

139 FERC ¶ 61,132
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

[Docket No. RM10-23-001; Order No. 1000-A]

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

(Issued May 17, 2012)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Rehearing and Clarification

SUMMARY: The Federal Energy Regulatory Commission affirms its basic determinations in Order No. 1000, 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. This order affirms the Order No. 1000 transmission planning reforms that: (1) require that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan; (2) provide that local and regional transmission planning processes must provide an opportunity to identify and evaluate transmission needs driven by public policy requirements established by state or federal laws or regulations; (3) improve coordination between neighboring transmission planning regions for new interregional transmission facilities; and (4) remove from Commission-approved tariffs and agreements a federal right of first refusal. This order also affirms the Order

what Order No. 1000 requires. To be clear, we are not requiring that any federal or state laws or regulations themselves be considered as part of the transmission planning process. That distinction is critical, and we want to be clear that this is not what Order No. 1000 requires.²⁶⁸

205. Instead, the Commission is acknowledging that the requirements in question are facts that may affect the need for transmission services and these facts must be considered for that reason. Our intent is that public utility transmission providers consider such transmission needs just as they consider transmission needs driven by reliability or economic concerns.²⁶⁹ We are not requiring that public utility transmission providers do any more than that. Such requirements may modify the need for and configuration of prospective transmission facilities. Accordingly, the transmission planning process and the resulting transmission plans would be deficient if they do not provide an opportunity to consider transmission needs driven by Public Policy Requirements.²⁷⁰ As a result, in Order No. 1000 we acted pursuant to our section 206

²⁶⁸ See discussion *infra* at section III.A.2.

²⁶⁹ We note that this is consistent with the approach taken in Order No. 888, and reiterated in Order No. 890, that public utility transmission providers are obligated to plan for the needs of their transmission customers. See, e.g., Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 418-19.

²⁷⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 109.

authority to ensure that this deficiency is remedied in the OATTs of public utility transmission providers.

206. We thus disagree with PSEG Companies that Order No. 1000's requirements in this regard are impermissible because the remedy is disproportionate to the identified problem. Again, we are requiring only that there be a process in place for public utility transmission providers, in consultation with stakeholders, to consider transmission needs driven by Public Policy Requirements. We believe that these reforms are necessary, because the record shows that there are, and there will continue to be, federal and state laws and regulations that will have a direct impact on transmission needs, just as reliability and economic concerns have a direct impact on transmission needs. By setting forth this process, our expectation is that public utility transmission providers, in consultation with stakeholders, will identify more efficient or cost-effective solutions to such transmission needs than may be the case without these requirements.

207. Given the parameters described above, and discussed in more detail below,²⁷¹ we do not see how these reforms are comparable to the matters at issue in *NAACP v. FPC*. As discussed in Order No. 1000, the Court in *NAACP v. FPC* found that the Commission did not have the power under the FPA or the Natural Gas Act (NGA) to construe its obligation to promote the public interest under those statutes as creating a "broad license

²⁷¹ See discussion *infra* at section III.A.3.