136 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

[Docket No. RM10-23-000; Order No. 1000]

Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities

(Issued July 21, 2011)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule

SUMMARY: The Federal Energy Regulatory Commission is amending the transmission planning and cost allocation requirements established in Order No. 890 to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. With respect to transmission planning, this Final Rule: (1) requires that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan; (2) requires that each public utility transmission provider amend its OATT to describe procedures that provide for the consideration of transmission needs driven by public policy requirements in the local and regional transmission planning processes; (3) removes from Commission-approved tariffs and agreements a federal right of first refusal for certain new transmission facilities; and (4) improves coordination between neighboring transmission planning regions for new

I. Introduction

1. In this Final Rule, the Commission acts under section 206 of the Federal Power Act (FPA) to adopt reforms to its electric transmission planning and cost allocation requirements for public utility transmission providers.[1] The reforms herein are intended to improve transmission planning processes and cost allocation mechanisms under the *pro forma* Open Access Transmission Tariff (OATT) to ensure that the rates, terms and conditions of service provided by public utility transmission providers are just and reasonable and not unduly discriminatory or preferential. This Final Rule builds on Order No. 890,[2] in which the Commission, among other things, reformed the *pro forma* OATT to require each public utility transmission provider to have a coordinated, open, and transparent regional transmission planning process. After careful review of the voluminous record in this proceeding, the Commission concludes that the additional reforms adopted herein are necessary at this time to ensure that rates for Commission-jurisdictional service are just and reasonable in light of changing conditions in the

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[1] 16 U.S.C. 824e (2006).

[2] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

industry. In addition, the Commission believes that these reforms address opportunities for undue discrimination by public utility transmission providers.

2. The Commission acknowledges that significant work has been done in recent years to enhance regional transmission planning processes. The Commission appreciates the diversity of opinions expressed by commenters in response to the Notice of Proposed Rulemaking[3] as to whether, in light of the progress being made in many regions, further reforms to transmission planning processes and cost allocation mechanisms are necessary at this time. On balance, the Commission concludes that the reforms adopted herein are necessary for more efficient and cost-effective regional transmission planning. As discussed further below, the electric industry is currently facing the possibility of substantial investment in future transmission facilities to meet the challenge of maintaining reliable service at a reasonable cost. The Commission concludes that it is appropriate to act now to ensure that its transmission planning processes and cost allocation requirements are adequate to allow public utility transmission providers to address these challenges more efficiently and cost-effectively. In reaching this conclusion, the Commission has balanced competing interests of various segments of the industry and designed a package of reforms that, in our view, will support the

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[3] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,660 (2010) (Proposed Rule).

development of those transmission facilities identified by each transmission planning region as necessary to satisfy reliability standards, reduce congestion, and allow for consideration of transmission needs driven by public policy requirements established by state or federal laws or regulations (Public Policy Requirements). By "state or federal laws or regulations," we mean enacted statutes (i.e., passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level.

3. Through this Final Rule, we conclude that the existing requirements of Order No. 890 are inadequate. Public utility transmission providers are currently under no affirmative obligation to develop a regional transmission plan that reflects the evaluation of whether alternative regional solutions may be more efficient or cost-effective than solutions identified in local transmission planning processes. Similarly, there is no requirement that public utility transmission providers consider transmission needs at the local or regional level driven by Public Policy Requirements. Nonincumbent transmission developers seeking to invest in transmission can be discouraged from doing so as a result of federal rights of first refusal in tariffs and agreements subject to the Commission's jurisdiction. While neighboring transmission planning regions may coordinate evaluation of the reliability impacts of transmission within their respective regions, few procedures are in place for identifying and evaluating the benefits of alternative interregional transmission solutions. Finally, many cost allocation methods in

place within transmission planning regions fail to account for the beneficiaries of new transmission facilities, while cost allocation methods for potential interregional facilities are largely nonexistent.

4. We correct these deficiencies by enhancing the obligations placed on public utility transmission providers in several specific ways. While focused on discrete aspects of the transmission planning and cost allocation processes, the specific reforms adopted in this Final Rule are intended to achieve two primary objectives: (1) ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet transmission needs more efficiently and cost-effectively; and (2) ensure that the costs of transmission solutions chosen to meet regional transmission needs are allocated fairly to those who receive benefits from them. In addition, this Final Rule addresses interregional coordination and cost allocation, to achieve the same objectives with respect to possible transmission solutions that may be located in a neighboring transmission planning region.

5. Certain requirements of this Final Rule distinguish between "a transmission facility in a regional transmission plan," and "a transmission facility selected in a regional transmission plan for purposes of cost allocation."[4] A "transmission facility selected in a

[4] *See infra* P 63.

regional transmission plan for purposes of cost allocation" is one that has been selected, pursuant to a Commission-approved regional transmission planning process, as a more efficient or cost-effective solution to regional transmission needs. As discussed in more detail below, this distinction is an essential component of this Final Rule.

6. Turning to the specific discrete reforms we adopt today, we first require public utility transmission providers to participate in a regional transmission planning process that evaluates transmission alternatives at the regional level that may resolve the transmission planning region's needs more efficiently and cost-effectively than alternatives identified by individual public utility transmission providers in their local transmission planning processes. This requirement builds on the transmission planning principles adopted by the Commission in Order No. 890, and the regional transmission planning processes developed in response to this Final Rule must satisfy those principles. These processes must result in the development of a regional transmission plan. As part of our reforms, we also require that the regional transmission planning process, as well as the underlying local transmission planning processes of public utility transmission providers, provide an opportunity to consider transmission needs driven by Public Policy Requirements. We conclude that requiring each local and regional transmission planning process to provide this opportunity is necessary to ensure that transmission planning processes identify and evaluate transmission needs driven by relevant Public Policy

Requirements, and support more efficient and cost-effective achievement of those requirements.

7. Second, we direct public utility transmission providers to remove from their OATTs or other Commission-jurisdictional tariffs and agreements any provisions that grant a federal right of first refusal to transmission facilities that are selected in a regional transmission plan for purposes of cost allocation.[5] We conclude that leaving federal rights of first refusal in place for these facilities would allow 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. To implement the elimination of such federal rights of first refusal, we adopt below a framework that requires, among other things, the development of qualification criteria and protocols for the submission and evaluation of transmission proposals. In addition, as described in section III.B.3, we also require each public utility transmission provider to amend its OATT 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

[5] *See infra* P 313.

facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions, including those the incumbent transmission provider proposes, to ensure the incumbent can meet its reliability needs or service obligations. This requirement, however, applies only to transmission facilities that are selected in a regional transmission plan for purposes of cost allocation and not, for example, to transmission facilities in local transmission plans that are merely "rolled up" and listed in a regional transmission plan without going through an analysis at the regional level, and therefore, not eligible for regional cost allocation.

8. Third, we require public utility transmission providers to improve coordination across regional transmission planning processes by developing and implementing, through their respective regional transmission planning process, procedures for joint evaluation and sharing of information regarding the respective transmission needs of transmission planning regions and potential solutions to those needs. These procedures must provide for the identification and joint evaluation by neighboring transmission planning regions of interregional transmission facilities to determine if there are more efficient or cost-effective interregional transmission solutions than regional solutions identified by the neighboring transmission planning regions. To facilitate the joint evaluation of interregional transmission facilities, we require the exchange of planning data and information between neighboring transmission planning regions at least annually.

9. Finally, we require public utility transmission providers to have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in a regional transmission plan for purposes of cost allocation. We also require public utility transmission providers in each transmission planning region to have, together with the public utility transmission providers in a neighboring transmission planning region, a common method, or set of methods, for allocating the costs of a new interregional transmission facility that is jointly evaluated by the two or more transmission planning regions in their interregional transmission coordination procedures. Given the fact that a determination by the transmission planning process to select a transmission facility in a plan for purposes of cost allocation will necessarily include an evaluation of the benefits of that facility, we require that transmission planning and cost allocation processes be aligned. Further, all regional and interregional cost allocation methods must be consistent with regional and interregional cost allocation principles, respectively, adopted in this Final Rule. Nothing in this Final Rule requires either interconnectionwide planning or interconnectionwide cost allocation.

10. The cost allocation reforms adopted today, and the cost allocation principles that each proposed regional and interregional cost allocation method or methods must satisfy, seek to address the potential opportunity for free ridership inherent in transmission services, given the nature of power flows over an interconnected transmission system. In particular, the principles-based approach requires that all regional and interregional cost

allocation methods allocate costs for new transmission facilities in a manner that is at least roughly commensurate with the benefits received by those who will pay those costs. Costs may not be involuntarily allocated to entities that do not receive benefits. [6] In addition, the Commission finds that participant funding is permitted, but not as a regional or interregional cost allocation method.

11. As noted above, the various specific reforms adopted in this Final Rule are designed to work together to ensure an opportunity for more transmission projects to be considered in the transmission planning process on an equitable basis and increase the likelihood that those transmission facilities selected in a regional transmission plan for purposes of cost allocation are the more efficient or cost-effective solutions available. At its core, the set of reforms adopted in this Final Rule require the public utility transmission providers in a transmission planning region, in consultation with their stakeholders, to create a regional transmission plan. This plan will identify transmission facilities that more efficiently or cost-effectively meet the region's reliability, economic and Public Policy Requirements. To meet such requirements more efficiently and cost-effectively, the regional transmission plan must reflect a fair consideration of transmission facilities proposed by nonincumbents, as well as interregional transmission

[6] However, it is possible that the developer of a facility selected in the regional transmission plan for purposes of cost allocation might decline to pursue regional cost allocation and, instead rely on participant funding. *See infra* P 723-729.

facilities. The regional transmission plan must also include a clear cost allocation method or methods that identify beneficiaries for each of the transmission facilities selected in a regional transmission plan for purposes of cost allocation, in order to increase the likelihood that such transmission facilities will actually be constructed.

12. The transmission planning and cost allocation requirements in this Final Rule, like those of Order No. 890, are focused on the transmission planning *process*, and not on any substantive outcomes that may result from this process. Taken together, the requirements imposed in this Final Rule work together to remedy deficiencies in the existing requirements of Order No. 890 and enhance the ability of the transmission grid to support wholesale power markets. This, in turn, will fulfill our statutory obligation to ensure that Commission-jurisdictional services are provided at rates, terms, and conditions of service that are just and reasonable and not unduly discriminatory or preferential.

13. We acknowledge that public utility transmission providers in some transmission planning regions already may have in place transmission planning processes or cost allocation mechanisms that satisfy some or all of the requirements of this Final Rule. Our reforms are not intended to undermine progress being made in those regions, nor do we intend to undermine other planning activities that are being undertaken at the interconnection level. Rather, the Commission is acting here to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional

services being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.

14. The Commission appreciates the significant work that will go into the preparation of compliance proposals in response to this Final Rule. To assist public utility transmission providers in their efforts to comply, the Commission directs its staff to hold informational conferences within 60 days of the effective date of this Final Rule to review and discuss the requirements imposed herein with interested parties. Moreover, as public utility transmission providers work with their stakeholders to prepare compliance proposals, the Commission encourages frequent dialogue with Commission staff to explore issues that are specific to each transmission planning region. The Commission will monitor progress being made.

A. Order Nos. 888 and 890

15. In Order No. 888,[7] issued in 1996, the Commission found that it was in the economic interest of transmission providers to deny transmission service or to offer transmission service to others on a basis that is inferior to that which they provide to

[7] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

themselves.[8] Concluding that unduly discriminatory and anticompetitive practices existed in the electric industry and that, absent Commission action, such practices would increase as competitive pressures in the industry grew, the Commission in Order No. 888 and the accompanying *pro forma* OATT implemented open access to transmission facilities owned, operated, or controlled by a public utility.

16. As part of those reforms, Order No. 888 and the *pro forma* OATT set forth certain minimum requirements for transmission planning. For example, the *pro forma* OATT required a public utility transmission provider to account for the needs of its network customers in its transmission planning activities on the same basis as it provides for its own needs.[9] The *pro forma* OATT also required that new facilities be constructed to meet the transmission service requests of long-term firm point-to-point customers.[10] While Order No. 888-A went on to encourage utilities to engage in joint and regional transmission planning with other utilities and customers, it did not require those actions.[11]

17. In early 2007, the Commission issued Order No. 890 to remedy flaws in the *pro forma* OATT that the Commission identified based on the decade of experience since the issuance of Order No. 888. Among other things, the Commission found that *pro forma*

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[8] Order No. 888, FERC Stats. & Regs. at 31,682.

[9] *See* Section 28.2 of the *pro forma* OATT.

[10] *See* Sections 13.5, 15.4, and 27 of the *pro forma* OATT.

[11] Order No. 888-A, FERC Stats. & Regs. at 30,311.

OATT obligations related to transmission planning were insufficient to eliminate opportunities for undue discrimination in the provision of transmission service. The Commission stated that particularly in an era of increasing transmission congestion and the need for significant new transmission investment, it could not rely on the self-interest of transmission providers to expand the grid in a not unduly discriminatory manner. Among other shortcomings in the *pro forma* OATT, the Commission pointed to the lack of clear criteria regarding the transmission provider's planning obligation; the absence of a requirement that the overall transmission planning process be open to customers, competitors, and state commissions; and the absence of a requirement that key assumptions and data underlying transmission plans be made available to customers.

18. In light of these findings, one of the primary goals of the reforms undertaken in Order No. 890 was to address the lack of specificity regarding how stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in transmission planning activities, the Commission required each public utility transmission provider to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to its OATT (Attachment K). The Order No. 890 transmission planning principles are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic

planning studies; and (9) cost allocation for new projects.[12]

19. The transmission planning reforms adopted in Order No. 890 apply to all public utility transmission providers, including Commission-approved RTOs and ISOs. The Commission stated that it expected all non-public utility transmission providers to participate in the local transmission planning processes required by Order No. 890, and that reciprocity dictates that non-public utility transmission providers that take advantage of open access due to improved planning should be subject to the same requirements as public utility transmission providers.[13] The Commission stated that a coordinated, open, and transparent regional planning process cannot succeed unless all transmission owners participate. However, the Commission did not invoke its authority under FPA section 211A, which allows the Commission to require an unregulated transmitting utility (i.e., a non-public utility transmission provider) to provide transmission services on a comparable and not unduly discriminatory or preferential basis.[14] The Commission instead stated that if it found, on the appropriate record, that non-public utility

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[12] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 418-601.

[13] *Id.* P 441.

[14] FPA section 211A(b) provides, in pertinent part, that "the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services – (1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and (2) on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential." 16 U.S.C. 824j.

working well.[32] PSEG Companies assert that the real issue is the siting process, which makes it difficult to actually build projects even if they are truly needed to maintain system reliability.

41. Indianapolis Power & Light states that the Commission has not undertaken any type of analysis to find out what needs to be built, where it needs to be built, and who needs to build it. Indianapolis Power & Light asserts that the Commission has not looked closely at the different regions of the country to determine which areas could benefit from the new proposed reforms. Indianapolis Power & Light states that the Commission has not sufficiently demonstrated a need for this rulemaking and should consider whether its broad-based application is necessary in the first place. San Diego Gas & Electric recommends that the Commission not issue a Final Rule at this time, arguing that doing so based on the current proposals would disrupt and delay the build-out of the transmission grid and cause transmission providers to redirect resources away from that primary objective to the inevitable legal and compliance challenges to this Final Rule.

C. Commission Determination

42. The Commission concludes that it is appropriate to act at this time to adopt the package of reforms contained in this Final Rule. Our review of the record, as well as the

[32] *E.g.*, PSEG Companies and Salt River Project.

recent studies discussed above, indicates that the transmission planning and cost allocation requirements established in Order No. 890 provide an inadequate foundation for public utility transmission providers to address the challenges they are currently facing or will face in the near future. Although focused on discrete aspects of transmission planning and cost allocation processes, the reforms adopted in this Final Rule are designed to work together to ensure an opportunity for more transmission projects to be considered in the transmission planning process on an equitable basis and increase the likelihood that transmission facilities in the transmission plan will move forward to construction. The Commission's actions today therefore will enhance the ability of the transmission grid to support wholesale power markets and, in turn, ensure that Commission-jurisdictional transmission services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.

43. The Commission acknowledges that transmission planning processes have seen substantial improvements, particularly at the regional level, in the relatively short time since the issuance of Order No. 890. Moreover, as some commenters note, transmission planning processes in many regions continue to evolve as public utility transmission providers and stakeholders explore new ways of addressing mutual needs. However, the Commission is concerned that the existing requirements of Order No. 890 regarding transmission planning and cost allocation are insufficient to ensure that this evolution will occur in a manner that ensures that the rates, terms and conditions of service by public

utility transmission providers are just and reasonable and not unduly discriminatory. As a number of commenters contend, inadequate transmission planning and cost allocation requirements may be impeding the development of beneficial transmission lines or resulting in inefficient and overlapping transmission development due to a lack of coordination, all of which contributes to unnecessary congestion and difficulties in obtaining more efficient or cost-effective transmission service.

44. The increase in transmission investment in recent years, as noted in the report produced by Edison Electric Institute and cited by Large Public Power Council,[33] does not mitigate our need to act at this time. To the contrary, as discussed below, the recent increase in transmission investment supports issuance of this Final Rule to ensure that the Commission's transmission planning and cost allocation requirements are adequate to support more efficient and cost-effective investment decisions moving forward. In its report, Edison Electric Institute states that its members have steadily increased investment in transmission over the period from 2001 to 2009, resulting in approximately $55.3 billion in new transmission facilities.[34] NERC confirms the recent increase in

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[33] Large Public Power Council (citing *Edison Electric Institute report, available at* http://www.eei.org/ourissues/ElectricityTransmission/Documents/Trans_Project_lowres.pdf).

[34] Edison Electric Institute at v.

investment in its 2010 Long-Term Reliability Assessment.[35] This trend appears to be only the beginning of a longer-term period of investment in new transmission facilities. In another report commissioned by Edison Electric Institute, Brattle Group suggests that approximately $298 billion of new transmission facilities will be required over the period from 2010 to 2030.[36] NERC's analysis of the past 15 years of transmission development confirms the significant increase in future transmission investment, showing that additional transmission planned for construction during the next five years nearly triples the average miles that have historically been constructed.[37]

45. The need for additional transmission facilities is being driven, in large part, by changes in the generation mix. As NERC notes in its 2009 Assessment, existing and potential environmental regulation and state renewable portfolio standards are driving significant changes in the mix of generation resources, resulting in early retirements of coal-fired generation, an increasing reliance on natural gas, and large-scale integration of

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[35] NERC 2010 Assessment at 25; *see also* Brattle Group, Attachment at 4 (noting rapid increase in transmission development, from $2 billion annually in the 1990s to $8 billion annual in 2008 and 2009).

[36] Transforming America's Power Industry at 37, http://www.eei.org/ourissues/finance/Documents/Transforming_Americas_Power_Industry.pdf.

[37] NERC 2010 Long-Term Reliability Assessment at 25.

renewable generation.[38] NERC has identified approximately 131,000 megawatts of new generation planned for construction over the next ten years, with the largest fuel-type growth in gas-fired and wind generation resources.[39] These shifts in the generation fleet increase the need for new transmission. Additionally, the existing transmission system was not built to accommodate this shifting generation fleet. Of the total miles of bulk power transmission under construction, planned, and in a conceptual stage, NERC estimates that 50 percent will be needed strictly for reliability and an additional 27 percent will be needed to integrate variable and renewable generation across North America.[40]

46. Rather than demonstrating a lack of need for action, as claimed by some commenters, the recent increases in constructed and planned transmission facilities supports issuance of this Final Rule at this time to ensure that the Commission's transmission planning and cost allocation requirements are adequate to support more efficient and cost-effective investment decisions. The increased focus on investment in new transmission projects makes it even more critical to implement these reforms to ensure that the more efficient or cost-effective projects come to fruition. The record in

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[38] NERC 2009 Long-Term Reliability Assessment at 8; *see also supra* P 29 (summarizing current state renewable portfolio standards).

[39] NERC 2010 Long-Term Reliability Assessment at 12.

[40] *Id.* at 24.

this proceeding and the reports cited above confirm that additional, and potentially significant, investment in new transmission facilities will be required in the future to meet reliability needs and integrate new sources of generation. It is therefore critical that the Commission act now to address deficiencies to ensure that more efficient or cost-effective investments are made as the industry addresses its challenges.

47. As explained below, each of the individual reforms adopted by the Commission is intended to address specific deficiencies in the Commission's existing transmission planning and cost allocation requirements. Through this package of reforms, the Commission seeks to ensure that each public utility transmission provider will work within its transmission planning region to create a regional transmission plan that identifies transmission facilities needed to meet reliability, economic and Public Policy Requirements, including fair consideration of lines proposed by nonincumbents, with cost allocation mechanisms in place to facilitate lines moving from planning to development. Although focused on particular aspects of the Commission's transmission planning and cost allocation requirements, these reforms are integrally related and should be understood as a package that is designed to reform processes and procedures that, if left in place, could result in Commission-jurisdictional services being provided at rates that are unjust and unreasonable and unduly discriminatory or preferential.

48. A number of commenters maintain that the Commission in the Proposed Rule failed to provide adequate evidence to support a finding under section 206 of the FPA

that the reforms adopted in this Final Rule are necessary to ensure that Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential. Section 313(b) of the FPA makes Commission findings of fact conclusive if they are supported by substantial evidence.[41] When applied in a rulemaking context, "the substantial evidence test is identical to the familiar arbitrary and capricious standard."[42] The Commission thus must show that a "reasonable mind might accept" that the evidentiary record here is "adequate to support a conclusion,"[43] in this case that this Final Rule is needed "to correct deficiencies in transmission planning and cost allocation processes," as described.[44] In the legal authority sections throughout this Final Rule, the Commission discusses how the cases cited by commenters demonstrate that the Commission has met its burden.

49. Commenters that maintain that the Commission's proposal is not supported by substantial evidence demand that the Commission identify evidence that is far in excess of what a reasonable person would require. We thus disagree with such comments, including Indianapolis Power & Light's, that it is necessary for the Commission to

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[41] 16 U.S.C. 825l(b).

[42] *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144, 1156 (1985); *see also Associated Gas Distributors v. FERC*, 824 F.2d 981 at 1018.

[43] *Dickenson v. Zurko*, 527 U.S. 150, 155 (1999).

[44] Proposed Rule, FERC Stats & Regs. ¶ 32,660 at P 1.

determine what needs to be built, where it needs to be built, and who needs to build it. That is not, and is not required to be, the intent of this rulemaking. This rulemaking reforms processes and is not intended to address such questions. No commenter has contested the need for additional transmission facilities, and numerous examples have been provided here of transmission planning and cost allocation impediments to the development of such facilities. Our intent here is to continue to ensure that public utility transmission providers use just and reasonable transmission planning processes and procedures, as required by Order Nos. 888 and 890, to provide for the needs of their transmission customers. Such planning may require public utility transmission providers—in consultation with stakeholders—to determine what needs to be built, where it needs to be built, and who needs to build it, but the Commission is not making such determinations here.

50. We also reject the characterization of factual examples presented to demonstrate the need for reform as anecdotal evidence. A wide range of concerns have been raised by commenters, and the Commission need not, and should not, wait for systemic problems to undermine transmission planning before it acts. The Commission must act promptly to establish the rules and processes necessary to allow public utility transmission providers to ensure planning of and investment in the right transmission facilities as the industry moves forward to address the many challenges it faces. Transmission planning is a complex process that requires consideration of a broad range of factors and an assessment

of their significance over a period that can extend from present out to 20, 30 years or more in the future. In addition, the development of transmission facilities can involve long lead times and complex problems related to design, siting, permitting, and financing. Given the need to deal with these matters over a long time horizon, it is appropriate and prudent that we act at this time rather than allowing the types of problems described above to continue or to increase. In light of these conditions and as explained below, we find that it is reasonable to take generic action through this rulemaking proceeding.

51. A brief consideration of the two cases that commenters rely on to argue that the Commission has not satisfied the substantial evidence standard helps to demonstrate that the standard has been fully met. In *National Fuel*, the court found that the Commission had not met the substantial evidence standard when it sought to extend its standards of conduct that regulate natural gas pipelines' interactions with their marketing affiliates to their interactions with their non-marketing affiliates. The court noted that it had upheld the standards of conduct as applied to pipelines and their marketing affiliates because the Commission had shown both a theoretical threat that pipelines could grant undue preferences to their marketing affiliates and evidence that such abuse had occurred.[45] In finding that the Commission had not met the substantial evidence standard when seeking to extend the standards of conduct, the court noted that the Commission had not cited a

[45] *National Fuel*, 468 F.3d 831 at 839.

single example of abuse by non-marketing affiliates. It concluded that the Commission relied either on examples of abuse or comments from the rulemaking that simply reiterated a theoretical potential for abuse.[46] The court remanded the matter and noted that if the Commission chose to proceed it could even rely solely on a theoretical threat if it could show how the threat justified the costs that the rules would create.[47]

52. Our action in this Final Rule is entirely consistent with the standards that the court set forth in *National Fuel*. We conclude that the narrow focus of current planning requirements and shortcomings of current cost allocation practices create an environment that fails to promote the more efficient and cost-effective development of new transmission facilities, and that addressing these issues is necessary to ensure just and reasonable rates. In other words, the problem that the Commission seeks to resolve represents a "theoretical threat," in the words of the *National Fuel* decision, the features of which are discussed throughout the body of this Final Rule in the context of each of the reforms adopted here. This threat is significant enough to justify the requirement imposed by this Final Rule. It is not one that can be addressed adequately or efficiently through the adjudication of individual complaints. The problems that we seek to resolve here stem from the absence of planning processes that take a sufficiently broad view of

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[46] *Id.* at 841.

[47] *Id.* at 844.

both the tasks involved and the means of addressing them. Individual adjudications by their nature focus on discrete questions of a specific case. Rules setting forth general principles are necessary to ensure that adequate planning processes are in place.

53. Stated in another way, in the terminology of *National Fuel,* the remedy we adopt is justified sufficiently by the "theoretical threat" identified herein, even without "record evidence of abuse." The actual experiences of problems cited in the record herein provide additional support for our action, but are not necessary to justify the remedy.

54. *Associated Gas Distributors* likewise is distinguishable from this proceeding. In that case, the court reviewed the Commission's rationale in Order No. 436 for industry-wide contract demand adjustment conditions, which permitted pipeline customers to reduce their contract demand by up to 100 percent over a period of five years.[48] The court held that the Commission failed to develop an adequate rationale for authorizing what it characterized as the "drastic action" of 100 percent contract demand reduction, and that the reasons the Commission provided "seem[ed] peripheral to the problem the Commission set out to solve."[49] The court also found that one of the Commission's arguments while "highly relevant" to contract demand reduction, failed to support the

[48] *Associated Gas Distributors*, 824 F.2d 981 at 1013.

[49] *Id.* at 1018-19.

broad remedy the Commission adopted.[50] The court explained that it was unclear why an industry-wide solution was necessary to solve a problem that the Commission suggested applied only "to a limited portion of the industry." [51]

55. We find that the facts and findings of *Associated Gas Distributors* are in no way comparable to the matters involved in this Final Rule. We disagree with commenters that characterize our reasoning as inadequate or peripheral to the problems that the Commission has identified in this proceeding. To the contrary, the reforms adopted herein are necessary to address those problems and are supported by the reasons set forth in this Final Rule. As discussed herein, the Commission finds that the narrow focus of current planning requirements and shortcomings of current cost allocation practices create an environment that fails to promote the more efficient and cost-effective development of new transmission facilities. There is a close relationship between those problems and the Commission's actions here to identify a minimum set of requirements that must be met to ensure that transmission planning processes and cost allocation methods subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.

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[50] *Id.* at 1019.

[51] *Id.* at 1018-19.

56. We also disagree with commenters that argue that the reforms adopted in this Final Rule will have an impact on industry that is comparable to the impact at issue in *Associated Gas Distributors*. The impact in that case involved the potential losses a gas pipeline could face from 100 percent contract demand reduction by a customer over a period of five years. Such reduction represents the complete elimination of expected revenues from gas sales under a contract. By contrast, compliance with this Final Rule will involve the adoption and implementation of additional processes and procedures. Many public utility transmission providers that are subject to this Final Rule already engage in processes and procedures of this type.

57. We acknowledge that some public utility transmission providers may need to do more than others to achieve compliance with the requirements of this Final Rule. Such differences, however, do not mean that the problems identified herein are "limited to a portion of the industry," in the terms used in *Associated Gas Distributors*. Indeed, acting on a generic basis is necessary for the Commission to identify and implement a minimum set of requirements for transmission planning processes and cost allocation methods, as discussed above.

58. We also disagree with commenters who assert that the Commission is relying on unsubstantiated allegations of discriminatory conduct or that the current Order No. 890 processes have not been in place long enough to justify the reforms proposed herein. The

courts have made clear that the Commission need not make specific factual findings of discrimination to promulgate a generic rule to ensure just and reasonable rates or eliminate undue discrimination.[52] In *Associated Gas Distributors*, the court explained that the promulgation of generic rate criteria involves the determination of policy goals and the selection of the means to achieve them and that courts do not insist on empirical data for every proposition upon which the selection depends: "[a]gencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall."[53] As discussed in this Final Rule, the Commission has received many comments arguing that commenters have experienced unjust and unreasonable, or unduly discriminatory or preferential practices in the transmission planning aspects of the transmission service provided by public utility transmission providers and that the lack of guidance from the Commission has delayed, as well as hindered, transmission projects. We have an obligation under section 206 to remedy these unjust and unreasonable, or unduly discriminatory or preferential rates, terms, and conditions and practices affecting rates.

59. It is thus clear to us that, notwithstanding the Commission's efforts in Order No. 890, deficiencies in the requirements of the existing *pro forma* OATT must be remedied

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[52] *TAPS v. FERC*, 225 F.3d 667 at 688; *National Fuel*, 468 F.3d 831.

[53] 824 F.2d 981 at 1008.

to support the more efficient and cost-effective development of transmission facilities used to provide Commission-jurisdictional services. Moreover, action is needed to address the opportunities to engage in undue discrimination by public utility transmission providers. Our actions in this Final Rule are necessary to produce rates, terms and conditions that are just and reasonable. We therefore exercise our broad remedial authority[54] today to ensure that rates are not unjust and unreasonable and to limit the remaining opportunities for undue discrimination.

60. We also disagree with the commenters that claim that any concerns with current transmission planning and cost allocation processes are better dealt with on a case-specific basis rather than through a generic rule. While the concerns discussed above that are driving the need for these reforms may not affect each region of the country equally, we remain concerned that the existing transmission planning and cost allocation requirements of Order No. 890 are inadequate to ensure the development of more efficient and cost-effective transmission. It is well established that the choice between rulemaking and case-by-case adjudication "lies primarily in the informed discretion of the administrative agency."[55] It is within our discretion to conclude that a generic

[54] *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967).

[55] *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947). *See also Alaska Power & Telephone Co.*, 98 FERC ¶ 61,092, at 61,277 (2002); *Trailblazer Pipeline Co.*,

(continued...)

rulemaking, not case-by-case adjudications, is the most efficient approach to take to resolve the industry wide problems facing us.

61. Nevertheless, the Commission recognizes that each transmission planning region has unique characteristics and, therefore, this Final Rule accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate these regional differences. The Commission recognizes that many transmission planning regions have or are in the process of taking steps to address some of the concerns described in this Final Rule. We encourage those regions to use the objectives and principles discussed in this Final Rule to guide continued development and compel them to abide by the requirements of this Final Rule.

62. The Commission recognizes the scope of these requirements, and to that end the Commission will continue to make its staff available to assist industry regarding compliance matters, as it did after Order No. 890. As stated above, as public utility transmission providers work with their stakeholders to prepare compliance proposals, the Commission encourages frequent dialogue with Commission staff to explore issues that are specific to each transmission planning region. The Commission will monitor progress being made.

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79 FERC ¶ 61,274, at 62,183 (1997).

D. Use of Terms

63. Before turning to the requirements of this Final Rule, the Commission defines several of the key terms used herein. For purposes of this Final Rule, there is a distinction between a transmission facility in a regional transmission plan and a transmission facility selected in a regional transmission plan for purposes of cost allocation. Transmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs. Those may include both regional transmission facilities, which are located solely within a single transmission planning region and are determined to be a more efficient or cost-effective solution to a regional transmission need, and interregional transmission facilities, which are located within two or more neighboring transmission planning regions and are determined by each of those regions to be a more efficient or cost effective solution to a regional transmission need. Such transmission facilities often will not comprise all of the transmission facilities in the regional transmission plan; rather, such transmission facilities may be a subset of the transmission facilities in the regional transmission plan. For example, such transmission facilities do not include a transmission facility in the regional transmission plan but that has not been selected in the

manner described above, such as a local transmission facility or a merchant transmission facility. A local transmission facility is a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.

64. In distinguishing between transmission facilities selected in a regional transmission plan for purposes of cost allocation and other transmission facilities that also may be in the regional transmission plan, we seek to recognize that different regions of the country may have different practices with regard to populating their regional transmission plans. In some regions, transmission facilities not selected for purposes of regional or interregional of cost allocation nonetheless may be in a regional transmission plan for informational purposes, and the presence of such transmission projects in the regional transmission plan does not necessarily indicate an evaluation of whether such transmission facilities are more efficient or cost-effective solutions to a regional transmission need, as is the case for transmission facilities selected in a regional transmission plan for purposes of cost allocation. By focusing in parts of this Final Rule on transmission facilities selected in a regional transmission plan for purposes of cost allocation, we do not intend to disturb regional practices with regard to other transmission facilities that also may be in the regional transmission plan.

65. We also clarify that the requirements of this Final Rule are intended to apply to new transmission facilities, which are those transmission facilities that are subject to

evaluation, or reevaluation as the case may be, within a public utility transmission provider's local or regional transmission planning process after the effective date of the public utility transmission provider's filing adopting the relevant requirements of this Final Rule. The requirements of this Final Rule will apply to the evaluation or reevaluation of any transmission facility that occurs after the effective date of the public utility transmission provider's filing adopting the transmission planning and cost allocation reforms of the *pro forma* OATT required by this Final Rule. We appreciate that transmission facilities often are subject to continuing evaluation as development schedules and transmission needs change, and that the issuance of this Final Rule is likely to fall in the middle of ongoing planning cycles. Each region is to determine at what point a previously approved project is no longer subject to reevaluation and, as a result, whether it is subject to the requirements of this Final Rule.[56] Our intent here is that this Final Rule not delay current studies being undertaken pursuant to existing regional transmission planning processes or impede progress on implementing existing transmission plans. We direct public utility transmission providers to explain in their compliance filings how they will determine which facilities evaluated in their local and regional planning processes will be subject to the requirements of this Final Rule.

66. Finally, nothing in this Final Rule should be read as the Commission granting

[56] We note that existing planning processes already include specific points at which a project will no longer be subject to reevaluation.

approval to build a "transmission facility in a regional transmission plan" or a "transmission facility selected in a regional transmission plan for purposes of cost allocation." For purposes of this Final Rule, the designation of a transmission project as a "transmission facility in a regional transmission plan" or a "transmission facility selected in a regional transmission plan for purposes of cost allocation" only establishes how the developer may allocate the costs of the facility in Commission-approved rates if such facility is built. Nothing in this Final Rule requires that a facility in a regional transmission plan or selected in a regional transmission plan for purposes of cost allocation be built, nor does it give any entity permission to build a facility. Also, nothing in this Final Rule relieves any developer from having to obtain all approvals required to build such facility.

III. Proposed Reforms: Transmission Planning

67. This section of the Final Rule has three parts: (A) participation in the regional transmission planning process; (B) nonincumbent transmission developers; and (C) interregional transmission coordination.

A. Regional Transmission Planning Process

68. This part of the Final Rule adopts several reforms to improve regional transmission planning. First, building on the reforms that the Commission adopted in Order No. 890, this Final Rule requires each public utility transmission provider to participate in a regional transmission planning process that produces a regional

transmission plan and complies with existing Order No. 890 transmission planning principles. Second, this Final Rule adopts reforms under which transmission needs driven by Public Policy Requirements are considered in local and regional transmission planning processes. By "local" transmission planning process, we mean the transmission planning process that a public utility transmission provider performs for its individual retail distribution service territory or footprint pursuant to the requirements of Order No. 890. These reforms work together to ensure that public utility transmission providers in every transmission planning region, in consultation with stakeholders, evaluate proposed alternative solutions at the regional level that may resolve the region's needs more efficiently or cost-effectively than solutions identified in the local transmission plans of individual public utility transmission providers.[57] This, in turn, will provide assurance that rates for transmission services on these systems will reflect more efficient or cost-effective solutions for the region. Each of these reforms is discussed more fully below.

69. Part A of section III has four subsections: (1) need for reform concerning regional transmission planning; (2) legal authority for transmission planning reforms;[58]

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[57] As in Order No. 890, the transmission planning requirements adopted here do not address or dictate which transmission facilities should be either in the regional transmission plan or actually constructed. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 438. We leave such decisions in the first instance to the judgment of public utility transmission providers, in consultation with stakeholders participating in the regional transmission planning process.

[58] Because the legal authority concerns raised by commenters with regard to our

(continued...)

(3) regional transmission plan and Order No. 890 transmission planning principles; and

(4) consideration of transmission needs driven by Public Policy Requirements.

1. Need for Reform Concerning Regional Transmission Planning

a. Commission Proposal

70. In the Proposed Rule, the Commission explained that, since the issuance of Order No. 890, it has become apparent to the Commission that Order No. 890's regional participation transmission planning principle may not be sufficient, in and of itself, to ensure an open, transparent, inclusive, and comprehensive regional transmission planning process. The Commission explained that, to meet that principle, each public utility transmission provider is currently required to coordinate with interconnected systems to: (1) share system plans to ensure that the plans are simultaneously feasible and otherwise use consistent assumptions and data; and (2) identify system enhancements that could relieve congestion or integrate new resources.[59] The Commission thus did not require development of a transmission plan by each transmission planning region. Moreover, the Commission did not require regional transmission planning activities to comply with the transmission planning principles established in Order No. 890.[60] As such, the

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regional transmission planning reforms and our interregional transmission coordination reforms are so closely related, we address these concerns together.

[59] Proposed Rule, FERC Stats. & Regs. ¶ 32,660 at P 45 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523).

[60] *See Entergy Services, Inc.*, 124 FERC ¶ 61,268, at P 104 (2008).

Commission proposed to require each public utility transmission provider to participate in a regional transmission planning process that satisfies the existing Order No. 890 transmission planning principles[61] and that produces a regional transmission plan.

71. The Commission also explained that, while it intended Order No. 890's economic planning studies transmission planning principle to be sufficiently broad to identify solutions that could relieve transmission congestion or integrate new resources and loads, including transmission facilities to integrate new resources and loads on an aggregated or regional basis,[62] it recognized that its statements with respect to the Order No. 890 economic planning studies transmission planning principle may have contributed to confusion as to whether Public Policy Requirements may be considered in the

[61] These transmission planning principles are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning.

[62] Order No. 890's economic planning studies transmission planning principle requires that stakeholders be given the right to request a defined number of high priority studies annually through the transmission planning process, which are intended to identify solutions that could relieve transmission congestion or integrate new resources and loads, including facilities to integrate new resources or loads on an aggregated or regional basis. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 547-48.

transmission planning process.[63] The Proposed Rule stated that, when conducting transmission planning to serve native load customers, a prudent public utility transmission provider will not only plan to maintain reliability and consider whether transmission facilities or other investments can reduce the overall costs of serving native load, but also consider how to enable compliance with relevant Public Policy Requirements. The Proposed Rule further stated that, to avoid acting in an unduly discriminatory manner, a public utility transmission provider must consider these same needs on behalf of all of its customers. The Commission also noted that providing for incorporation of Public Policy Requirements in transmission planning processes, where applicable, could facilitate cost-effective achievement of those requirements.[64] The Commission therefore proposed to require each public utility transmission provider to amend its OATT so that its local and regional transmission planning processes explicitly provide for consideration of Public Policy Requirements.

b. Comments

72. A number of commenters support the Commission's preliminary determination in the Proposed Rule that there is a need to enhance the regional transmission planning

[63] Proposed Rule, FERC Stats. & Regs. ¶ 32,660 at P 55-57 & n.76.

[64] *Id.* P 63.

below.[374] Subject to these general cost allocation principles, public utility transmission providers in consultation with stakeholders have the opportunity to develop the appropriate cost allocation methods for their new regional and interregional transmission facilities. In the event that no agreement among public utility transmission providers in a region or pair of regions can be reached, the Commission will use the record in the relevant compliance filing proceeding(s) as a basis to develop a cost allocation method or methods that meets the Commission's requirements.

483. The requirements established below are designed to work in tandem with the transmission planning requirements established above to identify more appropriately the benefits and the beneficiaries of new transmission facilities so that transmission developers, planners and stakeholders can take into account in planning who would bear the costs of transmission facilities, if constructed.

A. Need for Reform Concerning Cost Allocation

1. Commission Proposal

484. In the Proposed Rule, the Commission noted that its responsibility under sections 205 and 206 of the FPA to ensure that transmission rates are just and reasonable and not

[374] For purposes of this Final Rule, a regional transmission facility is a transmission facility located entirely in one region. The Proposed Rule sometimes called such a facility a regional facility and sometimes an intraregional facility. An interregional transmission facility is one that is located in two or more transmission planning regions. A transmission facility that is located solely in one transmission planning region is not an interregional transmission facility.

unduly discriminatory or preferential is not new, nor is the Commission's recognition of the cost causation principle. However, the Commission explained that the circumstances in which it must fulfill its statutory responsibilities change with developments in the industry, such as changes with respect to the demands placed on the grid. For example, the expansion of regional power markets has led to a growing need for new transmission facilities that cross several utility, RTO, ISO or other regions. Similarly, the increasing adoption of state resource policies, such as renewable portfolio standards, has contributed to the rapid growth of renewable energy resources that are frequently remote from load centers.

485. The Commission stated that challenges associated with allocating the cost of transmission appear to have become more acute as the need for transmission infrastructure has grown. The Commission noted that constructing new transmission facilities requires a significant amount of capital and, therefore, a threshold consideration for any company considering investing in transmission is whether it will have a reasonable opportunity to recover its costs. The Commission explained, however, that there are few rate structures in place today that provide both for analysis of the beneficiaries of a transmission facility that is proposed to be located within a transmission planning region that is outside of an RTO or ISO, or in more than one transmission planning region, and for corresponding allocation and recovery of the facility's costs. The Commission stated that lack of such rate structures creates

significant risk for transmission developers that they will have no identified group of customers from which to recover the cost of their investment. With regard to cost allocation within RTO or ISO regions, the Commission noted that cost allocation issues are often contentious and prone to litigation because it is difficult to reach an allocation of costs that is perceived as fair, particularly for RTOs and ISOs that encompass several states.

486. The Commission further noted that the risk of the free rider problems associated with new transmission investment is particularly high for projects that affect multiple utilities' transmission systems and therefore may have multiple beneficiaries. With respect to such projects, any individual beneficiary has an incentive to defer investment in the hopes that other beneficiaries will value the project enough to fund its development. The Commission explained that, on one hand, a cost allocation method that relies exclusively on a participant funding approach,[375] without respect to other beneficiaries of a transmission facility, increases this incentive and, in turn, the likelihood that needed transmission facilities will not be constructed in a timely manner. On the other hand, if costs would be allocated to entities that will receive no benefit from a

[375] Under a participant funding approach to cost allocation, the costs of a transmission facility are allocated only to those entities that volunteer to bear those costs. The Proposed Rule cited several examples of regions relying principally or exclusively on the participant funding approach to cost allocation. Proposed Rule, FERC Stats. & Regs. ¶ 32,660 at P 128.

transmission facility, then those entities are more likely to oppose selection of the facility in a regional transmission plan for purposes of cost allocation or to otherwise impose obstacles that delay or prevent the facility's construction.

487. In light of these challenges and recent developments affecting the industry, the Commission stated concern that existing cost allocation methods may not appropriately account for benefits associated with new transmission facilities and, thus, may result in rates that are not just and reasonable or are unduly discriminatory or preferential.[376] The Commission proposed the cost allocation requirements discussed in further detail below to address this concern.

2. Comments on Need for Reform

488. A number of commenters generally support the cost allocation requirements proposed by the Commission.[377] For example, ITC Companies state that the Commission has correctly concluded that reform with respect to transmission cost allocation methods is necessary. AWEA argues that issues related to cost allocation impede transmission development required to address increased demand, meet national

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[376] Proposed Rule, FERC Stats. & Regs. ¶ 32,660 at P 148-54.

[377] *E.g.*, Transmission Access Policy Study Group; AWEA; Northeast Utilities; ITC Companies; Energy Future Coalition Group; MidAmerican; MISO; NextEra; E.ON Climate Renewables North America; Exelon; Iberdrola Renewables; WIRES; Western Grid Group; and Pennsylvania PUC.

energy and environmental goals, and create an intelligent, secure, and reliable transmission network. Clean Line argues that implementation of a cost allocation method is critical to the development of new infrastructure. Multiparty Commenters argue that a fair allocation of the costs of new transmission can be facilitated by acknowledging that the cost of transmission is a small portion of the delivered cost of electricity, generally ten percent or less, whereas the costs of a single project may be significant for the builders of that project. Solar Energy Industries urge the Commission to use its authority to alleviate impediments to building new transmission lines for renewable energy and other system needs to promote a robust competitive market that will benefit consumers and the environment.

489. Many commenters also support aligning transmission planning and cost allocation more closely.[378] Transmission Dependent Utility Systems state that it is virtually impossible to separate transmission planning from transmission cost allocation. Exelon argues that fair, efficient, and legal cost allocation should follow the manner in which its system is planned. Integrys agrees with linking cost allocation rules with transmission planning, but cautions that the transmission planning process is not a substitute for the

[378] *E.g.*, Atlantic Grid; ITC Companies; Sunflower and Mid-Kansas; MISO; Pennsylvania PUC; PHI Companies; Colorado Independent Energy Association; Energy Future Coalition Group; PSC of Wisconsin; CapX2020; and Wind Coalition.

cost allocation process.

490. A number of commenters supporting closer alignment between planning and cost allocation state that existing ISO and RTO transmission planning and cost allocation processes already may satisfy the proposal to align transmission planning and cost allocation more closely.[379] AEP and SPP believe that their existing transmission planning and cost allocation processes satisfy many of the Commission's proposed requirements. Similarly, MISO Transmission Owners state that cost allocation in MISO is already closely tied to the transmission planning process. Organization of MISO States points to MISO filings that address cost allocation issues.

491. WIRES asks the Commission to ensure that the planning process not be unduly influenced by those that seek to redirect potential cost allocation liability. Illinois Commerce Commission believes it is unduly discriminatory for a state to be required to bear costs for transmission expansion projects under a cost sharing arrangement but have no decisional authority for projects outside their state. Where a regional state committee exists, Illinois Commerce Commission recommends that a process be carved out by which the regional state committee's board of directors has the opportunity to review and decide on the reasonableness of each of the RTO's proposed transmission expansion projects for which regional cost allocation would apply.

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[379] *E.g.*, SPP; AEP; MISO Transmission Owners; Organization of MISO States; California PUC; and Pacific Gas & Electric.

492. A number of commenters express concern with the Commission's proposal to impose generic regional and interregional cost allocation requirements.[380] Some commenters argue specifically that there is no need for the Commission's proposed cost allocation reforms.[381] For example, Northern Tier Transmission Group argues that the Proposed Rule does not present a factual basis for expanding the scope of the cost allocation requirement to every project contained in a regional transmission plan. It requests that the Commission confirm that the Proposed Rule is not intended to apply to existing transmission projects covered by existing tariff-based and contract-based cost allocation procedures. If the Proposed Rule is intended to apply to all new transmission projects in a region's transmission plan, Northern Tier Transmission Group urges that the Proposed Rule be rejected. It also is concerned that shifting the burden of cost allocation for every project onto the regional transmission planning process will create an unnecessary burden on a region's collective transmission providers. Westar states that the transmission planning selection process is critical to ensure that only transmission

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[380] *E.g.*, Arizona Public Service Company; Bonneville Power; California Transmission Planning Group; Tucson Electric; Western Area Power Administration; California Commissions; California ISO; Eastern Massachusetts Consumer-Owned System; New York PSC; Coalition for Fair Transmission Policy; Connecticut & Rhode Island Commissions; Large Public Power Council; National Grid; and Southern California Edison.

[381] *E.g.*, Ad Hoc Coalition; Southern Companies; Salt River Project; and Nebraska Public Power District.

projects that meet the various regional requirements are constructed and their costs recovered as part of tariff rates.

493. North Carolina Agencies contend that the Commission has not established that current cost allocation methods are unjust and unreasonable. Nebraska Public Power District argues that the Proposed Rule does not contain any record evidence demonstrating the need for generic rate reform and states that transmission investment has substantially increased in recent years. Salt River Project argues that the primary barriers to renewable resource development are delays and denial of siting and other permits, not transmission funding. California Municipal Utilities suggest that fewer remote resources are needed because more local renewable resources are being developed and, therefore, the need for cost allocation reforms must be re-examined. Indianapolis Power and Light believes that existing tariff requirements and ongoing proceedings will achieve the Commission's stated objective without the uncertainty of a parallel rulemaking process.

494. MEAG Power responds to Multiparty Commenters' assertion regarding the cost of transmission expansion by arguing that investments of the size actually needed to build out the transmission system, if allocated to load, would raise its native load customers' transmission costs dramatically. Sacramento Municipal Utility District states that, even if Multiparty Commenters' assertion were true, it is irrelevant to the establishment of a just

and reasonable transmission rate whether it comprises a small or large portion of the cost of delivered power.[382] Large Public Power Council raises arguments similar to those raised by both MEAG Power and Sacramento Municipal Utility District.

3. Commission Determination

495. The Commission concludes that it is necessary and appropriate to adopt the cost allocation requirements described in further detail below for public utility transmission providers. The Commission finds that, without these minimum requirements in place, cost allocation methods used by public utility transmission providers may fail to account for the benefits associated with new transmission facilities and, thus, result in rates that are not just and reasonable or are unduly discriminatory or preferential.

496. In Order No. 890, the Commission found that there is a close relationship between transmission planning, which identifies needed transmission facilities, and the allocation of costs of the transmission facilities in the plan.[383] The Commission explained that knowing how the costs of transmission facilities would be allocated is critical to the development of new infrastructure because transmission providers and customers cannot be expected to support the construction of new transmission unless they understand who

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[382] Sacramento Municipal Utility District (citing *Farmers Union Central Exchange v. FERC*, 734 F.2d 1486, 1508 (D.C. Cir. 1984)).

[383] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557.

will pay the associated costs.[384] In light of that relationship, the Commission directed public utility transmission providers to identify the cost allocation method or methods that would apply to transmission facilities that do not fit under previously existing rate structures.[385] After several rounds of compliance filings, the Commission accepted various public utility transmission providers' proposals as in compliance with Order No. 890. Particularly in transmission planning regions outside of the RTO and ISO footprints, several of the cost allocation methods that the Commission accepted relied exclusively on a participant funding approach to cost allocation.[386] The Commission did not address cost allocation for interregional transmission facilities in Order No. 890.

497. We conclude that, in light of changes within the industry and the implementation of other reforms in this Final Rule, the existing requirements of Order No. 890 are no longer adequate to ensure rates, terms and conditions of jurisdictional service are just and reasonable and not unduly discriminatory or preferential. While the existing cost allocation methods may have sufficed in the past, as we note above, the circumstances in

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[384] *Id.*

[385] *Id.* P 558.

[386] *See, e.g., El Paso Electric Co.*, 124 FERC ¶ 61,051 (2008); *Xcel Energy Services, Inc. - Public Service Co. of Colorado*, 124 FERC ¶ 61,052 (2008); *South Carolina Electric & Gas Co.*, 127 FERC ¶ 61,275 (2009). *Entergy Services, Inc.*, 127 FERC ¶ 61,272 (2009). *See also Avista Corp.*, 128 FERC ¶ 61,065 (2009); *Idaho Power Co.*, 128 FERC ¶ 61,064 (2009).

which the Commission must fulfill its statutory responsibilities change with developments in the electric industry, such as changes with respect to the demands placed on the transmission grid. The comments in this proceeding make clear that the pace of change has accelerated in recent years, such as the expansion of regional power markets, which has led to a growing need for transmission facilities that cross several utility, RTO, ISO or other regions. The industry's continuing transition also has enabled greater utilization of resources (e.g., reserve sharing) resulting in, among other effects, broader diffusion of the benefits associated with transmission facilities. Additionally, the increasing adoption of state resource policies, such as renewable portfolio standard measures, has contributed to rapid growth of renewable energy resources that are frequently remote from load centers, and thus a growing need for transmission facilities to access remote resources, often traversing several utility and/or ISO/RTO regions.

498. The challenges associated with allocating the cost of transmission appear to have become more acute as the need for transmission infrastructure has grown. Within RTO or ISO regions, particularly those that encompass several states, the allocation of transmission costs is often contentious and prone to litigation because it is difficult to reach an allocation of costs that is perceived by all stakeholders as reflecting a fair distribution of benefits. In other regions, few rate structures are currently in place that reflect an analysis of the beneficiaries of a transmission facility and for the corresponding cost allocation of the transmission facility's cost. Similarly, there are few rate structures

in place today that provide for the allocation of costs of interregional transmission facilities.

499. We agree with many commenters that the lack of clear *ex ante* cost allocation methods that identify 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 identified during the transmission planning process. Under the regional transmission planning and interregional transmission coordination requirements adopted in this Final Rule,[387] public utility transmission providers, in consultation with stakeholders, will identify, evaluate, and determine the set of transmission facilities that will meet the combined needs of the region or neighboring pairs of regions, respectively. This necessarily includes a determination by the region that the benefits associated with that set of transmission facilities outweigh the costs. Failing to address the allocation of costs for these transmission facilities in a way that aligns with the evaluation of benefits through the transmission planning process could lead to needed transmission facilities not being built, adversely impacting ratepayers.

500. In general and as discussed elsewhere in this Final Rule, the Commission requires a public utility transmission provider to participate in a regional transmission planning

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[387] *See* discussion *supra* sections III.A and III.C.

process and to coordinate transmission planning with public utility transmission providers in neighboring transmission planning regions in a manner that aligns transmission planning and cost allocation processes. Additionally, the OATTs of all public utility transmission providers in a region must include the same cost allocation method or methods adopted by the region. As some commenters point out, transmission facilities that are in a transmission plan to achieve a specific purpose or purposes, such as to avoid an impending violation of a Reliability Standard, address economic considerations, or enable compliance with Public Policy Requirements. Because such purposes involve the identification of expected beneficiaries, either explicitly or implicitly, establishing a closer link between transmission planning and cost allocation will ensure that rates for Commission-jurisdictional service appropriately account for benefits associated with new transmission facilities.

501. We recognize that identifying which types of benefits are relevant for cost allocation purposes, which beneficiaries are receiving those benefits, and the relative benefits that accrue to various beneficiaries can be difficult and controversial. We believe that a transparent transmission planning process is the appropriate forum to address these issues. By linking transmission planning and cost allocation through the transmission planning process, we seek to increase the likelihood that transmission facilities in regional transmission plans are actually constructed.

502. Turning to specific comments on this topic, we are not persuaded to adopt Illinois

Commerce Commission's proposal for separate review and decision by a committee of state regulators on the reasonableness of proposed transmission expansion projects for which regional cost allocation would apply. As explained above,[388] this Final Rule builds on Order No. 890's requirement that a public utility transmission provider have open and transparent transmission planning processes in which we encourage states or state committees to be involved. Additionally, as required by this Final Rule, through the transmission planning process, the public utility transmission providers and other parties, including state regulators, will have opportunities to participate in the identification of transmission needs. We decline, however, to mandate veto rights for state committees, but do not preclude public utility transmission providers from proposing such mechanisms on compliance if they choose to do so.[389]

503. In response to Northern Tier Transmission Group's concern that applying the new cost allocation requirements to existing transmission projects covered by existing tariff-based and contract-based cost allocation procedures will shift costs and create unnecessary burdens, we clarify that the cost allocation requirements of this Final Rule

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[388] *See* discussion *supra* section III.A.

[389] For example, Entergy's OATT allows Entergy's committee of state regulators to add a project to Entergy's transmission plan upon unanimous vote of the committee members. *See Entergy Arkansas, Inc.*, 133 FERC ¶ 61,211 (2010).

apply only to new transmission facilities[390] selected in regional transmission plans for purposes of cost allocation.

B. Legal Authority for Cost Allocation Reforms

1. Commission Proposal

504. The Commission explained in the Proposed Rule that, to ensure that transmission rates are just and reasonable, the costs of jurisdictional transmission facilities must be allocated in a way that satisfies the "cost causation" principle. It noted that the D.C. Circuit defined the cost causation principle stating that "it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them."[391] Moreover, the Commission noted that while the cost causation principle requires that the costs allocated to a beneficiary be at least roughly commensurate with the benefits that are expected to accrue to it,[392] the D.C. Circuit has explained that cost causation "does not require exacting precision in a ratemaking agency's allocation decisions."[393]

505. The Commission explained that, while costs generally have been allocated through

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[390] *See* discussion *supra* P 161.

[391] *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (*K N Energy*).

[392] *Illinois Commerce Commission*, 576 F.3d 470 at 476-77 ("We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.").

[393] *MISO Transmission Owners*, 373 F.3d 1361 at 1371.

commenters are supporting participant funding as a regional cost allocation method, we address those comments below.[428]

539. We disagree with Sacramento Municipal Utility District and Southern Companies that *AEP* applies only in exceptional circumstances and does not support our position here. In that case, the Commission expressed a preference for a voluntary resolution of the problem that loop flow represented, a position that is consistent with our findings here. The Commission's authority is not limited in principle by cases where the Commission expresses a preference not to exercise that authority. We also disagree with Sacramento Municipal Utility District that our reforms represent a perversion of the statutory scheme in which an entity could build a transmission facility and then simply claim a right to payment for benefits from beneficiaries with which it has no contractual or tariff relationship. As we state above, the Commission's jurisdiction is broad enough to allow it to ensure that beneficiaries of service provided by specific transmission facilities bear the costs of those benefits regardless of their contractual relationship with the owner of those transmission facilities. Our cost allocation reforms are tied to our transmission planning reforms, which require that, to be eligible for regional cost allocation, a proposed new transmission facility first must be selected in a regional transmission plan for purposes of cost allocation, which depends on a full assessment by

[428] *See* discussion *infra* section IV.F.2.

a broad range of regional stakeholders of the benefits accruing from transmission facilities planned according to the reformed transmission planning processes. As such, the public utility transmission providers in the regional transmission planning process identify the beneficiaries who will pay for the costs of the new transmission facility selected in a regional plan for purposes of cost allocation.

540. The fact that the Commission has supported parts of its argument through reference to cases in which privity of contract existed between public utilities and the entities from which costs were recovered does not affect this conclusion.[429] This issue was not before the court in any of these cases, and therefore the mere existence of privity of contract does not demonstrate the necessity of privity. In response to Nebraska Public Power District, we do not agree that the *Mobile-Sierra* doctrine has applicability here. We are dealing here with conditions under which costs can be recovered in rates, not conditions under which existing contracts rates can be altered.

541. Contrary to ColumbiaGrid's position, *Exxon Mobil Corp.* does not apply here. As ColumbiaGrid states, in *Exxon Mobil Corp.* the court held that the Commission may not require distributors to accept or pay for additional service.[430] Unlike the situation addressed in *Exxon Mobil Corp.*, the requirements of this Final Rule with respect to cost

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[429] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168; *Alliance Cos.*, 100 FERC ¶ 61,137.

[430] *See Exxon Mobil Corp.*, 430 F.3d 1166, 1176-77 (D.C. Cir. 2005).

C. Cost Allocation Method for Regional Transmission Facilities

1. Commission Proposal

550. The Proposed Rule would require that every public utility transmission provider develop a method, or set of methods, for allocating the costs of new transmission facilities that are included in the transmission plan produced by the transmission planning process in which it participates. If the public utility transmission provider is an RTO or ISO, then the method or methods would be required to be set forth in the RTO or ISO tariff. In other transmission planning regions, each public utility transmission provider would be required to set forth in its tariff the method or methods for cost allocation used in its transmission planning region. This method or methods would have to satisfy six regional cost allocation principles, discussed below.

551. These regional cost allocation principles would apply only to the cost allocation method or methods for new transmission facilities selected in the regional transmission plan produced by the transmission planning process in which the public utility transmission provider participates. The Commission also stated that it did not intend to require a uniform cost allocation method that every region must adopt to allocate the costs of new regional transmission facilities that are eligible for cost allocation, but

instead recognized that regional differences may warrant distinctions in cost allocation

methods among transmission planning regions.[439]

552. The Commission stated in the Proposed Rule that with regard to a new transmission facility that is located entirely within one transmission owner's service territory, a transmission owner may not unilaterally invoke the regional cost allocation method to require the allocation of the costs of a new transmission facility to other entities in its transmission planning region. However, if the regional transmission planning process determines that a new facility located solely within a transmission owner's service territory would provide benefits to others in the region, allocating the facility's costs according to that region's regional cost allocation method or methods would be permitted.[440]

2. Comments on Cost Allocation Method in Regional Transmission Planning

553. A number of commenters generally support the Commission's proposal.[441] For example, ITC Companies support the promulgation of a comprehensive, holistic cost

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[439] Proposed Rule, FERC Stats. & Regs. ¶ 32,660 at P 165.

[440] Proposed Rule, FERC Stats. & Regs. ¶ 32,660 at P 169.

[441] *E.g.*, MidAmerican; American Transmission; Clean Line; Dominion; East Texas Cooperatives; MISO; National Grid; NEPOOL; New York ISO; Multiparty Commenters; and WIRES.

allocation method generally applicable to new transmission facilities, citing SPP's highway/byway mechanism as a model.[442]

554. Other commenters express concern with the Commission's proposal to require the development of a cost allocation method for transmission facilities included in a regional transmission plan.[443] Bonneville Power asserts that mandatory regional cost allocation is not necessary to build new transmission in the Pacific Northwest, and such a requirement will lead to extended disputes and greater uncertainty. Bonneville Power contends that instead, voluntary participation, including participation in open seasons, is the best way to encourage the development of new transmission for renewables in the Pacific Northwest. California Commissions echo the sentiment that cost allocation has generally not been a major barrier to entry for new transmission in the West. California Commissions are concerned that the Commission may do more harm than good by moving aggressively and prescriptively on regional cost allocation methods that are not necessarily needed to support transmission development.

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[442] The arguments in support of this proposal are implicit in the comment summaries under the discussion of other cost allocation proposals below. *See* discussion *infra* section IV.E.8. The term "highway/byway" refers to regionwide allocation of the cost of a new high voltage transmission facility and the allocation of the cost of a new lower voltage transmission facility to a defined portion of the region. *See Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010).

[443] *E.g.*, Bonneville Power Administration; California Commissions; Eastern Massachusetts Consumer-Owned System; Xcel; and Western Area Power Administration.

555. Some commenters, such as Bonneville Power, California ISO, and Western Area Power Administration, express a preference for voluntary coordination and cost allocation of transmission facilities rather than mandatory cost allocation rules. Coalition for Fair Transmission Policy urges the Commission to consider whether it is prudent in all cases to require the filing of regional cost allocation methods by transmission providers in advance of projects being proposed, as not every project will fit into a particular model, and adherence to strict rules may deter rather than encourage the construction of needed new transmission facilities.

556. New York PSC indicates that it is uncertain as to whether the Commission intends to utilize a pre-established cost allocation methodology as an automatic right of cost recovery. Therefore, New York PSC requests that the Commission clearly indicate when a project would be entitled to cost recovery relative to receiving a cost allocation. Western Grid Group shares the view that the distinction between cost allocation and cost recovery is a pertinent issue. Arizona Public Service Company raises concerns about cost recovery in regions where no regional tariff mechanisms exist. In the absence of such a cost recovery solution, Arizona Public Service Company states that the Commission should not place the burden of recovery for third party developers on incumbent utilities that may be required to seek such recovery through state commissions for facilities that the incumbent utilities have not built and for which the incumbent utilities may be unable

to show benefit for their ratepayers.

557. MISO Transmission Owners agree that a transmission provider should not be able to invoke the regional cost allocation method unilaterally for a facility located entirely within its own service territory. However, they state that in the RTO context, facilities located solely within one transmission owner's service territory should be allocated in accordance with the Commission-accepted cost allocation method. MISO Transmission Owners state that the Proposed Rule should not be interpreted to indicate that single-zone facilities are no longer eligible for regional cost allocation if such allocation is permitted under an RTO or ISO tariff. Additionally, MISO Transmission Owners argue that the Commission should not permit this requirement to allow attempts to relitigate existing cost allocation method that apply to intra-zonal transmission facilities.

3. Commission Determination

558. We require that a public utility transmission provider have 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. If the public utility transmission provider is an RTO or ISO, then the cost allocation method or methods must be set forth in the RTO or ISO OATT. In a non-RTO/ISO transmission planning region, each public utility transmission provider located within the region must set forth in its OATT the same language regarding the cost allocation method or methods used in its

transmission planning region. In either instance, such cost allocation method or methods must be consistent with the regional cost allocation principles adopted below.

559. We conclude that these regional transmission cost allocation requirements are necessary to ensure that rates, terms and conditions of jurisdictional service are just and reasonable and not unduly discriminatory or preferential. In the absence of clear cost allocation rules for regional transmission facilities, 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 their needs. Conversely, greater certainty as to the cost allocation implications of a potential transmission project will enhance the ability of stakeholders in the regional transmission planning process to evaluate the merits of the transmission project. Moreover, as we have established above, there is a fundamental link between cost allocation and planning, as it is through the planning process that benefits, which are central to cost allocation, can be assessed.

560. We do not specify here how the costs of an individual regional transmission facility should be allocated. However, while each transmission planning region may develop a method or methods for different types of transmission projects, such method or methods should apply to all transmission facilities of the type in question. Although we allow a different method or methods for different types of transmission facilities, as discussed below regarding regional Cost Allocation Principle 6, if public utility

transmission providers choose to propose a different cost allocation method or methods for different types of transmission facilities, each method would have to be determined in advance for each type of facility.

561. We disagree with California Commissions that our actions here are too aggressive and prescriptive and with Bonneville Power that adopting a mandatory cost allocation method will lead to extended disputes and greater uncertainty. We have stressed throughout this proceeding that we intend to be flexible and are open to a variety of approaches to compliance. By imposing the cost allocation requirements adopted here, the Commission seeks to enhance certainty for developers of potential transmission facilities by identifying, up front, the cost allocation implications of selecting a transmission facility in the regional transmission plan for purposes of cost allocation. This does not undermine the ability of market participants to negotiate alternative cost sharing arrangements voluntarily and separately from the regional cost allocation method or methods. Indeed, market participants may be in a better position to undertake such negotiations as a result of the public utility transmission providers in the region having evaluated a transmission project. The results of that evaluation, including the identification of potential beneficiaries of the transmission project, could facilitate negotiations among potentially interested parties.

562. In response to Coalition for Fair Transmission Policy, we require the development of a cost allocation method or a set of methods in advance of particular transmission

facilities being proposed so that developers have greater certainty about cost allocation and other stakeholders will understand the cost impacts of the transmission facilities proposed for cost allocation in transmission planning. The appropriate place for this consideration is the regional transmission planning process because addressing these issues through the regional transmission planning process will increase the likelihood that transmission facilities selected in regional transmission plans for purposes of cost allocation are actually constructed, rather than later encountering cost allocation disputes that prevent their construction.

563. With regard to comments regarding matters of cost recovery, we acknowledge that cost allocation and cost recovery are distinct. This Final Rule sets forth the Commission's requirements regarding the development of regional and interregional cost allocation methods and does not address matters of cost recovery. We disagree with Arizona Public Service Company, however that incumbent utilities may be unreasonably burdened by the potential of cost allocation for transmission facilities developed by third party developers. For any proponent of a transmission facility, whether an incumbent or a nonincumbent, to have the costs of a transmission facility allocated through the regional cost allocation method or methods, its transmission facility first must be selected in the regional transmission plan for purposes of cost allocation. This in turn requires a determination that the transmission project is an efficient or cost-effective solution pursuant to the processes the transmission providers in the region have put in place,

including consultation with stakeholders. Therefore, the benefits of any such transmission project should have been clearly identified prior to the allocation of any related costs.

564. With respect to cost allocation for a proposed transmission facility located entirely within one public utility transmission owner's service territory, we find that a public utility transmission owner may not unilaterally apply the regional cost allocation method or methods developed pursuant to this Final Rule. However, a proposed transmission facility located entirely within a public utility transmission owner's service territory could be determined by public utility transmission providers in the region to provide benefits to others in the region and thus the cost of that transmission facility could be allocated according to that region's regional cost allocation method or methods.

565. In response to MISO Transmission Owners' concerns regarding relitigation of existing Commission-approved transmission cost allocation methods, the Commission declines here to prejudge whether any such existing cost allocation methods comply with the requirements of this Final Rule. To the extent MISO Transmission Owners believe that to be the case with their region, they may take such positions during the development of compliance proposals and during Commission review of compliance filings. However, we reiterate here that our cost allocation reforms apply only to new transmission facilities that are selected in a regional transmission plan for purposes of cost allocation and, therefore, do not provide grounds for relitigation of cost allocation

decisions for existing transmission facilities.

D. Cost Allocation Method for Interregional Transmission Facilities

1. Commission Proposal

566. The Proposed Rule would require that each public utility transmission provider within a transmission planning region develop a method for allocating the costs of a new interregional transmission facility between the two neighboring transmission planning regions in which the facility is located or among the beneficiaries in the two neighboring transmission planning regions. This common method would have to satisfy six interregional cost allocation principles, discussed below.

567. The Commission stated in the Proposed Rule that it would not apply the interregional cost allocation principles so as to require every pair of regions to adopt the same uniform approach to cost allocation for new interregional transmission facilities, but instead recognized that there may be legitimate reasons for the public utility transmission providers located in different pairs of neighboring transmission planning regions to adopt different cost allocation methods.[444]

2. Comments on Interregional Cost Allocation Reforms

568. A number of commenters generally support the proposal that each transmission provider have an interregional cost allocation method for facilities located in more than

[444] Proposed Rule, FERC Stats. & Regs. ¶ 32,660 at P 175.

611. The twelve regional and interregional proposed cost allocation principles are discussed below in pairs of six separate subsections. Because the proposed cost allocation principles for regional transmission facilities are very similar to the proposed cost allocation principles for interregional transmission facilities, almost all commenters discussed them together as if they were a single principle. Therefore, the Commission discusses the corresponding sets of cost allocation principles together and, except where otherwise indicated, the Commission determinations regarding each set of cost allocation principles apply to both the regional and interregional transmission facilities in a regional transmission plan for purposes of cost allocation. The cost allocation principles in the Final Rule apply only to those new transmission facilities selected in a regional transmission plan for purposes of cost allocation and new transmission facilities subject to the cost allocation provision of the interregional coordination procedures in an OATT.

2. Cost Allocation Principle 1—costs allocated in a way that is roughly commensurate with benefits[468]

a. Comments

612. Many commenters generally support the Commission's first proposed cost allocation principle for both regional and interregional cost allocation, which provides that the costs of transmission facilities must be allocated to those that benefit in a manner

[468] For the full text of this principle, *see* P 586 for regional cost allocation and P 587 for interregional cost allocation.

that costs are allocated to such beneficiaries, only the costs associated with the least-cost method of achieving the benefits should be allocated. LS Power states that it is important for the Final Rule to acknowledge that the factors that drive transmission planning do not fully define the range of beneficiaries.

b. Commission Determination

622. The Commission adopts the following Cost Allocation Principle 1 for both regional and interregional cost allocation:

> Regional Cost Allocation Principle 1: The cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.[478]

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[478] In the Proposed Rule, Regional Cost Allocation Principle 1 referred to "public policy requirements established by State or Federal laws or regulations that may drive transmission needs." As defined in P 2 of this Final Rule, we use "Public Policy

(continued...)

and

> Interregional Cost Allocation Principle 1: The costs of a new interregional transmission facility must be allocated to each transmission planning region in which that transmission facility is located in a manner that is at least roughly commensurate with the estimated benefits of that transmission facility in each of the transmission planning regions. In determining the beneficiaries of interregional transmission facilities, transmission planning regions may consider benefits including, but not limited to, those associated with maintaining reliability and sharing reserves, production cost savings and congestion relief, and meeting Public Policy Requirements.[479]

623. As discussed above,[480] requiring a beneficiaries pay cost allocation method or methods is fully consistent with the cost causation principle as recognized by the Commission and the courts. As the Commission stated in Order No. 890, the one factor

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Requirements" in Regional Cost Allocation Principle 1 and throughout our discussion of the Cost Allocation Principles.

[479] We note that the phrase "individually or in the aggregate" is not contained in Interregional Cost Allocation Principle 1 because interregional transmission facilities are considered facility by facility by pairs of transmission planning regions, unless pairs of transmission planning regions choose to do otherwise.

[480] *See* discussion *supra* P 495 and section V.B.

that it weighs when considering a dispute over cost allocation is whether a proposal fairly assigns costs among those who cause the costs to be incurred and those who otherwise benefit from them.[481] Therefore, it is appropriate here to adopt a cost allocation principle that includes as beneficiaries those that cause costs to be incurred or that benefit from a new transmission facility.

624. However, the Commission is not prescribing a particular definition of "benefits" or "beneficiaries" in this Final Rule. In our view, the proper context for further consideration of these matters is on review of compliance proposals and a record before us. Moreover, allowing the flexibility to accommodate a variety of approaches can better advance the goals of this rulemaking. The cost allocation principles are not intended to prescribe a uniform approach, but rather each public utility transmission provider should have the opportunity to first develop its own method or methods. Also, we recognize that regional differences may warrant distinctions in cost allocation methods.

625. While some commenters express concerns that the definition of benefits could be interpreted too broadly or too narrowly, we do not believe that further defining "benefits" in this Final Rule is a necessary or appropriate means to ensure that this will not be the case. We expect that concerns regarding overly narrow or broad interpretation of benefits will be addressed in the first instance during the process of public utility transmission

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[481] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.