114} It ordered that MISO remove such ROFRs under the just and reasonable standard.\textsuperscript{115}

Both Commissioners Clark and Moeller dissented.\textsuperscript{116} Both dissents are substantially similar to those that were filed with the PJM compliance order.\textsuperscript{117}

\textbf{v. New York Independent System Operator (NYISO)}

NYISO submitted its regional compliance filing in Docket No. ER13-102-000.\textsuperscript{118} The filing contained proposed changes to language in the NYISO tariff to effectuate the regional planning, ROFRs removal, and cost allocation requirements of Order No. 1000. NYISO’s revisions to attachment K (regional planning) of its tariff, as described in Section V of the NYISO filing, included: (i) the addition Public Policy Requirements as a transmission planning factor; (ii) directives on criteria for qualification for new project inclusion in NYISO’s regional planning process; (iii) monitoring; and (iv) consideration of more efficient or cost-effective planning solutions.\textsuperscript{119}

\textsuperscript{114}Id. at P 180. Bolstering this conclusion is the fact that MISO members had been unable to negotiate this provision: they had to accept it as-is. \textit{Id.} at P 181. The Commission also found that the provision arose out of a common interest among competing transmission owners to protect themselves from competition, and in addition that there is no need to guarantee certainty to the negotiating parties, \textit{id.} at P 183.

\textsuperscript{115}Id.

\textsuperscript{116}Id., Dissent of Commissioner Moeller at 2; Dissent of Commissioner Clark at 1.

\textsuperscript{117}See supra, section II.A.iii.


\textsuperscript{119}Id. at ii.
Through a March 18, 2013 order, the Commission partially accepted NYISO’s October 25, 2012 compliance filing.\textsuperscript{120} It partially accepted the proposed changes to NYISO’s regional planning process, but ordered that NYISO revise its tariff language associated with the determination of which types of facilities are covered by its tariff revisions.\textsuperscript{121} The Commission generally accepted NYISO’s nonincumbent participation revisions, including NYISO’s treatment of ROFRs,\textsuperscript{122} but mandated that NYISO elaborate on its proposed project qualification requirements.\textsuperscript{123}

\textbf{C. Continued Development of Interregional Transmission Plans}

Per Order No. 1000, interregional compliance filings were filed in April of 2013.\textsuperscript{124} Some of the issues presented in these filings include: (i) the frequency of interregional planning studies, (ii) the scope of interregional transmission planning, and (iii) the types of projects to be included in interregional plans—as they are identified under the current tariffs (\textit{e.g.}, MISO’s BRPs and MEPs). To date, the Commission has not issued orders on these filings.


\textsuperscript{121} Id. at P 25.

\textsuperscript{122} Id. at P 168-172.

\textsuperscript{123} Id. at P 200.

\textsuperscript{124} Order No. 1000 at P 780.
IV. Conclusion

Order No. 1000 fundamentally changed the landscape of transmission planning and cost allocation in the United States. The first phase of Order No. 1000 compliance filings, and Commission orders on those filings, provides helpful information regarding how RTOs/ISOs and other transmission providers will implement regional transmission planning and cost allocation strategies in the future.

Several questions regarding Order No. 1000 remain, although some questions will be answered in the near future, including whether the upcoming D.C. Circuit Court of Appeals decision in *South Carolina v. FERC* will affect Order No. 1000, as it currently exists. In addition, the Commission will, at some point, issue orders on the interregional filings. These orders should provide the public with a better understanding of the contours of interregional planning requirements of Order No. 1000 in the context of specific regions, and should demonstrate the unique compliance challenges that are likely to exist in various regions.