

148 FERC ¶ 61,213  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Public Service Company of Colorado	Docket Nos. ER13-75-001 ER13-75-003 ER13-75-005
Tucson Electric Power Company	ER13-77-001 ER13-77-002 ER13-77-003
UNS Electric, Inc.	ER13-78-001 ER13-78-002 ER13-78-003
Public Service Company of New Mexico	ER13-79-001 ER13-79-002 ER13-79-003
Arizona Public Service Company	ER13-82-001 ER13-82-002 ER13-82-003
El Paso Electric Company	ER13-91-001 ER13-91-002 ER13-91-003
Black Hills Power, Inc.	ER13-96-001 ER13-96-002 ER13-96-003
Black Hills Colorado Electric Utility Company, LP	ER13-97-001 ER13-97-002 ER13-97-003
NV Energy, Inc.	ER13-105-001 ER13-105-002 ER13-105-003
Cheyenne Light, Fuel, & Power Company	ER13-120-001 ER13-120-002 ER13-120-003

ORDER ON REHEARING AND COMPLIANCE

(Issued September 18, 2014)

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1. On March 22, 2013, the Commission issued an order accepting, subject to modifications,<sup>1</sup> compliance filings that Arizona Public Service Company (Arizona Public Service Co.), Black Hills Power, Inc. (Black Hills Power), Basin Electric Power Cooperative (Basin Electric), Powder River Electric Cooperative (Powder River),<sup>2</sup> Black Hills Colorado Electric Utility Company, LP (Black Hills Colorado), Cheyenne Light, Fuel, & Power Company (Cheyenne LF&P), El Paso Electric Company (El Paso Electric), NV Energy, Inc. (NV Energy), Xcel Energy Services, Inc. (Xcel), on behalf of Public Service Company of Colorado, Public Service Company of New Mexico, Tucson Electric Power Company (Tucson Electric), and UNS Electric, Inc. (UNS Electric) (collectively, Filing Parties) made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.<sup>3</sup>
2. On April 22, 2013, Filing Parties, LSP Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively, LS Power), and Non-Public Utilities<sup>4</sup> filed requests for rehearing of the First Compliance Order. On September 20, 2013, Filing

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<sup>1</sup> *Public Serv. Co. of Colo.*, 142 FERC ¶ 61,206 (2013) (First Compliance Order).

<sup>2</sup> Black Hills Power, Basin Electric, and Powder River jointly own a transmission system in South Dakota, Wyoming, and Nebraska. Black Hills Power, Basin Electric, and Powder River provide point-to-point and network integration transmission service under their Joint Open Access Transmission Tariff, for which Black Hills Power is the administrator.

<sup>3</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S. C. Pub. Serv. Auth. v. FERC*, No. 12-1232, 2014 WL 3973116 (D.C. Cir. Aug. 15, 2014).

<sup>4</sup> The non-public utility transmission providers seeking rehearing and clarification are Basin Electric, Colorado Springs Utilities, Imperial Irrigation District, Los Angeles Department of Water and Power, Platte River Power Authority, Sacramento Municipal Utility District, Salt River Project Agricultural Improvement and Power District, Southwest Transmission Cooperative, Inc., Transmission Agency of Northern California, Tri-State Generation and Transmission Association, Inc., and Western Area Power Administration (collectively, Non-Public Utilities).

Parties separately submitted,<sup>5</sup> pursuant to section 206 of the Federal Power Act (FPA),<sup>6</sup> revisions to their respective Open Access Transmission Tariffs (OATT) to comply with the First Compliance Order.<sup>7</sup> Subsequently, on July 31 and August 1, 2014, Filing Parties separately submitted substitute revisions to their respective OATTs to remove one aspect of their proposed regional transmission planning process. For the reasons discussed below, we deny rehearing and accept in part and reject in part Filing Parties' respective proposed OATT revisions, subject to conditions, and direct Filing Parties to submit further revisions to their respective OATTs in further compliance filings due within 60 days of the date of issuance of this order.<sup>8</sup>

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<sup>5</sup> On September 20, 2013, El Paso Electric filed its second round compliance filing in Docket No. ER13-2407-000. Subsequently, on September 30, 2013, El Paso Electric withdrew the filing and resubmitted its second round compliance in Docket No. ER13-91-002.

<sup>6</sup> 16 U.S.C. § 824e (2012).

<sup>7</sup> Arizona Public Service Co., FERC Electric Tariff, Volume No. 2, Attachment E (1.1.0) (Arizona Public Service Co. OATT, Attachment E); Public Service Company of Colorado, Transmission Tariffs, R-PSCo (PSCo Transmission Planning Process) (0.3.0) (Public Service Company of Colorado OATT, Attachment R-PSCo); Tucson Electric, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (3.0.0) (Tucson Electric OATT, Attachment K); Public Service Company of New Mexico, PNM Open Access Transmission Tariff, Elec Tariff Vol No. 6, Open Access Transmission Tariff (S-57), (Attachment K) (1.0.0) (Public Service Company of New Mexico OATT, Attachment K); El Paso Electric, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (4.0.0) (El Paso Electric OATT, Attachment K); Black Hills Power, Joint Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (0.2.0) (Black Hills Power Joint OATT, Attachment K); Black Hills/Colorado Electric Utility Company, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (2.3.0) (Black Hills Colorado OATT, Attachment K); NV Energy, NVE Database, Tariff, Volume No. 1, Attachment K (Transmission Planning Process) (0.4.0) (NV Energy OATT, Attachment K); Cheyenne LF&P, Fuel and Power Company, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (0.2.0) (Cheyenne LF&P OATT, Attachment K). Citations to a Filing Party's existing OATT, instead of its proposed OATT revisions submitted as part of its compliance filing, will provide the full cite, including the current version numbers.

<sup>8</sup> We note that the same or similar issues are addressed in the following orders that have issued or are being issued contemporaneously with this order: *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,198 (2014); *PacifiCorp*, 147 FERC ¶ 61,057 (*continued ...*)

## I. Background

3. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed 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. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890<sup>9</sup> to require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

4. The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its OATT a method, or set of methods, for allocating the costs of new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. Order No. 1000 also required that each cost allocation method adhere to six cost allocation principles.

5. On October 11, 2012 Filing Parties submitted initial revisions to their respective OATTs to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000. On March 22, 2013 the Commission accepted Filing

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(2014); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 (2014); *S. C. Elec. & Gas Co.*, 147 FERC ¶ 61,126 (2014); *Maine Public Serv. Co.*, 147 FERC ¶ 61,129 (2014); *Duke Energy Carolinas, LLC and Duke Energy Progress*, 147 FERC ¶ 61,241 (2014); *New York Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044 (2014); *Avista Corp.*, 148 FERC ¶ 61,212 (2014); *Tampa Electric Co.*, 148 FERC ¶ 61,172 (2014).

<sup>9</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).



Parties' respective compliance filings, subject to further modifications to be filed within 120 days of the date of issuance of the First Compliance Order.<sup>10</sup>

**II. Requests for Rehearing or Clarification – Docket Nos. ER13-75-001, ER13-77-001, ER13-78-001, ER13-79-001, ER13-82-001, ER13-91-001, ER13-96-001, ER13-97-001, ER13-105-001**

6. Timely requests for rehearing and clarification were filed by Filing Parties, Non-Public Utilities, and LS Power. Filing Parties seek rehearing and clarification of certain Commission determinations in the First Compliance Order addressing the affirmative obligation to plan, the proposed nonincumbent transmission developer reforms, the proposed regional cost allocation method, including the proposal that the regional cost allocation method be non-binding, and transmission service and ownership rights. Non-Public Utilities also seek rehearing of the Commission's determination addressing non-binding cost allocation. LS Power seeks rehearing and clarification of the Commission's determination regarding the proposed evaluation criteria for transmission proposals, as well as participant funding for transmission projects not selected in the regional transmission plan for purposes of cost allocation.

**III. Compliance Filings – Docket Nos. ER13-75-002, ER13-77-002, ER13-78-002, ER13-79-002, ER13-82-002, ER13-91-002, ER13-96-002, ER13-97-002, ER13-105-002, ER13-120-002**

7. In response to the First Compliance Order, Filing Parties have submitted further revisions to their local and regional transmission planning processes in their respective OATTs to comply with the Commission's requirements in the First Compliance Order, including modifications to OATT provisions governing the regional transmission planning requirements, consideration of transmission needs driven by public policy requirements, nonincumbent transmission developer reforms, and cost allocation.<sup>11</sup> Filing Parties request an effective date for their respective compliance filings of January 1 of the year following conditional or full Commission acceptance of their pending compliance filings. Should this proposed date result in an effective date in an odd-numbered year, Filing Parties state that they will conduct an abbreviated

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<sup>10</sup> Filing Parties were subsequently granted a 60-day extension, until September 20, 2013, to submit the further compliance filings. Notice of Extension of Time, Docket Nos. ER13-75-000, *et al.* (issued July 5, 2013).

<sup>11</sup> We note that Cheyenne LF&P's transmission planning process OATT revisions are not readable in eTariff. Accordingly, Cheyenne LF&P is directed to submit, within 60 days of the date of issuance of this order, a further compliance filing to make its local and regional transmission planning processes readable in eTariff.

transmission planning process in that odd-numbered year and begin the full biennial process in the following even-numbered year.

8. Notice of Filing Parties' compliance filings was published in the *Federal Register*, 78 Fed. Reg. 59,663, 59,665, 61,998 (2013), with interventions and protests due on or before October 21, 2013.

9. Arizona Corporation Commission (Arizona Commission) submitted a motion to intervene out-of-time<sup>12</sup> and comments. Southern California Edison Company (SoCal Edison) submitted a motion to intervene out-of-time and comments. Non-Public Utilities, Public Interest Organizations,<sup>13</sup> the Colorado Public Utilities Commission (Colorado Commission) and Public Utilities Commission of Nevada (Nevada Commission) (collectively, Colorado and Nevada Commissions),<sup>14</sup> and LS Power submitted comments. Filing Parties, Non-Public Utilities, the Colorado and Nevada Commissions, the American Wind Energy Association (AWEA), and Public Interest Organizations submitted answers. Non-Public Utilities submitted supplemental comments.

10. On July 31 and August 1, 2014, Filing Parties amended their respective compliance filings to remove a proposed tariff revision addressing one aspect of their regional transmission planning process (July 31 Revised Compliance Filings). Notice of Filing Parties' July 31, 2014 compliance filings was published in the *Federal Register*, 79 Fed. Reg. 46,252, 46,788 (2014), with interventions and protests due on or before

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<sup>12</sup> Although styled as a motion to intervene out-of-time, we note that Arizona Commission's intervention was submitted prior to the deadline for interventions regarding the second compliance filings and thus was timely filed. Accordingly, we will treat Arizona Commission's motion as a notice of intervention under Rule 214 of the Commission's Rules of Practice and Procedure.

<sup>13</sup> Public Interest Organizations consist of seven intervenors including: Interwest Energy Alliance, Natural Resources Defense Council, Sierra Club, Sonoran Institute, Sustainable FERC Project, Wilderness Society, and Western Resources Advocates, as well as two additional entities (Interstate Renewable Energy Council and Western Grid Group) that join in support of the comments.

<sup>14</sup> Colorado and Nevada Commissions address their comments solely to the compliance filings of Black Hills Colorado (Docket No. ER13-97-002), Xcel (Docket No. ER13-75-003), and NV Energy (Docket No. ER13-105-002); however, given that Filing Parties filed a joint regional transmission planning proposal, we address comments and protests filed in dockets for individual Filing Parties as comments and protests filed regarding the joint proposal.

August 14, 2014. Public Interest Organizations,<sup>15</sup> LS Power, and Non-Public Utilities submitted comments to Filing Parties' July 31 Revised Compliance Filings.

#### **IV. Discussion**

##### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention serves to make Arizona Commission a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), we will grant SoCal Edison's late-filed motion to intervene, given its interest in this proceeding and the absence of undue prejudice or delay.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

13. We note that the tariff records submitted here in response to the First Compliance Order also include tariff provisions pending in tariff records that Filing Parties separately filed on May 10, 2013 to comply with the interregional transmission coordination and cost allocation requirements of Order No. 1000. The tariff records Filing Parties submitted in their interregional compliance filing are pending before the Commission and will be addressed in a separate order. Therefore, any acceptance of the tariff records in the instant filings that include tariff provisions submitted to comply with the interregional transmission coordination and cost allocation requirements of Order No. 1000 is made subject to the outcome of the Commission order addressing Filing Parties' interregional compliance filings.<sup>16</sup>

##### **B. Substantive Matters**

14. We deny Filing Parties' and LS Power's requests for rehearing and grant certain clarifications as discussed below.

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<sup>15</sup> Three additional entities (Interstate Renewable Energy Council, NW Energy Coalition, and Western Grid Group) joined in Public Interest Organizations' comments.

<sup>16</sup> Filing Parties' interregional compliance filings are pending in Docket Nos. ER13-1447-000; ER13-1450-000; ER13-1465-000; ER13-1466-000; ER13-1469-000; ER13-1461-000; ER13-1462-000; ER13-1471-000; ER13-1472-000; and ER13-1474-000.

15. We find that Filing Parties' respective compliance filings partially comply with the directives in the First Compliance Order.<sup>17</sup> Accordingly, we accept Filing Parties' compliance filings to be effective January 1, 2015, subject to further compliance filings, as discussed below. We direct Filing Parties to submit the compliance filings within 60 days of the date of issuance of this order.

### **1. Overview of WestConnect Transmission Planning Process**

16. As proposed, the WestConnect transmission planning region is defined by the transmission owners for whom regional transmission planning is being conducted. The service areas of the participating transmission provider members consist of all or portions of nine states: Arizona, California, Colorado, New Mexico, Nebraska, Nevada, South Dakota, Texas, and Wyoming.

17. Filing Parties explain that the purpose of the regional transmission planning process is to produce a regional transmission plan and provide a process for evaluating transmission projects submitted for cost allocation. The WestConnect Order No. 1000 transmission planning and cost allocation processes (WestConnect process) are organized and governed by the Planning Management Committee, which is comprised of representatives from five membership sectors.<sup>18</sup> The Planning Management Committee is responsible for, among other things, administering the regional transmission planning process and approving a regional transmission plan that includes cost allocation determinations.<sup>19</sup>

18. The WestConnect transmission planning region conducts a biennial regional transmission planning process consisting of eight quarters. In coordination with its members, transmission owners, and other interested stakeholders, the Planning

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<sup>17</sup> Filing Parties submitted, in separate dockets, coordinated compliance filings that contain largely uniform transmittal letters and proposed OATT revisions. Given this uniformity, the Commission will cite to the transmittal letter and OATT of a single Filing Party, Arizona Public Service Co., when referencing Filing Parties' proposal. Where differences between or among the filings are addressed, the Commission will cite to an individual Filing Party's filing as appropriate.

<sup>18</sup> These membership sectors include: Transmission Owners with Load Serving Obligations; Transmission Customers; Independent Transmission Developers and Owners; State Regulatory Commissions; and Key Interest Groups.

<sup>19</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.A.

Management Committee<sup>20</sup> develops the regional transmission plan.<sup>21</sup> During the first and second quarters of the transmission planning cycle, the WestConnect regional transmission planning process gathers and verifies base case information, including transmission owner plans and any identified transmission needs driven by public policy requirements. As part of this, the regional transmission planning process considers data submitted by customers, transmission developers, and transmission owners, as described in the public utility transmission providers' OATTs.<sup>22</sup> During the second and third quarters, the WestConnect regional transmission planning process will conduct independent analyses to identify regional needs.<sup>23</sup> During the fourth quarter, stakeholders may submit project ideas and transmission and non-transmission alternative projects for consideration and evaluation in the regional transmission plan.<sup>24</sup>

19. Next, during the fifth and sixth quarters, the WestConnect regional transmission planning process evaluates all qualified submitted transmission projects and non-transmission alternatives to identify the more efficient or cost-effective solutions to satisfy the region's needs. The seventh and eighth quarters are dedicated to developing recommendations for the final regional transmission plan, including cost allocation recommendations for transmission projects that more efficiently or cost-effectively meet the region's transmission needs.<sup>25</sup> Finally, the Planning Management Committee is charged with approving the final WestConnect regional transmission plan.

## **2. Regional Transmission Planning Requirements**

20. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that produces a regional transmission plan and that complies with the identified transmission planning principles of Order No. 890.<sup>26</sup>

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<sup>20</sup> The Planning Management Committee provides an open forum where stakeholders can participate and obtain information regarding base cases, plans, and projects, and can provide input or express their needs as they relate to the transmission system.

<sup>21</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.A.

<sup>22</sup> *E.g.*, *id.* § III.C.

<sup>23</sup> *E.g.*, *id.* § III.E.

<sup>24</sup> *E.g.*, *id.* § III.C.

<sup>25</sup> *E.g.*, *id.* § VII.B.

<sup>26</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

The regional transmission planning reforms required public utility transmission providers to consider and select, in consultation with stakeholders, transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related transmission needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.<sup>27</sup>

**a. Transmission Planning Region**

21. Order No. 1000 required each public utility transmission provider to participate in a transmission planning region, which is a region in which public utility transmission providers, in consultation with stakeholders and affected states, agree to participate for purposes of regional transmission planning.<sup>28</sup> The scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.<sup>29</sup> However, an individual public utility transmission provider cannot, by itself, satisfy Order No. 1000.<sup>30</sup>

22. In addition, Order No. 1000 required public utility transmission providers to explain how they will determine which transmission facilities are subject to the requirements of Order No. 1000.<sup>31</sup> Order No. 1000 also required public utility transmission providers in each transmission planning region to have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region<sup>32</sup> and, thus, become eligible to be allocated costs under the regional cost allocation method.<sup>33</sup> Order No. 1000 also required that each public utility transmission provider include in its OATT a list of all the public utility and non-public utility transmission providers enrolled as transmission providers in the transmission planning region.<sup>34</sup>

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<sup>27</sup> *Id.* PP 11, 148.

<sup>28</sup> *Id.* P 160.

<sup>29</sup> *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* PP 65, 162.

<sup>32</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>33</sup> *Id.* PP 276-277.

<sup>34</sup> *Id.* P 275.

**i. First Compliance Order**

23. In the First Compliance Order, the Commission found that the scope of the transmission planning region, the description of the facilities that will be subject to the requirements of Order No. 1000, and the enrollment process specified in Filing Parties' filings partially complied with the requirements of Order No. 1000.<sup>35</sup> With respect to scope, the Commission found that the WestConnect footprint would satisfy the requirements set forth in Order No. 1000, but stated that Filing Parties did not enroll as public utility transmission providers in the WestConnect regional transmission planning process and, thus, failed to satisfy Order No. 1000's enrollment requirement.<sup>36</sup>

24. Specifically, the Commission found that Filing Parties' proposal requiring an entity wishing to enroll in the WestConnect transmission planning region to execute the Planning Participation Agreement and pay its share of costs, as provided therein, complied with the requirement to have a clear enrollment process.<sup>37</sup> However, the Commission stated that Filing Parties had not enrolled and thus did not comply with the requirement for public utility transmission providers to enroll and participate in a regional transmission planning process.<sup>38</sup> In addition, the Commission found that Filing Parties had not revised their OATTs to include a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in the WestConnect transmission planning region.<sup>39</sup> The Commission therefore directed Filing Parties to enroll in a transmission planning region and revise their respective OATTs to: (1) indicate such enrollment; and (2) include a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in the WestConnect transmission planning region.<sup>40</sup>

25. The Commission also rejected Filing Parties' proposal to delay issuance of the first WestConnect Order No. 1000 regional transmission plan until final Commission action on the Order No. 1000 compliance filings of the public utility transmission

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<sup>35</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 24.

<sup>36</sup> *Id.* P 25.

<sup>37</sup> *Id.* P 27.

<sup>38</sup> *Id.* P 25.

<sup>39</sup> *Id.* P 26.

<sup>40</sup> *Id.* PP 25-26.

providers that enroll.<sup>41</sup> Because Filing Parties did not justify such delay, the Commission required Filing Parties to clarify when the WestConnect regional transmission planning process will be implemented, without linking such implementation to final Commission action in this proceeding.<sup>42</sup>

26. Further, the Commission found an inconsistency between Filing Parties' requested effective date and their proposed timetable for implementing the regional transmission planning process, and directed Filing Parties to reconcile the inconsistency.<sup>43</sup> As a result, Filing Parties were directed to establish an appropriate effective date for their OATT revisions that will align with their implementation of the Order No. 1000 regional transmission planning process.<sup>44</sup> While the Commission found that Filing Parties' proposal to exempt from reevaluation those transmission facilities that meet one or more of certain criteria as of the last effective date of Filing Parties' compliance filings was a reasonable approach to identifying which transmission facilities will not be subject to reevaluation and thus not subject to Order No. 1000's requirements, the Commission likewise found that Filing Parties' proposal to exempt previously approved transmission projects that meet certain criteria from reevaluation "to the last effective date of [Filing Parties'] Order No. 1000 compliance filings" did not comply with Order No. 1000. Filing Parties were directed to revise the date through which their exemption criteria will be effective to align with the revised effective date proposed on compliance.<sup>45</sup>

ii. **Enrollment and Participation by Transmission Providers**

(a) **Summary of Compliance Filings**

27. Filing Parties propose to modify their OATTs to include a list of the transmission owners that have enrolled in the WestConnect transmission planning region for purposes of Order No. 1000.<sup>46</sup> The WestConnect transmission planning region has two types of

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<sup>41</sup> *Id.* P 28.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* P 29.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* PP 30-31.

<sup>46</sup> These transmission owners include Arizona Public Service Co., Black Hills Power, Black Hills Colorado, Cheyenne LF&P, El Paso Electric, NV Energy, Public  
(*continued ...*)



members, transmission owners and stakeholders.<sup>47</sup> Filing Parties also propose to revise their OATTs to create two categories of transmission owners that can participate under the WestConnect regional transmission planning process: (1) transmission owners that enroll in the WestConnect transmission planning region in order to comply with the Order No. 1000 transmission planning and cost allocation requirements, and are listed as having enrolled for purposes of Order No. 1000; and (2) transmission owners that elect to participate in the WestConnect regional transmission planning process as coordinating transmission owners without enrolling in the WestConnect transmission planning region for Order No. 1000 cost allocation purposes.<sup>48</sup> Under Filing Parties' proposal, a transmission owner that enrolls in the WestConnect transmission planning region is subject to the entirety of Order No. 1000 regional transmission planning, including Order No. 1000's regional cost allocation provisions. Conversely, Filing Parties' proposal allows a coordinating transmission owner to participate in every aspect of the regional transmission planning process in the same way as enrolled transmission owners *except* Order No. 1000 regional cost allocation (i.e., coordinating transmission owners are not subject to regional cost allocation). Both categories of transmission owners must sign the Planning Participation Agreement<sup>49</sup> and pay their respective share of costs to fund the

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Service Company of Colorado, Public Service Company of New Mexico, Tucson Electric, and UNS Electric. The WestConnect regional transmission planning process incorporated into Black Hills Power's OATT refers to Black Hills Power, Basin Electric, and Powder River collectively as the "Transmission Provider" tasked with conducting regional transmission planning to comply with Order No. 1000. *E.g.*, Arizona Public Service Co. Transmittal Letter at 3; Arizona Public Service Co. OATT, Attachment E, § III.A.2.c.

<sup>47</sup> Stakeholder members include those who wish to have voting input into the methodologies, studies, and decisions made in the execution of the Order No. 1000 transmission planning and cost allocation requirements. Stakeholders wishing to have voting input may execute the Planning Participation Agreement and pay annual dues. *E.g.*, Arizona Public Service Co. Transmittal Letter at 5; Arizona Public Service Co. OATT, Attachment E, § III.A.2.

<sup>48</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, §§ III.A.2 and III.B.5.a.

<sup>49</sup> Filing Parties have not filed the Planning Participation Agreement as part of their regional transmission planning process. We address the Planning Participation Agreement below in the Planning Participation Agreement section of this order.

regional transmission planning process.<sup>50</sup> Further, Filing Parties' OATTs provide that the WestConnect transmission planning process will conduct transmission planning on behalf of all transmission owner members.<sup>51</sup> Filing Parties state that coordinating transmission owners will indicate their commitment to participate in the WestConnect regional transmission planning process by signing the Planning Participation Agreement.<sup>52</sup>

28. Filing Parties explain that they revised their OATTs to create separate categories of transmission providers in response to the Commission's requirement that cost allocation determinations for transmission projects selected in the regional transmission plan for purposes of cost allocation be binding upon identified beneficiaries.<sup>53</sup> Filing Parties explain that their proposal to create two categories of transmission owners furthers broad participation in the WestConnect process by non-public utility transmission providers. They also explain that the coordinating transmission owner provisions preserve the current level of participation in the region, as well as the broad scope of funding of regional transmission planning activities.<sup>54</sup>

29. Under Filing Parties' proposal, although a coordinating transmission owner may submit a proposed regional transmission project for study in the WestConnect process, it may not seek regional cost allocation for that project. Transmission projects that are not eligible for regional cost allocation are eligible for study in the regional transmission planning process as more efficient or cost-effective solutions.<sup>55</sup> In addition, under the proposal, regional cost allocation is not applicable to any proposed transmission project (whether proposed by a coordinating transmission owner or any other entity) that is shown through the regional study process to provide quantifiable benefits (as defined in

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<sup>50</sup> Coordinating transmission owners fund the process in a manner comparable to that of transmission owners enrolled in the transmission planning region. *E.g.*, Arizona Public Service Co. Transmittal Letter at 5; Arizona Public Service Co. OATT, Attachment E, § III.A.2.a.

<sup>51</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, §§ III.A and III.C.4.

<sup>52</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 5; Arizona Public Service Co. OATT, Attachment E, § III.A.2.

<sup>53</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 3 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 306).

<sup>54</sup> *E.g.*, *id.* at 3-4.

<sup>55</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 5; *E.g.*, Arizona Public Service Co. OATT, Attachment E, §§ III.C, III.C.5.

Filing Parties' OATTs) to any coordinating transmission owner or to any other transmission owner not enrolled in any transmission planning region, nor is it applicable to any project that electrically interconnects with a coordinating transmission owner or a transmission owner not enrolled in any transmission planning region.<sup>56</sup> Filing Parties state that other forms of cost allocation may be pursued for such projects, including participant funding.<sup>57</sup>

30. Filing Parties state that, although transmission projects proposed by a coordinating transmission owner or that interconnect with a coordinating transmission owner facility are ineligible for regional cost allocation, the region will benefit from studying those proposed transmission projects because the WestConnect regional transmission planning process will identify and quantify the transmission project's costs and benefits within a transparent, stakeholder-driven regional transmission planning process. Filing Parties assert that consideration of all transmission projects in the regional transmission planning process may spur interest in a project's development among all parties, thereby serving the Commission's goal of having a regional transmission planning process that identifies transmission projects that are more efficient or cost-effective for the transmission planning region.<sup>58</sup>

31. Filing Parties explain that they considered alternatives to their revised approach, including a less inclusive planning structure for only public utility transmission owners that enroll. However, Filing Parties concluded that such a structure is less attractive because it removes from the WestConnect regional transmission planning process a large part of the current transmission system in the WestConnect transmission planning region and bars participation by non-public utility transmission providers who contribute financial and human resources for regional transmission planning activities.<sup>59</sup> Further, Filing Parties explain that they also considered an approach whereby transmission project costs that would have otherwise been attributed to a non-enrolled beneficiary would be

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<sup>56</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.

<sup>57</sup> Filing Parties note that cost responsibility for participant funded projects will not be governed by the regional cost allocation method. *E.g.*, Arizona Public Service Co. Transmittal Letter at 5-6.

<sup>58</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 5-6; Arizona Public Service Co. OATT, Attachment E, § III.B.

<sup>59</sup> Filing Parties state that the transmission owners that are likely to participate as coordinating transmission owners have historically provided approximately half of the overall funding for WestConnect transmission planning activities. *E.g.*, Arizona Public Service Co. Transmittal Letter at 6-8.

reallocated to enrolled transmission owners. However, they explain that such an approach would run counter to Order No. 1000's Cost Allocation Principle 1, since in their view costs would not be roughly commensurate with benefits.<sup>60</sup>

32. Filing Parties note that the Planning Participation Agreement will address timely and orderly withdrawal from enrollment in the WestConnect transmission planning region, the continuing obligations of such withdrawing entities, and any conditions on re-enrollment.<sup>61</sup> In response to the First Compliance Order, Filing Parties propose to remove OATT provisions that provided for the allocation of costs through a voluntary cost sharing arrangement in the event that a WestConnect transmission planning region member withdraws from the region.

(1) **Participation by Non-Public Utility Transmission Providers**

(i) **Protests/Comments**

33. LS Power urges the Commission to reject Filing Parties' proposal to create a category for "coordinating transmission owners" in the WestConnect transmission planning process,<sup>62</sup> arguing that Order No. 1000 does not allow the type of participation for non-public utility transmission providers proposed by Filing Parties. LS Power asserts that in Order No. 1000-A, the Commission made clear that any non-public utility transmission provider that chooses not to become part of the transmission planning region would be permitted to act as a stakeholder in the transmission planning process.<sup>63</sup> It therefore urges the Commission to reject Filing Parties' effort to allow non-public entities to eschew enrollment in the WestConnect transmission planning region, but still enjoy participant status. Instead, it states that the Commission should require the non-public utilities to either enroll in the region or participate as stakeholders in the transmission planning process.<sup>64</sup> LS Power warns of the negative precedent that the Commission would set if it were to accept Filing Parties' proposal to create two types of transmission owners for purposes of transmission planning under Order No. 1000, claiming that non-

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<sup>60</sup> *E.g., id.* at 7.

<sup>61</sup> *E.g., id.* n.10.

<sup>62</sup> LS Power Comments at 3-4.

<sup>63</sup> *Id.* at 6 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 275).

<sup>64</sup> *Id.* at 6-7.

public utilities in other regions would adopt the same regional construct and thus eviscerate Order No. 1000.<sup>65</sup>

34. Non-Public Utilities support Filing Parties' revised proposal, which allows for their continued participation in the WestConnect regional transmission planning process as coordinating transmission owners, if they choose not to enroll in the WestConnect transmission planning region. Non-Public Utilities state that the proposal will help ensure that the WestConnect regional transmission planning process will continue to be efficient and effective.<sup>66</sup> The Arizona Commission also supports Filing Parties' proposed coordinating transmission owner proposal, arguing that provisions for participation by non-public utility transmission providers as coordinating transmission owners that are not subject to regional cost allocation are superior to those entities not participating in the WestConnect regional transmission planning process. The Arizona Commission believes that the proposed approach to accommodate non-public utility transmission providers increases the likelihood of transmission plans that may result in lower transmission-related costs for the retail customers of the companies regulated by the Arizona Commission.

(ii) **Answers**

35. Filing Parties explain that their coordinating transmission owner proposal addresses the requirement that regional cost allocation must be binding on identified beneficiaries, while simultaneously recognizing that the participation of non-public utility transmission providers enhances the regional transmission planning process. Filing Parties disagree with LS Power's argument that the First Compliance Order requires that non-public utility transmission providers that do not enroll in the transmission planning region should be relegated to "mere stakeholders" and barred from membership on the Planning Management Committee.<sup>67</sup> Filing Parties explain that because non-public utility transmission providers are prevalent in the region, their representation is necessary on the Planning Management Committee. Filing Parties note that Order No. 1000 does not preclude entities other than enrolled public utility transmission providers from being members of the Planning Management Committee, pointing out that LS Power is also eligible for membership on that committee.<sup>68</sup>

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<sup>65</sup> *Id.* at 7.

<sup>66</sup> Non-Public Utilities Comments at 2-3.

<sup>67</sup> Filing Parties Answer at 10-12.

<sup>68</sup> *Id.* at 12-13.

36. Filing Parties also state that they expect the non-public utility transmission providers that have been participating in pre-Order No. 1000 transmission planning activities to continue participating in the WestConnect process. They note that they do not know how many non-public utility transmission providers will enroll in the transmission planning region, and expect that the Commission's order on their second round compliance filings will inform these decisions. Filing Parties assert that their revised proposal is superior to one in which non-public utility transmission providers that elect not to enroll in the WestConnect transmission planning region would be excluded from the WestConnect process.<sup>69</sup>

37. AWEA argues that Filing Parties' answer demonstrates that their coordinating transmission owner proposal is not compliant with Order No. 1000. AWEA agrees with LS Power that the Commission was clear in both Order No. 1000 and the First Compliance Order that the type of bifurcated participation proposed by Filing Parties does not comply with Order No. 1000. AWEA urges the Commission to reject Filing Parties' proposal, because the Commission should not lower the bar for participating in regional transmission planning simply because non-public utility transmission providers may not participate in the regional transmission planning process. AWEA states that section 211A of the FPA could be a remedy in the event that inefficient and not cost-effective solutions result from the lack of non-public utility transmission provider enrollment.<sup>70</sup>

38. Non-Public Utilities argue that LS Power and AWEA erroneously assume that all transmission owners in the WestConnect transmission planning region are obligated to enroll in the region.<sup>71</sup> Similarly, Non-Public Utilities reject LS Power's argument that non-public utility transmission providers cannot be included in the regional transmission planning process if they do not enroll in a transmission planning region – and argue that Order No. 1000 does not impose an “either/or” choice between enrollment, and participation in transmission planning solely as stakeholders.<sup>72</sup> They argue that Order No. 1000 did not foreclose the possibility of coordinating transmission owners, but recognized that each region had unique characteristics and, thus, provided regions significant flexibility in implementing their membership options.<sup>73</sup> Non-Public Utilities

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<sup>69</sup> *Id.* at 13-15.

<sup>70</sup> AWEA Answer to Filing Parties Answer at 2-5.

<sup>71</sup> Non-Public Utilities Answer to LS Power at 4-5.

<sup>72</sup> *Id.* at 7.

<sup>73</sup> *Id.* at 7-8.

also note that non-public utility transmission providers would fund approximately half of the costs of the WestConnect regional transmission planning process.<sup>74</sup>

(2) **Impact on Cost Allocation**

(i) **Protests/Comments**

39. LS Power argues that the proposed participation by coordinating transmission owners is a means by which to exclude new transmission facilities located in their footprints from regional cost allocation, because Filing Parties' proposal would disqualify any transmission project that electrically interconnects with a transmission facility of a coordinating transmission owner from regional cost allocation.<sup>75</sup> LS Power further states that Filing Parties do not indicate whether any transmission facilities would be eligible for regional cost allocation in light of the exclusion of facilities electrically interconnected with non-enrolled transmission owners (including those that are jointly owned) and the exclusion for local transmission projects, or establish whether their proposal would leave a fully contiguous transmission planning region.<sup>76</sup> LS Power and AWEA disagree with Filing Parties' proposal to exclude from regional cost allocation any transmission project that provides quantifiable benefits to a coordinating transmission owner.<sup>77</sup> LS Power argues that this would exclude a significant portion of regional transmission projects from regional cost allocation, and likely leave participant funding as the only cost allocation method available for such projects.<sup>78</sup>

40. Public Interest Organizations also oppose Filing Parties' proposal to exclude from regional cost allocation any project that electrically interconnects with or provides quantifiable benefits to a coordinating transmission owner, for essentially the same reasons as LS Power. However, Public Interest Organizations also state that a regional transmission planning process that includes the non-public utility transmission providers would be far superior to one that does not, and that transmission projects that interconnect with or otherwise impact a coordinating transmission owner should be provided a pathway to move forward within the Order No. 1000 cost allocation framework while safeguarding non-public utility transmission providers from being

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<sup>74</sup> *Id* at 5-6.

<sup>75</sup> LS Power Comments at 4.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 5; AWEA Answer at 2-5.

<sup>78</sup> LS Power Comments at 5.

subject to this cost allocation. Accordingly, Public Interest Organizations argue, the Commission should direct Filing Parties to modify their proposal so that regional cost allocation applies to the proportion of the benefits of a transmission project that affect the public utility transmission providers.<sup>79</sup>

(ii) Answers

41. Filing Parties argue that LS Power's proposed solution – namely, that all transmission owners in the region should be subject to regional cost allocation – violates Order No. 1000 because the Commission expressly recognized in Order No. 1000 that non-public utility transmission providers are not subject to Order No. 1000 and its binding cost allocation requirement. Filing Parties argue that adopting such a requirement would likely have resulted in a process without the participation of non-public utility transmission providers, thus jeopardizing the Commission's goal of meaningful participation by those entities.<sup>80</sup>

42. Filing Parties confirm LS Power's argument that a prospective transmission developer may not know, at the time it submits a transmission project for study, if its project is eligible for Order No. 1000 cost allocation, because the determination of whether a transmission project provides quantifiable benefits to coordinating transmission owners comes after studies are conducted and beneficiaries are determined. Filing Parties state, however, that this is unavoidable under the proposal. Nevertheless, Filing Parties also contend that this is true regardless of the revised proposal, because the determination of whether any transmission project satisfies the region's cost-benefit ratio also takes place after the studies are performed. Filing Parties explain that this means that a transmission developer may not know, at the time it submits a transmission project proposal to meet an identified regional need, whether its project will be eligible for regional cost allocation.<sup>81</sup>

43. Non-Public Utilities similarly disagree with LS Power's claim that the coordinating transmission owner proposal removes non-public utility transmission providers from regional cost allocation entirely. They also assert that the coordinating transmission owner proposal is superior to a lesser role (i.e., as stakeholders) because: (1) enrolled non-public utility transmission providers would be subject to binding cost allocation; (2) non-public utility transmission providers that choose not to enroll would still have an active role in coordinating their transmission plans with the region, which

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<sup>79</sup> Public Interest Organizations Protest at 8-9.

<sup>80</sup> Filing Parties Answer at 12.

<sup>81</sup> *Id.* at 15.



would ensure a more efficient and cost-effective regional transmission plan; and (3) non-public utility transmission providers could continue funding about half of the costs of the transmission planning process.<sup>82</sup>

44. Non-Public Utilities also disagree with LS Power's claim that Filing Parties' proposal excludes a significant portion of regional transmission projects in the WestConnect transmission planning region from cost allocation. They argue that the proposal identifies the transmission owners who are able to accept both the benefits and the costs associated with a transmission project eligible for regional cost allocation and thus precludes free ridership. Further, Non-Public Utilities argue that the proposal is complemented through participant funding, which the Commission has recognized as an alternative cost sharing agreement that would comply with Order No. 1000.<sup>83</sup>

45. In response to Public Interest Organizations' argument that binding cost allocation should apply to enrolled transmission owners in the region, even if a transmission project proposed for regional cost allocation interconnects with or provides quantifiable benefits to a coordinating transmission owner, Filing Parties argue that this approach would violate Order No. 1000. First, they argue that this proposal would violate Order No. 1000's requirement that costs be allocated in a manner roughly commensurate with benefits because not all project beneficiaries would be allocated costs. Second, they argue that it would violate Order No. 1000's requirement that the regional cost allocation method avoid free ridership concerns because transmission owners shown to reap quantifiable benefits from a transmission project would escape any allocation of project costs. Filing Parties further argue that the identification and comprehensive, stakeholder-driven study of a transmission project by the WestConnect transmission planning region can provide a blueprint for further discussions between beneficiaries and transmission developers on how to fund a project even if it is not eligible for regional cost allocation. Finally, Filing Parties argue that Public Interest Organizations' comments are an impermissible collateral attack on the Commission's holdings that Order No. 1000 requires the allocation of the entire prudently-incurred cost of a transmission project selected in a regional transmission plan for purposes of cost allocation to prevent stranded costs, and that cost allocation determinations be binding upon identified beneficiaries.<sup>84</sup>

46. Public Interest Organizations argue that Filing Parties misinterpret their concerns with the proposed modifications to the regional cost allocation method. Public Interest

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<sup>82</sup> Non-Public Utilities Answer to LS Power at 5-6.

<sup>83</sup> *Id.* at 8-9.

<sup>84</sup> Filing Parties Answer at 16-19.

Organizations explain that their concern is that the proposed regional transmission planning process will result in very few transmission lines qualifying for regional cost allocation, thus leaving the vast majority of regional transmission projects to rely on participant funding. Public Interest Organizations argue that it is difficult to accept a cost allocation method proposed to satisfy Order No. 1000's obligations that would likely undermine the rule's intent from the outset. Thus, they disagree that their position constitutes a collateral attack on Order No. 1000, and instead argue that their proposed approach should help uphold Order No. 1000's goals, particularly with respect to the principle that participant funding not be used as the sole method for cost allocation.<sup>85</sup>

47. Public Interest Organizations agree with Filing Parties that certain transmission projects that provide significant benefits to coordinating transmission owners would be problematic. However, they state that Filing Parties propose no threshold on what should be considered a meaningful amount of benefits to coordinating transmission owners that would justify excluding a transmission project from cost allocation. Ultimately, Public Interest Organizations argue that the proposed cost allocation method has the potential to cripple the transmission planning region's ability to devise the most cost-effective solutions to identified regional needs. They assert that Order No. 1000 requires transmission owners to have in place a workable cost allocation method that assigns costs in a manner at least roughly commensurate with benefits received. Public Interest Organizations state that Filing Parties' proposal is intended to highlight and avoid a possible outcome whereby the proposed regional transmission planning process prevents any proposed cost allocation method, outside of participant funding, from being implemented.<sup>86</sup>

48. AWEA argues that the proposal provides benefits to coordinating transmission owners, but leaves unanswered questions regarding its effect on transmission projects that are selected in the regional transmission plan for purposes of cost allocation, including: (1) why it would be just and reasonable for Filing Parties' customers alone to bear the cost in rates that are higher than would result if the non-public utility transmission providers' customers also bear some of those costs; (2) how this outcome would not violate and perpetuate the free rider problem identified in Order No. 1000; and (3) if the transmission project would be reassessed and reconfigured to provide benefits only to enrolled transmission providers, how this outcome would be a proper use of interested parties' time and resources, would not delay transmission development, and would not

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<sup>85</sup> Public Interest Organizations Answer at 10-11.

<sup>86</sup> *Id.* at 11-12.

lead to inefficient and less cost-effective regional transmission solutions than otherwise would have been built.<sup>87</sup>

(3) **Withdrawal**

(i) **Protests/Comments**

49. Although Non-Public Utilities support Filing Parties' revised proposal, they argue that Filing Parties should be directed to revise their proposed OATT provisions addressing binding cost allocation to clarify that non-public utility transmission providers that are enrolled as transmission owners in the transmission planning region have the right to withdraw. Non-Public Utilities assert that the proposed provisions create uncertainty about the ability of enrolled non-public utility transmission providers to withdraw rather than accept an allocation of costs pursuant to the regional transmission planning process, which they assert is permitted by Order No. 1000-A.<sup>88</sup> Accordingly, Non-Public Utilities state that Filing Parties should be directed to revise the provision as follows:

Order No. 1000 cost allocation methods as set forth in Section VII of this Attachment [K] are binding on identified beneficiaries enrolled in the WestConnect Planning Region, without prejudice to the following rights and obligations: (1) the right of a non-public utility that is enrolled in the Transmission Owners with Load Serving Obligations sector to unenroll rather than accept an allocation of costs pursuant to a regional or interregional cost allocation method; (2) the right and obligation. . . .<sup>89</sup>

(ii) **Answers**

50. Filing Parties state that the rights of non-public utility transmission providers to withdraw from the transmission planning region will be addressed in a future filing. Filing Parties explain that Non-Public Utilities' proposal does not address when and how withdrawal could be appropriately exercised without undue disruption to the transmission planning process, including addressing the effects on the regional transmission projects

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<sup>87</sup> AWEA Answer to Filing Parties Answer at 2-5.

<sup>88</sup> Non-Public Utilities Comments at 7 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 622 and n.734).

<sup>89</sup> *Id.* at 7-8.

previously selected for regional cost allocation, or the effects on future transmission projects seeking regional cost allocation. Filing Parties explain that additional stakeholder discussions will be necessary to define the parameters and process for withdrawal from the WestConnect transmission planning region, including the continuing responsibility for costs allocated prior to withdrawal, and any limitations on re-enrollment. Filing Parties argue that, while they do not oppose providing an opportunity to withdraw from the transmission planning region, a withdrawing entity must follow a properly structured process that avoids disruption to the WestConnect regional transmission planning process. Therefore, Filing Parties commit to propose, after the Commission issues an order on their compliance filings, revisions to their OATTs to address how and when withdrawal may occur.<sup>90</sup>

51. Non-Public Utilities state that they have come to agreement with Filing Parties with respect to: (1) the non-public utility transmission providers' right to join a sector other than the Transmission Owners with Load Serving Obligations sector; and (2) the procedures to withdraw from the region. Non-Public Utilities state that the revisions will be included within Filing Parties' next compliance filings.<sup>91</sup>

**(b) Commission Determination**

52. We find that the scope of the transmission planning region and the enrollment process specified in Filing Parties' respective OATTs comply with the directives in the First Compliance Order. The Commission previously found that the scope of the WestConnect region would satisfy the requirements set forth in Order No. 1000, but noted that Filing Parties did not enroll as public utility transmission providers in the WestConnect regional transmission planning process and, thus, failed to satisfy Order No. 1000's scope and enrollment requirements. Because their respective OATTs now include a list of all public utility transmission providers that have enrolled in the transmission planning region, we conclude that Filing Parties satisfy the scope requirement set forth in Order No. 1000, which states that the scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.<sup>92</sup> We find that Filing Parties' revised proposal as it relates to participation by non-public utility transmission providers in the WestConnect regional transmission planning process partially complies with Order No. 1000, as discussed further below.

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<sup>90</sup> Filing Parties Answer at 21-23.

<sup>91</sup> *See* Non-Public Utilities' Supplemental Comments at 3-8.

<sup>92</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160.

53. Order No. 1000 requires that public utility transmission providers enroll in a regional transmission planning process that complies with the requirements established in Order No. 1000.<sup>93</sup> Although non-public utility transmission providers were not similarly required to enroll in an Order No. 1000-compliant regional transmission planning process, the Commission recognized that non-public utility transmission providers may nonetheless elect to participate in a regional transmission planning process under Order No. 1000. Accordingly, the Commission addressed means by which a non-public utility transmission provider might choose to participate, including enrolling in a region<sup>94</sup> or participating as a stakeholder.<sup>95</sup> Order No. 1000-A affirmed that, if a non-public utility transmission provider makes the choice to enroll in a region, then that transmission provider would be subject to the regional and interregional cost allocation methods for that region.<sup>96</sup> Order No. 1000-A also affirmed that

the regional transmission planning process is not required to plan for the transmission needs of such a non-public utility transmission provider that has not made the choice to join a transmission planning region. If the non-public utility transmission provider is a customer of a public utility transmission provider in the region, that public utility transmission provider must plan for that customer's needs as it would for the needs of any customer. That non-public utility transmission provider's ability to participate as a stakeholder in the regional transmission planning process

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<sup>93</sup> *Id.* P 151.

<sup>94</sup> To provide clarity regarding how a transmission provider may enroll in a transmission planning region, and to ensure that the scope of the region is clear, Order No. 1000 also required that "public utility transmission providers in each transmission planning region have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region," and that "each public utility transmission provider (or regional transmission planning entity acting for all of the public utility transmission providers in its transmission planning region) [] include in its OATT a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region." Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>95</sup> *Id.* P 275.

<sup>96</sup> *Id.*

should be the same as for any other similarly situated stakeholder customer.<sup>97</sup>

54. To facilitate the participation of non-public utility transmission providers in the WestConnect regional transmission planning process, Filing Parties propose to allow transmission providers to participate in the transmission planning region as either: (1) “transmission [providers] that enroll in WestConnect in order to comply with the Order No. 1000 transmission planning and cost allocation requirements”; or (2) “transmission [providers] that elect to participate in the WestConnect Regional Planning Process without enrolling for Order No. 1000 cost allocation purposes,” which the Filing Parties refer to as “coordinating transmission owners.”<sup>98</sup>

55. We find that Filing Parties’ revised proposal partially complies with Order No. 1000. As discussed above, while Order No. 1000-A expressly contemplated that a non-public utility transmission provider may enroll in a region or, if it elects not to enroll, may participate as a stakeholder and/or be planned for as a customer,<sup>99</sup> we find that Order No. 1000 does not preclude the enrolled public utility transmission providers in a transmission planning region from conducting transmission planning for non-enrolled non-public utility transmission providers if the enrolled public utility transmission providers elect to do so. We therefore find that, contrary to protestors’ assertions, Order No. 1000 did not foreclose the aspect of the Filing Parties’ proposal allowing the regional transmission planning process to identify the transmission needs of non-public utility transmission providers that elect not to enroll together with the transmission needs of enrolled transmission providers. Furthermore, given the unique circumstances in the WestConnect region, in which the eleven enrolled public utility transmission providers have historically engaged in significant joint transmission planning and development with the ten neighboring non-public utility transmission providers,<sup>100</sup> we find that accepting

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<sup>97</sup> *Id.* P 276; *see also id.* P 278.

<sup>98</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, §§ III.A.2, III.B.5.a.

<sup>99</sup> If a non-public utility transmission provider is a customer of a public utility transmission provider in the region, that public utility transmission provider must plan for that customer’s needs as it would for the needs of any customer. Order No. 1000-A, 139 FERC ¶ 61,132 at P 276.

<sup>100</sup> Filing Parties Rehearing Request at 20-21 (stating that without the participation of the non-public transmission providers, “it would be very difficult for any of the jurisdictional transmission owners in WestConnect to participate in joint planning, as in many cases those entities are completely separated from one another by non-jurisdictional transmission owners”).

Filing Parties' proposal is appropriate to foster continued, proactive cooperation between and among public utility transmission providers in the WestConnect region and neighboring non-public utility transmission providers. We also find that Filing Parties' proposal will increase transparency, support the building of a record with respect to transmission planning, and allow regional transmission planning to be conducted inclusive of non-public utility transmission providers, so as to expand opportunities for identifying and proposing more efficient or cost-effective regional transmission projects. We conclude that Order No. 1000 permits Filing Parties' proposal for participation by non-public utility transmission providers and accept the general coordinating transmission owner framework whereby the WestConnect transmission planning process may conduct transmission planning on behalf of coordinating transmission owners.<sup>101</sup>

56. However, we direct Filing Parties to revise certain aspects of their proposal to ensure that transmission projects that benefit enrolled public utility transmission providers are not excluded from regional cost allocation. Filing Parties propose that regional cost allocation is not applicable to any transmission project (whether proposed by a coordinating transmission owner or any other entity) that is shown through the regional study process to provide quantifiable benefits to any coordinating transmission owner or to any other transmission owner not enrolled in any transmission planning region, nor to any project that electrically interconnects with a coordinating transmission

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<sup>101</sup> In Order No. 1000-A, the Commission held that

to maintain a reciprocity tariff under the voluntary "safe harbor" provision, a non-public utility transmission provider must ensure that the provisions of that tariff substantially conform, or are superior, to the *pro forma* OATT as it has been revised by Order No. 1000. As such, if a non-public utility transmission provider wishes to maintain its safe harbor tariff, it may not be able to ensure that it addresses Order No. 1000's transmission planning and cost allocation reforms, so that it continues to substantially conform, or be superior, to the *pro forma* OATT.

Order No. 1000-A, 139 FERC ¶ 61,132 at P 772 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 815 and Appendix C: *Pro Forma* Open Access Transmission Tariff). Therefore, if a non-public transmission provider does not enroll in a transmission planning region and, accordingly, does not comply with the requirements of Order No. 1000, it may not be able to demonstrate that its OATT continues to substantially conform, or be superior, to the *pro forma* OATT, as it has been revised by Order No. 1000, and may not be able to maintain its safe harbor tariff.

owner or a transmission owner not enrolled in any transmission planning region.<sup>102</sup> We reject this aspect of Filing Parties' proposal. Carving out from potential regional cost allocation all transmission facilities that interconnect with, or provide quantifiable benefits to, transmission owners that have not enrolled in the WestConnect transmission planning region (including coordinating transmission owners) would unduly restrict consideration of transmission facilities that nonetheless may have regional benefits and are determined to be more efficient or cost-effective transmission solutions to regional transmission needs. To the extent a transmission project otherwise satisfies the region's evaluation metrics, that project should not be categorically excluded from potential selection in the regional transmission plan for purposes of cost allocation simply because the facility interconnects with or provides benefits to a transmission owner that is not enrolled in the WestConnect region. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that delete any provisions implementing this aspect of their proposal from their respective OATTs.

57. Furthermore, given the unique circumstances in the WestConnect region referenced above,<sup>103</sup> we clarify that a non-public utility transmission provider that participates in the WestConnect transmission planning process as a coordinating transmission owner, and that is determined to be a beneficiary of a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation, may determine whether, consistent with its view of its statutory obligations, it will accept its share of the costs of that transmission facility. To ensure that a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation, and which would provide benefits to a coordinating transmission owner, may be considered for possible selection in a timely manner, we direct Filing Parties to revise their respective OATTs to describe the process by which a coordinating transmission owner that is identified as a beneficiary of a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation will advise the enrolled transmission providers of whether the coordinating transmission owner will accept its share of the costs of that transmission facility.<sup>104</sup>

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<sup>102</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.

<sup>103</sup> Filing Parties Rehearing Request at 20-21 (stating that without the participation of the non-public transmission providers, "it would be very difficult for any of the jurisdictional transmission owners in WestConnect to participate in joint planning, as in many cases those entities are completely separated from one another by non-jurisdictional transmission owners").

<sup>104</sup> For example, Filing Parties could propose an approach under which the non-public utility transmission providers that are not enrolled in the transmission planning (*continued ...*)



58. Moreover, we decline to require Filing Parties to revise their OATTs to incorporate Non-Public Utilities' proposed revisions to clarify an enrolled non-public utility transmission provider's right to withdraw from the WestConnect transmission planning region rather than accept an allocation of costs pursuant to the regional transmission planning process. Order No. 1000 did not require public utility transmission providers to establish withdrawal provisions for non-public utility transmission providers, but stated that "the relevant tariffs or agreements governing the regional transmission planning process could establish the terms and conditions of orderly withdrawal for non-public utility transmission providers that are unable to accept the allocation of costs pursuant to a regional or interregional cost allocation method."<sup>105</sup> Nevertheless, we note that Non-Public Utilities submitted supplemental comments addressing agreed upon procedures for withdrawing from the region. Non-Public Utilities state that the revisions will be included within Filing Parties' next compliance filings. We encourage Filing Parties to submit any further revisions in their next compliance filings due within 60 days of the date of issuance of this order. Should Filing Parties submit further revisions, the Commission will review and provide opportunity for comment at that time.<sup>106</sup>

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region but that have been determined to be potential beneficiaries of a regional transmission project would have an opportunity to examine their statutory obligations and find that they either: (1) will accept in accordance with their view of their statutory obligations the costs that they would be allocated pursuant to the regional cost allocation method; or (2) will not accept in accordance with their view of their statutory obligations the costs that they would be allocated pursuant to the regional cost allocation method. After the non-public utility transmission providers that are not enrolled have made these decisions, the WestConnect transmission planning process would reapply the regional cost allocation method to the enrolled transmission providers (including both public utility and non-public utility transmission providers) and to those non-enrolled non-public utility transmission providers that will accept the costs that they would be allocated pursuant to the regional cost allocation method.

<sup>105</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at n.734.

<sup>106</sup> We note that the Commission previously accepted a proposal by the public utility transmission providers in the Florida region to allow non-public utility transmission providers to choose to withdraw from the transmission planning region. Under this proposal, the non-public utility transmission provider will continue to pay any costs it is allocated pursuant to the regional cost allocation method for a transmission facility that was selected in the regional transmission plan for purposes of cost allocation while it was enrolled, until the entire prudently incurred cost of the transmission facility has been recovered. *See Tampa Elec. Co.*, 148 FERC ¶ 61,172, at P 44.

59. Finally, we direct Black Hills Power to clarify the enrollment status of the parties listed as transmission providers in its revised OATT. In the WestConnect regional transmission planning process incorporated into Black Hills Power's OATT, Black Hills Power, Basin Electric, and Powder River are collectively listed as the "Transmission Provider" responsible for conducting regional transmission planning to comply with Order No. 1000. However, Basin Electric and Powder River are not listed as transmission providers enrolled in the WestConnect transmission planning region. Consequently, it is not clear if Black Hills Power or all three entities are responsible for effectuating the responsibilities adopted in the regional transmission planning process. Accordingly, we direct Black Hills Power to submit, within 60 days of the date of issuance of this order, a further compliance filing that clarifies whether Basin Electric and Powder River are enrolled in the WestConnect transmission planning region, and if so, Filing Parties must revise their respective OATTs to reflect that enrollment. If Basin Electric and Powder River are not enrolled in the WestConnect transmission planning region, Black Hills Power must explain how, given the joint OATT, if Black Hills Power is allocated costs pursuant to the regional cost allocation method, costs will be allocated to the three parties, and which party or parties will be responsible for implementing the OATT provisions governing the regional transmission planning process.

**iii. Effective Date and Implementation of the Transmission Planning Process**

**(a) Summary of Compliance Filings**

60. Filing Parties propose an effective date of January 1 of the year following the Commission's conditional or full acceptance of their compliance filings implementing the regional transmission planning process. In support of this request, Filing Parties state that there is an important link between the WestConnect regional transmission planning process and the proposed western interregional coordination process, on the one hand, and the regional processes of their interregional neighbors on the other. In order to align both processes, Filing Parties state that they intend to commence the biennial WestConnect regional transmission planning process in an even-numbered year. Filing Parties' compliance filings also provide that, if the effective date occurs in an odd-numbered year, i.e., January 1, 2015, Filing Parties will conduct an abbreviated transmission planning process in that odd-numbered year and begin the full biennial process in the following even-numbered year.<sup>107</sup> Reevaluation of the WestConnect

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<sup>107</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 31; Arizona Public Service Co. OATT, Attachment E, § III.A.

regional transmission plan will begin within the second transmission planning cycle following the effective date, and occur in each subsequent transmission planning cycle.<sup>108</sup>

61. In their July 31 Revised Compliance Filings, Filing Parties propose to eliminate the proposed one-time abbreviated planning cycle to be held during 2015.<sup>109</sup> In support of their request, Filing Parties state that, because their compliance filings submitted on September 20, 2013 are pending before the Commission, there will be insufficient time to implement an abbreviated, single-year planning cycle in 2015 and also implement a full biennial planning cycle beginning in 2016. Filing Parties explain that ten months have lapsed since they made their compliance filings, and to date the regional transmission planning entity is not yet formed.<sup>110</sup> As a result, Filing Parties state that they do not have sufficient time to create the tools, contracts, staffing and funding for both an abbreviated planning cycle during 2015 and also a biennial planning cycle that will be the standard cycle going forward, beginning in 2016. In addition, Filing Parties aver that the absence of Commission action on their pending compliance filings has created uncertainty with stakeholders unwilling to enter into contractual arrangements necessary to form a new Planning Management Committee.<sup>111</sup> Further, Filing Parties state that other issues such as participation by non-public utility transmission providers in Filing Parties' proposed regional transmission planning and cost allocation processes, and whether, and to what extent, revisions will be required for the proposed regional transmission planning process, as well as expectations for funding also contribute to this uncertainty.<sup>112</sup> Therefore, Filing Parties propose to amend their respective compliance filings to remove the one-year abbreviated transmission planning cycle and to commence the standard biennial transmission planning cycle on the first even-numbered year following Commission approval (i.e., January 1, 2016).<sup>113</sup>

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<sup>108</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.

<sup>109</sup> *E.g.*, Arizona Public Service Co. July 31 Revised Compliance Filings at 1-2.

<sup>110</sup> Filing Parties explain that because no effective date is in place for Filing Parties' regional transmission planning process, no regional entity is yet formed to undertake the function of regional planning under the new process. *E.g.*, Arizona Public Service Co. July 31 Revised Compliance Filings at 3.

<sup>111</sup> *E.g.*, Arizona Public Service Co. July 31 Revised Compliance Filings at 4.

<sup>112</sup> *E.g.*, *id.* at 4.

<sup>113</sup> *E.g.*, *id.* at 3-4.

(b) Protests/Comments

(1) September 20, 2013 Compliance Filings

62. LS Power objects to Filing Parties' proposed January 1, 2014 effective date, arguing that Filing Parties seek to further delay implementation of Order No. 1000's reforms by creating an arbitrary deadline for Commission action. LS Power argues that Filing Parties do not explain why the Order No. 1000 reforms cannot be implemented during the two year biennial transmission planning cycle unless they begin on day one of the cycle, or why the reforms must be implemented on January 1 of a particular year. Accordingly, LS Power requests that the Commission establish an effective date of January 1, 2014, regardless of when the Commission issues its order on Filing Parties' compliance filings.<sup>114</sup>

63. LS Power expresses concern with an abbreviated transmission planning process if the effective date of the tariff revisions is January 1, 2015. Specifically, LS Power is concerned about the dates reflected in the tariff for "Notification to Transmission Developer" (i.e., September 30 of each year to notify transmission developers if they have satisfied the qualification criteria and December 31 of each year to post a list of all qualified transmission developers).<sup>115</sup> LS Power states that these dates could exclude new entrants from participation in an abbreviated transmission planning process. Thus, it requests that, if the Commission accepts the proposal for the abbreviated transmission planning process based on a January 1, 2015 effective date, such acceptance should be conditioned on addressing qualification of all interested transmission developers to ensure full participation in any such abbreviated process.<sup>116</sup>

64. LS Power also objects to proposed OATT provisions that exempt certain incumbent transmission projects from evaluation or reevaluation under the Order No. 1000 planning criteria.<sup>117</sup> It cites one provision under which "projects" meeting certain criteria will not be subject to reevaluation, and LS Power points out that in the First Compliance Order, the Commission directed Filing Parties to clarify that their reevaluation requirements apply to the regional transmission plan rather than

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<sup>114</sup> LS Power Comments at 7-8.

<sup>115</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.D.3(a).

<sup>116</sup> LS Power Comments at 18.

<sup>117</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.7.

transmission projects.<sup>118</sup> It also claims that the term “board approval” is unclear in another provision exempting from reevaluation transmission projects that “have received approval through local or state regulatory authorities or board approval.” LS Power asserts that transmission projects that have received “board approval” do not rise to the same level as projects that have received approval from state or local authorities. It further objects to an OATT provision that exempts from reevaluation projects that have been included in ten-year corporate capital project budgets. It asserts that such projects have not necessarily been selected in the regional transmission plan for purposes of cost allocation or evaluated, such that they should be exempt from reevaluation. Finally, LS Power objects to a provision that exempts from reevaluation transmission projects currently undergoing review in the Western Electricity Coordinating Council (WECC) planning process. It asserts that only transmission projects that the WestConnect transmission planning region has fully studied and approved prior to the effective date of Filing Parties’ OATT revisions should be subject to exclusion from the Order No. 1000 transmission planning process. LS Power concludes that Filing Parties should remove from their OATTs the entire subsection addressing transmission project exemptions from the reevaluation process.<sup>119</sup>

**(2) July 31, 2014 Revised Compliance Filings**

65. Non-Public Utilities support Filing Parties’ amendment to remove the 2015 abbreviated transmission planning cycle. Non-Public Utilities agree with Filing Parties that there is insufficient time to implement the abbreviated transmission planning cycle in 2015 while simultaneously preparing for the standard biennial transmission planning cycle set to begin in 2016.<sup>120</sup>

66. Conversely, Public Interest Organizations assert that there is significant overlap between the preparations needed for the 2015 abbreviated transmission planning cycle and the 2016 two year transmission planning cycle, and, thus, argue that preparing for the abbreviated cycle in 2015 will accomplish, in advance, much of the preparation needed for the 2016 transmission planning cycle. Thus, Filing Parties’ concern that they cannot concurrently implement the abbreviated transmission planning cycle and the 2016 transmission planning cycle is mitigated.<sup>121</sup> Second, Public Interest Organizations

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<sup>118</sup> LS Power Comments at 21 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 253).

<sup>119</sup> LS Power Comments at 22.

<sup>120</sup> Non-Public Utilities August 14, 2014 Comments at 2.

<sup>121</sup> Public Interest Organizations August 14, 2014 Comments at 4.

explain that Filing Parties are currently collaborating with stakeholders and are making progress in preparing for the 2015 abbreviated transmission planning cycle, such as drafting documents, procedures, and priorities.<sup>122</sup> In addition, Public Interest Organizations express concern that Filing Parties' proposal to omit the abbreviated transmission planning cycle in 2015 could halt or delay the progress Filing Parties and stakeholders have made up to this point, and may eliminate the transparency and stakeholder involvement afforded by Order No. 1000 until the 2016 transmission planning cycle preparation commences.<sup>123</sup> Finally, Public Interest Organizations state that experience gained from the 2015 abbreviated transmission planning cycle will ensure a better outcome for the 2016 transmission planning cycle.<sup>124</sup> For example, they state that the WestConnect transmission planning region has not previously conducted any relevant cost-benefit analysis or production cost modeling on a regional basis, and a nearer term effective date will get the process going.<sup>125</sup> LS Power agrees and states that Filing Parties have failed to support their request, but rather, simply contend that to implement the abbreviated transmission planning process would require additional resources.<sup>126</sup>

(c) **Answers to Protests of September 20, 2013  
Compliance Filings**

67. With respect to LS Power's request that the Commission adopt an effective date of January 1, 2014, Filing Parties argue that their proposal allows for flexibility and gives some certainty to parties participating in the WestConnect transmission planning region, while aligning the WestConnect regional transmission planning process with those of its interregional neighbors. Filing Parties explain that it would be impossible to use a January 1, 2014 effective date if the Commission issues an order approving the second round compliance filings in mid-2014, and that until the Commission approves Filing Parties' proposed OATT revisions, they are required to follow their existing Order No. 890 regional transmission planning processes as the filed rate. While LS Power is concerned about the proposed abbreviated transmission planning process if the initial effective date is January 1, 2015, Filing Parties explain that they do not intend to limit the full participation of all interested transmission developers; rather, the abbreviated process

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<sup>122</sup> *Id.* at 5.

<sup>123</sup> *Id.* at 3.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 6.

<sup>126</sup> LS Power August 14, 2014 Comments at 2-3.

is proposed only as needed for the initial transmission planning cycle to allow Filing Parties to streamline the process to ensure that key milestones in the transmission planning process can be met. If an abbreviated process is needed, Filing Parties explain that the Planning Management Committee will develop a study scope for the first year, including project submission deadlines, and post it to the WestConnect website within the first 30 days of the year. According to Filing Parties, this abbreviated process will ensure that the Order No. 1000 reforms can begin, and participants will receive no less than 30 days notice for required submissions, as well as stated timeframes to cure any deficiencies.<sup>127</sup>

68. Non-Public Utilities likewise disagree with LS Power's proposed January 1, 2014 effective date. They argue that key issues remain outstanding and future modifications to the process would disrupt the process significantly. Instead, they argue that the Commission should order a January 1, 2015 effective date.<sup>128</sup>

69. Moreover, Filing Parties and Non-Public Utilities request the Commission to dismiss LS Power's argument that all projects being planned as of the effective date of the WestConnect regional transmission planning process should be subject to the regional transmission planning and cost allocation process. Filing Parties and Non-Public Utilities argue that in the First Compliance Order the Commission dismissed LS Power's identical claim and found that Filing Parties' proposal to exempt from reevaluation those transmission facilities that meet one or more of certain criteria as of the last effective date of Filing Parties' compliance filings was a reasonable approach.<sup>129</sup> Non-Public Utilities further argue that requiring reevaluation of transmission projects that are already in the WECC review pipeline would delay the construction of projects that have been previously approved and supported, and unnecessarily add costs to the process, without providing any additional benefits to the transmission planning region.<sup>130</sup>

**(d) Commission Determination**

70. We find that Filing Parties have complied with the Commission's directives in the First Compliance Order to align the effective date and implementation of their regional transmission planning process. Filing Parties propose an effective date of January 1 in

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<sup>127</sup> Filing Parties Answer at 23-25.

<sup>128</sup> Non-Public Utilities Answer to LS Power at 14-15.

<sup>129</sup> Filing Parties Answer at 44-47 and Non-Public Utilities Answer to LS Power at 13 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 30).

<sup>130</sup> Non-Public Utilities Answer to LS Power at 13-14.

the year following the Commission's conditional or full acceptance of the instant filing. Filing Parties explain that, given the important link between the WestConnect regional transmission planning process with the western interregional coordination process and with the processes of its interregional neighbors, they intend to commence the biennial WestConnect regional transmission planning process in an even-numbered year to align these processes.

71. As discussed below, we accept Filing Parties' proposed effective date of January 1 in the year following the Commission's acceptance, including any conditional acceptance, of the instant filing (i.e., January 1, 2015). We also reject Filing Parties' proposal in their July 31, 2014 Revised Compliance Filings to eliminate the one-time abbreviated transmission planning cycle to be held during 2015.

72. We will first discuss the implementation of the abbreviated planning cycle to be held in 2015. As explained above, Filing Parties initially proposed to conduct a one-time abbreviated process during 2015, and to implement their full biennial transmission planning process in 2016, the following even-numbered year. In their July 31, 2014 Revised Compliance Filings, Filing Parties sought to eliminate this aspect of their second round compliance proposal. We deny Filing Parties' request to eliminate the one-time abbreviated transmission planning cycle to be held during 2015, which would in effect delay the effective date of their revised transmission planning process to January 1, 2016.<sup>131</sup> We agree with Public Interest Organizations that, because the 2015 abbreviated transmission planning process is the same as the biennial transmission planning process, except on a condensed schedule, the preparations Filing Parties must make to implement the 2015 and 2016 transmission planning cycles are essentially the same. Further, the preparations for 2015 (e.g., tools and contracts) will be needed to conduct the regular biennial transmission planning process starting in 2016.<sup>132</sup> We find that the experience gained from the 2015 abbreviated transmission planning cycle can inform the parties with respect to instituting new processes and ensure a better outcome for the transmission planning cycle set to commence in 2016. As explained by Public Interest Organizations, Filing Parties and stakeholders have already begun their preparations for the 2015 abbreviated planning cycle. Thus, the issuance of this order three and a half months in advance of the proposed January 1, 2015 effective date for the abbreviated transmission planning cycle should provide sufficient time for Filing Parties and stakeholders to implement the proposal. We also note that the study scope under the abbreviated transmission planning cycle is due on January 30, 2015,<sup>133</sup> providing an additional 30

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<sup>131</sup> *E.g.*, Arizona Public Service Co. July 31 Compliance Revised Filings at 1-2.

<sup>132</sup> Public Interest Organizations August 14, 2014 Comments at 4.

<sup>133</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.A.



days for Filing Parties and stakeholders to obtain the contracts, staffing, and funding necessary to implement the abbreviated transmission planning cycle in 2015, while also considering the resources necessary to implement its standard biennial transmission planning cycle in 2016.<sup>134</sup> Further, accepting the initial proposal to implement both a single-year abbreviated transmission planning cycle in 2015 and the full biennial transmission planning cycle in 2016 will allow the regional transmission planning process to begin without disrupting the process or unnecessarily delaying its commencement. We therefore deny Filing Parties' request to eliminate the one-time abbreviated transmission planning cycle to be held during 2015, and accept Filing Parties' initial proposal to make the revisions submitted in the compliance filing effective January 1, 2015.<sup>135</sup>

73. Regarding the abbreviated process itself, we agree with LS Power that an abbreviated transmission planning cycle should ensure full participation in the process by all transmission developers. We find that, as proposed, Filing Parties' abbreviated process allows for full participation by all transmission developers because it is a streamlined process that follows the terms accepted by the Commission, except on a condensed timeline (i.e., a one-year transmission planning cycle). As a result, we also accept Filing Parties' original commitment to post the timeline for the abbreviated process developed by the Planning Management Committee in January 2015.<sup>136</sup> We note that such plan should include the applicable schedule for project submission deadlines and other milestones, as appropriate.

74. Next, we reject, as an out-of-time rehearing request, LS Power's requests regarding the provisions that exempt transmission projects that meet certain criteria, as of the regional transmission planning process' effective date, from reevaluation under the Order No. 1000 regional transmission planning process. Order No. 1000 provides that each region must determine at what point a previously approved transmission project is

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<sup>134</sup> See *New York Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044 at P 37 (rejecting a request for an extension of the effective date because there was still sufficient opportunity to implement the regional transmission planning process).

<sup>135</sup> El Paso Electric's and NV Energy's July 31, 2014 Revised Compliance Filings in Docket Nos. ER13-91-003 and ER13-105-003, respectively, replaced their initial compliance filings in Docket Nos. ER13-91-002 and ER13-105-002, rendering those initial compliance filings overcome by events. Given our rejection of Filing Parties' July 31, 2014 Revised Compliance Filings, El Paso Electric and NV Energy must, in further compliance filings, restore the language providing for the abbreviated transmission planning cycle to be held during 2015.

<sup>136</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.A.

no longer subject to reevaluation and, as a result, whether it is subject to Order No. 1000's requirements.<sup>137</sup> As the Commission found in the First Compliance Order, Filing Parties' proposal to exempt from reevaluation those transmission facilities that meet one or more of certain criteria as of the last effective date of Filing Parties' compliance filings is a reasonable approach to identifying which transmission facilities will not be subject to reevaluation and thus not subject to Order No. 1000's requirements. In the First Compliance Order, the Commission previously dismissed the same concern raised by LS Power.<sup>138</sup> Pursuant to section 313(a) of the FPA, an aggrieved party must file a request for rehearing within thirty days after the issuance of the Commission's order.<sup>139</sup> Because LS Power failed to timely raise these challenges, it is barred by the FPA from raising them here.

b. **Order No. 890 and Other Regional Transmission Planning Process General Requirements**

75. Order No. 1000 required that the regional transmission planning process result in a regional transmission plan<sup>140</sup> and satisfy the Order No. 890 transmission planning principles of: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning.<sup>141</sup>

76. The Commission found that Filing Parties' regional transmission planning process fully complies with the Order No. 890 transmission planning principles of coordination, transparency,<sup>142</sup> and economic planning. The Commission directed Filing Parties to

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<sup>137</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 65, 162.

<sup>138</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 30.

<sup>139</sup> 16 U.S.C. § 8251(a) (2012); *see also* 18 C.F.R. § 713(b) (2014) (requiring that a request for rehearing "be filed not later than 30 days after issuance of any final decision . . .").

<sup>140</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

<sup>141</sup> *Id.* PP 146, 151. These transmission planning principles are explained more fully in Order No. 890.

<sup>142</sup> While the Commission found in the First Compliance Order that Filing Parties' filings complied fully with the transparency principle, it also noted that any revisions made in compliance with other directives ordered elsewhere in that order must remain consistent with the transparency principle. Accordingly, Filing Parties were directed to analyze the impact on transparency of the specific revisions they would propose, and if necessary propose further revisions in order to remain in compliance. First Compliance (*continued ...*)

make changes to satisfy the principles of: (a) openness; (b) information exchange; (c) comparability; and (d) dispute resolution, which are discussed further below.

**i. Openness**

**(a) First Compliance Order**

77. In the First Compliance Order, the Commission found that, with certain modifications, the WestConnect transmission planning meetings are open to all affected parties as required by the openness principle.<sup>143</sup> The Commission recognized that, as proposed by Filing Parties, it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties so long as the overall development of the regional transmission plan and the regional transmission planning process remains open.<sup>144</sup> However, the Commission directed Filing Parties to clarify in their respective OATTs that all closed executive sessions of the Planning Management Committee would be limited to matters that are outside the overall development of the regional transmission plan, such as contractual or personnel matters.<sup>145</sup>

78. The Commission accepted Filing Parties' OATT proposal to allow stakeholders to gain access to proprietary information and Critical Energy Infrastructure Information (CEII) by executing non-disclosure agreements. However, the Commission stated that Filing Parties did not provide a clear process for stakeholders to access and submit the standard non-disclosure agreements that stakeholders may execute with the WestConnect planning members and directed Filing Parties to include such a process in their respective OATTs as part of their further compliance filings. In addition, the Commission required Filing Parties to include in their respective OATTs either a standard non-disclosure agreement or, alternatively, a hyperlink to where the non-disclosure agreement can be found on the WestConnect website.<sup>146</sup>

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Order, 142 FERC ¶ 61,206 at P 62. Filing Parties state that they followed the Commission's instruction to evaluate the impact on transparency of all proposed revisions in their compliance filing. *E.g.*, Arizona Public Service Co. Transmittal Letter at 11.

<sup>143</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 52.

<sup>144</sup> *Id.* P 55.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* P 57.

(b) **Summary of Compliance Filings**

79. Filing Parties propose to revise their respective OATTs to clarify that closed executive sessions of the Planning Management Committee will be used to address matters outside of the development of the regional transmission planning process, including matters involving contracts, personnel, financial matters, or legal matters such as, but not limited to, litigation.<sup>147</sup> Filing Parties also propose to revise their respective OATTs to state that any entity wishing to access confidential information must execute and submit via e-mail a non-disclosure agreement obtained from the WestConnect website.<sup>148</sup>

(c) **Commission Determination**

80. We find that Filing Parties' compliance filings partially comply with the First Compliance Order's directives with respect to the openness principle. Filing Parties clarified in their respective OATTs that all closed executive sessions of the Planning Management Committee will be limited to matters outside the development of the regional transmission planning process, which we find complies with the Commission's directive in the First Compliance Order. In addition, Filing Parties revised their respective OATTs to state that any entity wishing to access confidential information can access, execute, and submit by email a non-disclosure agreement from the WestConnect website. We find that Filing Parties have thus complied with the Commission's directive in the First Compliance Order that they include in their respective OATTs a clear process for stakeholders to access and submit the standard non-disclosure agreements that stakeholders may execute with the WestConnect planning members. However, we note that in some instances in Filing Parties' respective OATTs, Filing Parties have included hyperlinks to the non-disclosure agreements that are not functioning. To avoid future confusion, Filing Parties are directed to include in their respective OATTs either a standard non-disclosure agreement or, alternatively, the location on the WestConnect website where the non-disclosure agreement can be found. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to include a copy of the document in their respective OATTs or the location on the WestConnect website.

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<sup>147</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 9; Arizona Public Service Co. OATT, Attachment E, § III.B.5.b.

<sup>148</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 9; Arizona Public Service Co. OATT, Attachment E, § III.E.8.

**ii. Information Exchange****(a) First Compliance Order**

81. The Commission found that Filing Parties' proposal partially complied with the information exchange principle. While the proposal detailed procedures governing the submission and exchange of planning information and data in the regional transmission planning process, it only generally described the timing for submission and exchange of planning information and data in the regional transmission planning process, and the notice that would be provided to stakeholders and other entities responsible for submission of such data.<sup>149</sup> Thus, the Commission found that Filing Parties' proposal failed to provide sufficient detail regarding the schedule for submission of information during the WestConnect transmission planning cycle, and directed Filing Parties to revise their respective OATTs to include details on the timing and notice for submission of such information.<sup>150</sup>

**(b) Summary of Compliance Filings**

82. In response, Filing Parties' revised OATT language specifies in various places that, any time the WestConnect transmission planning region requests information from members or stakeholders, the submission period shall last for no less than thirty days.<sup>151</sup> Additionally, Filing Parties propose to revise the submission requirements to clarify that transmission project submittals and non-transmission alternative submittals that address an identified regional need may be submitted through the fifth quarter of the WestConnect transmission planning cycle (i.e., the first quarter of the second year of the transmission planning cycle).<sup>152</sup>

**(c) Commission Determination**

83. We find that Filing Parties' compliance filings partially comply with the First Compliance Order's directives and the information exchange principle. Filing Parties' respective OATTs include only general timeframes for when stakeholders must submit various types of information and input, but do not detail when, in the WestConnect

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<sup>149</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 67.

<sup>150</sup> *Id.*

<sup>151</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.1, III.C.6.

<sup>152</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 12; Arizona Public Service Co. OATT, Attachment E, § III.C.

transmission planning cycle, such information and input is required. For example, when seeking stakeholder feedback on modeling assumption data, Filing Parties' revised OATTs provide that "requests for submittal of data from WestConnect members and stakeholders will be followed by a data submittal window lasting no less than thirty (30) days from the date of such requests."<sup>153</sup> While this provides a clear timeframe for the submission window, it does not provide even a general guideline for when in the regional transmission planning process this request might occur. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their respective OATTs to include more detailed guidelines on the timing and notice for submission of information and input throughout the regional transmission planning process. Such revisions should include a regional transmission planning process schedule delineating opportunities and/or requests for stakeholder input during the process, and could be complemented with a flow chart or other graphic to allow stakeholders to easily understand the milestones in the regional transmission planning process.

### iii. Comparability

#### (a) First Compliance Order

84. In the First Compliance Order, the Commission found that Filing Parties' filings partially complied with the comparability principle. Specifically, the Commission found that Filing Parties' proposal provided sufficient detail regarding how non-transmission alternatives will be evaluated in the regional transmission planning process. However, the Commission found that Filing Parties' OATTs failed to require that the WestConnect transmission planning region, after considering the data and comments supplied by customers and other stakeholders, develop a transmission plan that meets the specific service requests of Filing Parties' transmission customers and otherwise treats similarly-situated customers comparably in transmission planning. The Commission directed Filing Parties to revise their respective OATTs to address this requirement.<sup>154</sup>

85. The Commission also rejected a proposal by NV Energy to eliminate from its local transmission planning process a provision requiring comparable treatment of all solutions that are presented on a timely basis. The Commission concluded that NV Energy's proposed modification was unjustified and outside the scope of Order No. 1000.<sup>155</sup>

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<sup>153</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.

<sup>154</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 86- 87.

<sup>155</sup> *Id.* P 87.

86. The Commission concluded that Filing Parties' proposed treatment of non-transmission alternatives might not be comparable to the consideration of transmission solutions and required further clarification. The Commission stated that it was not explicitly stated in Filing Parties' OATTs that non-transmission alternatives, like transmission proposals, will have the opportunity to demonstrate that information required for a project submittal in the WestConnect regional transmission planning process should not be required for a specific non-transmission alternative. Accordingly, the Commission directed Filing Parties to amend their OATTs to expressly provide both transmission and non-transmission alternatives the opportunity to omit unnecessary information from project submittals in the regional transmission planning process.<sup>156</sup>

87. Finally, the Commission rejected Filing Parties' proposal to assess a \$25,000 submission fee to non-transmission alternative proposals, notwithstanding that non-transmission alternatives are not eligible for regional cost allocation. The Commission stated:

Filing Parties' proposal also appears to apply a \$25,000 filing fee on a non-comparable basis, and its application to non-transmission alternatives might be unjust, unreasonable, and unduly discriminatory. The \$25,000 fee appears to apply to transmission proposals for which regional cost allocation is being sought and to non-transmission alternatives, which Filing Parties state will not be eligible for regional cost allocation. Assessing a \$25,000 fee for proposing non-transmission alternatives that are ineligible for regional cost allocation appears unjust and unreasonable. As such, Filing Parties may not assess this fee for proposing projects that do not seek cost allocation, including non-transmission alternatives. Filing Parties on compliance should revise their OATTs accordingly.<sup>[157]</sup>

(b) **Request for Rehearing**

88. Filing Parties seek clarification from the Commission that a cost-based fee structure, if designed to collect the actual cost of the study that the sponsor requests (whether proposing to develop a transmission project or non-transmission alternative),

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<sup>156</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 89.

<sup>157</sup> *Id.* P 90.

would comply with Order No. 1000. Filing Parties seek rehearing if the Commission does not grant this clarification.<sup>158</sup>

89. Filing Parties state that, although the Commission rejected the \$25,000 fee for non-transmission alternative proposals on the basis that such proposals were not eligible to be selected in the regional transmission plan for purposes of cost allocation, the Commission did not address who should fund the study of a non-transmission alternative proposal, given that the Commission requires the evaluation of such alternatives under Order No. 1000. Filing Parties state that the Commission's finding has created confusion as to how such studies for non-transmission alternative proposals are to be paid for.<sup>159</sup>

90. Additionally, Filing Parties explain that, in response to the First Compliance Order, they undertook an evaluation to consider whether to remove the flat fee design of the project submittal fee and instead design a cost-based fee applicable to all projects, whereby an initial deposit is tendered by a developer seeking study work (whether for a transmission facility or a non-transmission alternative), with a subsequent true-up for the actual consultant fees and other costs incurred by the transmission planning region to study the proposal. Filing Parties seek clarification that a project fee of this type, if designed to collect the actual cost of the study for a transmission project or non-transmission alternative, would comply with Order No. 1000.<sup>160</sup>

**(c) Summary of Compliance Filings**

91. Filing Parties propose to revise their respective OATTs to address the Commission's concerns with respect to comparability. Filing Parties' proposed revisions state that "the [Planning Management Committee], after considering the data and assumptions supplied by customers and other stakeholders, [will] develop a regional transmission plan that treats similarly-situated customers (e.g., network, retail network, and native load) comparably in transmission system planning."<sup>161</sup> Filing Parties explain that this statement does not indicate that the Planning Management Committee will develop a transmission plan "[that] meets the specific service requests of their

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<sup>158</sup> Filing Parties Rehearing Request at 52.

<sup>159</sup> Filing Parties Rehearing Request at 51-52.

<sup>160</sup> *Id.*

<sup>161</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 10; Arizona Public Service Co. OATT, Attachment E, § III.B.1.



transmission customers”<sup>162</sup> because the Planning Management Committee has no transmission customers and does not receive or evaluate specific service requests for transmission service on any individual transmission system. Rather, Filing Parties note that the obligation to meet specific service requests is appropriately left to each individual transmission provider and thus their proposed revision addresses the Commission’s concern.<sup>163</sup>

92. Filing Parties also propose to amend their respective OATTs to permit sponsors of non-transmission alternatives to demonstrate that the omission of unnecessary information is appropriate for a specific proposal on the same basis as sponsors of transmission alternatives.<sup>164</sup> Specifically, Filing Parties propose to revise their respective OATTs to provide that, when submitting a non-transmission alternative, a stakeholder shall identify the information that it believes is not necessary and justify its conclusion.<sup>165</sup>

93. Regarding the flat \$25,000 project submittal fee applicable for transmission and non-transmission alternative proposals, Filing Parties propose to amend their proposal so that the collection of study costs is applied on a comparable basis to all projects studied to address an identified regional need. Under the revised proposal: (1) any project may seek study by the Planning Management Committee to address an identified regional need, without regard to whether the project seeks regional cost allocation; (2) all projects, whether transmission alternatives or non-transmission alternatives, seeking such study must pay the costs of the study, without regard to whether the project seeks regional cost allocation; and (3) the method of collecting that reimbursement will change from a flat \$25,000 fee to a \$25,000 deposit, subject to true-up based on actual costs.<sup>166</sup> In addition, while Filing Parties’ respective OATTs provide that any interested stakeholder may submit project ideas for consideration in the regional transmission planning process without a need for that stakeholder’s project to qualify for a project submittal for purposes of cost allocation, Filing Parties propose to revise their respective OATTs to

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<sup>162</sup> E.g., Arizona Public Service Co. Transmittal Letter at 10 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 87).

<sup>163</sup> E.g., Arizona Public Service Co. Transmittal Letter at 10.

<sup>164</sup> E.g., Arizona Public Service Co. Transmittal Letter at 10; Arizona Public Service Co. OATT, Attachment E, § III.C.6.

<sup>165</sup> E.g., Arizona Public Service Co. OATT, Attachment E, § III.C.6.

<sup>166</sup> E.g., Arizona Public Service Co. Transmittal Letter at 11; Arizona Public Service Co. OATT, Attachment E, § III.C.

clarify that specific project submittals are treated differently from those offering project ideas for consideration in the regional transmission planning process.<sup>167</sup>

**(d) Commission Determination**

94. We find that Filing Parties' revised proposal complies with the Commission's directives in the First Compliance Order because the Planning Management Committee, after considering the data and comments supplied by customers and other stakeholders, are obligated to treat similarly-situated customers comparably in developing the regional transmission plan. Also, consistent with the First Compliance Order, Filing Parties revised their respective OATTs to permit a stakeholder submitting a non-transmission alternative to identify the information it believes is not necessary and justify that conclusion in the same manner as transmission developer who believes certain information is not necessary.

95. With respect to fees assessed to study transmission and non-transmission solutions as part of the regional transmission planning process, we find that, as an initial matter, under Order No. 1000 and Order No. 890, transmission providers must allow any stakeholder to suggest potential transmission and non-transmission solutions as part of providing input into a transmission providers' local and regional transmission planning processes. Thus, charging a fee to stakeholders for submitting ideas or input for transmission or non-transmission solutions would be inconsistent with Order No. 890 and Order No. 1000's emphasis on an open and inclusive regional transmission planning process.<sup>168</sup> For example, the First Compliance Order accepted the proposal to charge a fee to become a member of the WestConnect Planning Management Committee because, even if an interested party chooses not to become a Planning Management Committee member, it is able to voice concerns and opinions on proposals, propose solutions for

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<sup>167</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.

<sup>168</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 61,297 at P 188 (stating "the planning process must provide for the timely and meaningful input and participation of all interested customers and other stakeholders in the development of transmission plans. Customers and other stakeholders therefore must have the opportunity to participate at the early stages of the development of the transmission plan, rather than merely given an opportunity to comment on transmission plans that were developed in the first instance without their input."); Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 70 (stating "[i]n 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").

consideration, and provide other meaningful input throughout the WestConnect regional transmission planning process.<sup>169</sup>

96. There is a difference, however, between stakeholders submitting input and ideas for solutions as part of the open and transparent regional transmission planning process, and the submission of specific transmission and non-transmission alternative proposals by potential developers which require the WestConnect transmission planning region to conduct studies. The former represents conceptual ideas that might lack the level of specificity typically required of a specific solution being submitted for consideration in the regional transmission planning process. In contrast, the latter represents concrete proposals for which the developers are seeking regional evaluation (even if they are not being proposed for Order No. 1000 regional cost allocation) and that require a study to be conducted. It is therefore appropriate to differentiate, for purposes of determining whether a study fee may be assessed, between stakeholder-suggested transmission and non-transmission ideas submitted as part of providing input into the regional transmission planning processes and specific transmission projects or non-transmission alternative proposals submitted by a developer to be studied by the transmission planning region.

97. In their first compliance filing, Filing Parties proposed to assess a \$25,000 filing fee for submittal of transmission projects seeking regional cost allocation and non-transmission alternatives proposals that are not eligible for regional cost allocation, the concern addressed in the First Compliance Order was charging the *same* \$25,000 filing fee to study a transmission project for potential selection in the regional transmission plan for purposes of cost allocation and a non-transmission alternative that is ineligible for regional cost allocation.<sup>170</sup> Accordingly, the proposal to charge the same filing fee may have been unjust and unreasonable because the cost to study a transmission project for potential selection in the regional transmission plan for purposes of cost allocation may be different (i.e., higher) than studying a non-transmission alternative that is not eligible for regional cost allocation. Filing Parties' new proposal to charge a cost-based fee to all developers that submit a transmission project or non-transmission alternative proposal regardless of whether the developer is seeking regional cost allocation will alleviate that concern.

98. In addition, we find that a study fee charged to developers that propose a non-transmission alternative meets the comparability principle because the fee would apply to *all* proposals in the regional transmission planning process, regardless of whether the

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<sup>169</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 52.

<sup>170</sup> The First Compliance Order did not prohibit WestConnect Filing Parties from assessing any fee for the study of non-transmission alternative proposals in the regional transmission planning process.

entity submitting the proposal is seeking cost allocation. This proposal is thus consistent with Order No. 1000's requirement that, when evaluating alternative transmission projects, public utility transmission providers in the transmission planning region consider non-transmission alternatives on a comparable basis.<sup>171</sup>

99. Finally, we find that this particular proposal is acceptable as it charges study fees to an entity that proposes a transmission project or non-transmission alternative that it wants to develop. The Commission has affirmed the appropriateness of assessing fees for transmission studies initiated by a developer or customer.<sup>172</sup> Thus, Filing Parties' proposed approach is consistent with the Commission's general practice allowing transmission providers to recover from developers or customers the cost of transmission studies initiated by the developer or customer.

100. However, we find that Filing Parties' proposed OATT provisions regarding the \$25,000 deposit, which is subject to true-up based on the actual study costs, partially complies with the Commission requirements with respect to refunds of deposits for cost-based studies. First, Filing Parties have not proposed to refund the interest accrued on any unused balance of the deposit. We require Filing Parties to refund to the project sponsor the difference between the deposit and the study costs, including interest. Moreover, Filing Parties must provide to each project sponsor a detailed and itemized accounting of the study costs in the relevant invoices.<sup>173</sup> Furthermore, Filing Parties must

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<sup>171</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

<sup>172</sup> See, e.g., *pro forma* OATT § 19.2 (requiring that a Facilities Study Agreement for a long-term firm point-to-point transmission service request require the transmission customer to agree to reimburse the Transmission Provider for the cost of performing the facilities study); *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (citation abbreviated) (establishing *pro forma* study deposits for generator interconnection requests of \$10,000, \$50,000, and \$100,000 for feasibility, system impact, and facilities studies, respectively); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027, at P 144 (2004) (affirming that a Transmission Provider is not obligated to perform or continue to perform any interconnection studies unless the interconnection customer has paid all undisputed amounts for the studies).

<sup>173</sup> See Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 220 (requiring Transmission Provider to provide "detailed and itemized accounting" of Interconnection Study costs), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

make clear in their respective OATTs that any disputes regarding the accounting for specific deposits should be addressed under the transmission planning dispute resolution procedures. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to: (1) refund to the project sponsor the difference between the deposit and the study costs, including interest; (2) provide to each project sponsor a description of the costs to which the deposit will be applied, how those costs will be calculated, and an accounting of the actual costs; and (3) provide a provision that any disputes arising from this process be addressed under the transmission planning dispute resolution procedures.

101. Given our acceptance above of Filing Parties' new proposal, their request for rehearing and clarification regarding the ability to use cost-based study fees is moot.

**iv. Dispute Resolution**

**(a) First Compliance Order**

102. In the First Compliance Order, the Commission found that Filing Parties complied with the dispute resolution principle for disputes arising within the scope of WECC's dispute resolution procedures and under their respective OATTs. However, the Commission noted that the procedures do not apply to disputes that may arise between or among members of the Planning Management Committee. The Commission further noted Filing Parties' representation that they would include additional dispute resolution procedures in the Planning Participation Agreement<sup>174</sup> to be executed by the members of the Committee.<sup>175</sup> Accordingly, the Commission directed Filing Parties to revise their respective OATTs to include all procedures to address disputes that arise from the regional transmission planning process.<sup>176</sup>

**(b) Summary of Compliance Filings**

103. Filing Parties propose to revise their OATTs to incorporate new procedures applicable to disputes that might arise between members of the Planning Management

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<sup>174</sup> According to Filing Parties, the Planning Participation Agreement will formalize the WestConnect members' relationships and establishes obligations, including transmission owner coordination of regional transmission planning among WestConnect participants and the local transmission planning process to produce a regional transmission plan. *E.g.*, Arizona Public Service Co. OATT, Attachment E § III.A.1.

<sup>175</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 95.

<sup>176</sup> *Id.*

Committee and require that all disputes be initiated no later than 30 days from the date on which the conduct that gives rise to the dispute occurs. The procedures require that (1) disputing Planning Management Committee members first seek to resolve the dispute by providing written notification of the dispute in accordance with the provisions of the Planning Participation Agreement to the Planning Management Committee (or designated sub-committee), which will seek to resolve the dispute through discussion, negotiation, and the development of a recommended course of action. The Planning Management Committee may adopt the recommended resolution, or alternatively the disputing parties may refer the dispute to arbitration in accordance with the provisions of the Planning Participation Agreement. Under the proposal, if the disputing members are unable to resolve their dispute using these processes, a disputing member may refer either a procedural or substantive matter within the Commission's jurisdiction to the Commission for resolution, in accordance with its rights under the FPA; however, a disputing Planning Management Committee member must first pursue resolution under the provisions of the Planning Participation Agreement before referring a matter to the Commission for resolution.<sup>177</sup>

(c) **Protests/Comments**

104. Several parties express concern about the proposed dispute resolution provisions, including certain provisions contained in the Planning Participation Agreement (which was not filed with the Commission). Colorado and Nevada Commissions explain that while the dispute resolution provisions in Filing Parties' OATTs cover only high-level, procedural aspects of the dispute resolution process, the dispute resolution provisions contained in the Planning Participation Agreement call into question state commissions' ability to participate in the region's transmission planning process as voting members of the Planning Management Committee, without compromising their ability to fulfill their regulatory responsibilities or causing the assumption of legal or cost sharing responsibility that state commissions lack the authority to assume.<sup>178</sup> Similarly, LS Power states that the Commission cannot determine whether the proposal is just and reasonable without first seeing and understanding the unfiled Planning Participation Agreement.<sup>179</sup> Public Interest Organizations likewise argue that the Planning Participation Agreement's provisions on dispute resolution liability will heavily prejudice stakeholders like Public Interest Organizations against becoming members of the

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<sup>177</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 9; Arizona Public Service Co. OATT, Attachment E, § V.

<sup>178</sup> Colorado and Nevada Commissions Comments at 2-3.

<sup>179</sup> LS Power Comments at 23.

Planning Management Committee.<sup>180</sup> Commenters ask the Commission to direct Filing Parties to file the Planning Participation Agreement with the Commission.<sup>181</sup>

105. LS Power also objects to the proposed OATT provision that requires a disputing Planning Management Committee member to first pursue resolution under the provisions of the Planning Participation Agreement before referring a matter to the Commission for resolution.<sup>182</sup> It states that the Commission cannot determine whether this provision is just and reasonable without first seeing and understanding the unfiled Planning Participation Agreement.<sup>183</sup> It adds that if the dispute resolution process under the Planning Participation Agreement is not of limited duration, it should not stand as a barrier to addressing tariff-based disputes to the Commission.<sup>184</sup>

(d) **Answers**

106. Filing Parties argue that, regardless of how this issue of legal liability is resolved in the Planning Participation Agreement, the dispute resolution procedures in the Planning Participation Agreement should not require any modification. Filing Parties explain that disputes by any stakeholder in the regional transmission planning process with respect to the Planning Management Committee's actions in performing regional transmission planning are to be addressed in accordance with the dispute resolution provisions of the public utility transmission providers' OATTs.

(e) **Commission Determination**

107. We find that the revised dispute resolution provisions in Filing Parties' compliance filings partially comply with the directive in the First Compliance Order. While Filing Parties have revised their respective OATTs to apply dispute resolution procedures to all disputes that may arise between or among members of the Planning Management Committee, Filing Parties have not provided sufficient detail to show that these provisions fully comply with Order No. 1000.

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<sup>180</sup> Public Interest Organizations Protest at 10-11.

<sup>181</sup> Colorado and Nevada Commissions Supplemental Comments at 7-8; LS Power Comments at 8-10.

<sup>182</sup> LS Power Comments at 23 (citing, *e.g.*, Arizona Public Service Co. OATT, Attachment E, § V).

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

108. In particular, Filing Parties' proposed revisions reference provisions of the Planning Participation Agreement, which Filing Parties have not filed with the Commission for review. With respect to commenters' concerns regarding provisions in the Planning Participation Agreement that might limit or prevent state public service commission and other stakeholder participation in the Planning Management Committee, we find that those concerns cannot be addressed based on the record before us, as the Planning Participation Agreement has not been filed with the Commission. Given the significance of the dispute resolution provisions in the Planning Participation Agreement to the WestConnect regional transmission planning process, it is necessary that we have an opportunity to review and approve those provisions as part of Filing Parties' Order No. 1000 compliance efforts. Accordingly, as discussed further below in the Planning Participation Agreement section of this order, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that include submittal of the Planning Participation Agreement for the Commission's review.<sup>185</sup>

109. Moreover, we find that Filing Parties' proposal that, for disputes among Planning Management Committee members, the disputing Planning Management Committee members must first seek to resolve such disputes under the provisions of the Planning Participation Agreement before referring a matter to the Commission for resolution<sup>186</sup> does not comply with the dispute resolution principle for transmission planning disputes established in Order No. 890. Order No. 890 clarified that "affected parties ... would retain any rights they may have under FPA section 206 to file complaints with the Commission."<sup>187</sup> While Filing Parties' revised OATTs state that the availability of their dispute resolution procedures does not eliminate a disputing Planning Management Committee member's right under the FPA to refer a procedural or substantive matter within the Commission's jurisdiction to the Commission for resolution,<sup>188</sup> we find that requiring a Planning Management Committee member to first seek to resolve a dispute among Planning Management Committee members under the provisions of the Planning Participation Agreement before referring such a dispute to the Commission would significantly limit a party's rights to file a section 206 complaint with respect to transmission planning disputes. Accordingly, we require Filing Parties to submit, within

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<sup>185</sup> Colorado and Nevada Commissions state that they continue to work with Filing Parties on the dispute resolution procedures. To the extent stakeholders' concerns regarding liability and dispute resolution are not resolved prior to the submission of those filings, stakeholders may raise those concerns at that time.

<sup>186</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § V.

<sup>187</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 503.

<sup>188</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § V.



60 days of the date of issuance of this order, further compliance filings that revise their respective OATTs to remove the requirement that, for disputes among Planning Management Committee members, the disputing Planning Management Committee members must first seek to resolve such disputes under the provisions of the Planning Participation Agreement before referring a matter to the Commission for resolution.

c. **Requirement to Plan on a Regional Basis to Identify More Efficient or Cost-Effective Transmission Solutions**

110. Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.<sup>189</sup> Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the transmission planning region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.<sup>190</sup> In addition, whether or not public utility transmission providers within a transmission planning region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is a more efficient or cost-effective solution to their needs.<sup>191</sup>

111. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer<sup>192</sup> must provide to the regional transmission planning process to allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.<sup>193</sup>

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<sup>189</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

<sup>190</sup> *Id.* P 149.

<sup>191</sup> *Id.* P 331.

<sup>192</sup> Order No. 1000 defines merchant transmission projects as projects “for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates.” *Id.* P 119.

<sup>193</sup> *Id.* P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

112. Finally, the regional transmission planning process developed by public utility transmission providers, in consultation with stakeholders, must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's transmission needs.<sup>194</sup> Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

**i. Affirmative Obligation to Plan**

**(a) First Compliance Order**

113. In the First Compliance Order, the Commission found that Filing Parties' filings partially complied with the requirement of Order No. 1000 that public utility transmission providers participate in a transmission planning region that conducts a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs. Specifically, the Commission found that the process will identify projects to resolve any potential reliability violations, but will rely on interested parties to propose regional reliability projects that replace components of the local transmission plans of multiple transmission owners. The Commission also noted that the process will analyze economic projects and projects to address transmission needs driven by public policy requirements, but there was no indication as to whether such projects will be identified by the WestConnect transmission planning region or by stakeholders, prospective transmission developers, and other interested parties.<sup>195</sup>

114. The Commission stated that Order No. 1000 addressed the deficiencies in the existing requirements of Order No. 890 by, among other requirements, placing an affirmative obligation on public utility transmission providers to participate in a regional transmission planning process that produces a regional transmission plan.<sup>196</sup> The Commission further explained that it is not sufficient for a transmission planning region to merely "roll-up" local transmission plans without analyzing whether the regional needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution.<sup>197</sup>

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<sup>194</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

<sup>195</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 114.

<sup>196</sup> *Id.* P 115 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148).

<sup>197</sup> *Id.* P 114.

115. Accordingly, the Commission directed Filing Parties to revise their respective OATTs to set forth the affirmative obligation to identify transmission solutions that more efficiently or cost-effectively meet reliability requirements, address economic considerations, and meet transmission needs driven by public policy requirements.<sup>198</sup> The Commission stated that these OATT revisions must describe the process Filing Parties will use to identify more efficient or cost-effective transmission solutions and explain how the region will conduct that regional analysis through power flow studies, production cost analyses, and/or other methods.<sup>199</sup>

**(b) Requests for Rehearing or Clarification**

**(1) Summary of Requests for Rehearing or Clarification**

116. Filing Parties seek rehearing of the Commission’s finding in the First Compliance Order that the proposed regional transmission planning process does not fully satisfy Order No. 1000’s requirement that the regional transmission planning process evaluate alternatives that may meet the needs of the transmission planning region more efficiently or cost-effectively. They contend that this finding is inconsistent with Order No. 1000, which Filing Parties assert does not disturb a public utility’s Order No. 890 transmission planning process, the local transmission plan resulting from that process, or the state’s authority over local transmission planning with respect to public utility transmission providers. Filing Parties state that they reconciled Order No. 1000’s regional transmission planning requirements and the existing Order No. 890 local transmission planning requirements in their compliance filings. The proposed regional transmission planning process specifically imposes upon the regional entity an obligation to evaluate whether there are *regional solutions* that meet the *needs of the region* more cost-effectively or efficiently while the respective local transmission planning processes determine whether a solution in a local transmission plan properly meets a local need, an area Filing Parties assert is “off limits under Order No. 1000.”<sup>200</sup>

117. Filing Parties explain that, consistent with Order No. 1000, they propose to “roll up” their local transmission plans, incorporating a combined assessment of those plans, and to conduct a further review to the extent a local transmission plan or transmission project is submitted and selected for regional cost allocation. Noting that Order No. 1000

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<sup>198</sup> The Commission further noted that any additional OATT procedures proposed to implement this directive must also comply with the Order No. 890 transmission planning principles.

<sup>199</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 117.

<sup>200</sup> Filing Parties Rehearing Request at 39-40.

provides for regional flexibility,<sup>201</sup> and particularly that the Commission decided not “to specify . . . a particular set of analyses that must be performed by public utility transmission providers within the regional transmission planning process,”<sup>202</sup> Filing Parties argue that the Commission’s suggestion that the WestConnect transmission planning region must, in every instance, perform an independent regional analysis to identify the most efficient or cost-effective solution is inconsistent with Order No. 1000. They also argue that the Commission’s holding in the First Compliance Order that “[i]t is not sufficient for a transmission planning region to merely ‘roll-up’ local transmission plans without analyzing whether the regional needs, when taken together, can be met more efficiently or cost-effectively by a regional solution” directly conflicts with Order No. 1000’s finding that regional transmission planning process may utilize a “top down” or “bottom up” approach.<sup>203</sup>

118. Moreover, Filing Parties contend, to the extent the Commission is “imposing upon WestConnect an obligation to separately evaluate every project rolled up into the regional [transmission] plan or alternatively alter its local transmission planning obligations,” the First Compliance Order is contrary to Order No. 1000 in that it necessarily trumps processes that are solely within state public utility commissions’ purview to review the resource plans of public utility transmission providers.<sup>204</sup> Filing Parties further argue that such directive ignores the particular characteristics and circumstances of the WestConnect transmission planning region that render an obligation to perform an independent regional analysis unduly burdensome. Noting that the WestConnect transmission planning region is comprised of both public utility transmission providers and non-public utility transmission providers, that participate on a voluntary basis, Filing Parties explain that WestConnect has only a single contract employee and thus seeks to take advantage of its member utilities’ expertise and manpower by using local transmission plans as a starting point for regional transmission planning. Filing Parties state that this approach is consistent with Order No. 1000’s recognition that “the various regions of the country differ significantly in resources, industry organization, market design, and other ways” and allows WestConnect to benefit from its member utilities’ resources.<sup>205</sup>

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<sup>201</sup> *Id.* at 41-43.

<sup>202</sup> *Id.* at 42 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 149).

<sup>203</sup> *Id.* at 43 (quoting First Compliance Order, 142 FERC ¶ 61,206 at P 114 and citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 158).

<sup>204</sup> *Id.* at 43-44.

<sup>205</sup> *Id.* at 43-45 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 266).

119. Filing Parties also disagree that the proposed regional transmission planning process simply rolls up local transmission plans. They explain that while the process begins with such a roll-up, the local transmission plans are then reviewed to identify regional needs using regional system WECC-approved base cases as a reference point. According to Filing Parties, the WestConnect transmission planning region will then validate the data by performing a regional reliability assessment to ensure that the local transmission plans are simultaneously feasible, as well as a variety of studies, including, but not limited to, steady-state power flow, voltage, stability, short circuit, and transient studies. If a reliability violation is identified, Filing Parties state, the WestConnect regional transmission planning process will identify project alternatives to resolve the violation. Filing Parties also explain that stakeholders will have an opportunity to participate in the process, and that interested parties will have the opportunity to propose regional transmission projects that may be more efficient or cost-effective solutions than the solutions identified in the respective local transmission plans.<sup>206</sup>

120. Filing Parties also assert that the Commission's holding that it is insufficient to merely "roll up" local transmission plans without analyzing whether a regional solution would more efficiently or cost-effectively meet regional needs is inconsistent with state integrated resource planning processes and may stifle transmission development by placing the local transmission plans at risk of a potential "do over" at the regional level. They explain that transmission providers will not have the necessary certainty to proceed with development of transmission facilities that might be needed to meet transmission service requests until the conclusion of the regional transmission planning process. Furthermore, according to Filing Parties, if the results of the regional transmission planning process differ from the state process, transmission providers will be forced into an endless cycle of analysis at the state and regional levels until the two processes produce results similar enough to support moving forward. Filing Parties are concerned that they could be forced either to build transmission facilities that are later found to be less than optimal from a regional perspective such that they face a possible cost recovery disallowance, or to delay the construction of needed transmission facilities to the detriment of their customers.<sup>207</sup>

## (2) **Commission Determination**

121. We deny Filing Parties' request for rehearing. In response to Filing Parties' argument that their proposed regional transmission planning process satisfies Order No. 1000's requirement that the regional transmission planning process evaluate alternatives that may meet the needs of transmission planning region more efficiently or cost-

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<sup>206</sup> *Id.* at 45-46.

<sup>207</sup> *Id.* at 47.

effectively, we affirm the finding in the First Compliance Order that Order No. 1000 requires the public utility transmission providers in the transmission region, in consultation with stakeholders to conduct a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose transmission solutions for the region to consider.<sup>208</sup> Thus, Filing Parties' proposal, to assess whether the local transmission plans are simultaneously feasible in order to identify regional needs and to consider proposed regional transmission projects from interested parties, alone is insufficient to meet Order No. 1000's requirement that the regional transmission planning process evaluate whether there are regional solutions that meet the needs of the region more efficiently or cost-effectively.

122. More specifically, in Order No. 1000 the Commission found action was needed to remedy deficiencies in Order No. 890-compliant local transmission planning processes. In explaining the need for Order No. 1000's reforms, the Commission stated that "[a]fter careful review of the voluminous record in this proceeding" it concluded 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 industry."<sup>209</sup> The deficiencies in the existing Order No. 890 transmission planning processes that were identified by Order No. 1000 included the lack of an affirmative obligation on public utility transmission providers to plan for regional transmission needs.<sup>210</sup> Thus, the Commission found that it had an obligation under the FPA to ensure that Commission-jurisdictional services resulting from regional transmission planning processes are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential, and that regional transmission

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<sup>208</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 114-116.

<sup>209</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 1; *id.* P 116 ("[F]or the pro forma OATT (and, consequently, public utility transmission providers' OATTs) to be just and reasonable and not unduly discriminatory or preferential, it must be revised in the context of transmission planning to include the requirement that regional transmission planning processes result in the production of a regional transmission plan using a process that satisfies the specified Order No. 890 transmission planning principles and that provides an opportunity to consider transmission needs driven by Public Policy Requirements.").

<sup>210</sup> *Id.* PP 147-48.

planning processes must include the affirmative obligation on public utility transmission providers to plan in order to satisfy the FPA's just and reasonable standard.<sup>211</sup>

123. Under their pre-Order No. 1000 OATTs, Filing Parties had no affirmative obligation to plan for the region's transmission needs that culminated in a regional transmission plan that reflects the evaluation of whether alternative regional transmission solutions may be more efficient or cost-effective than transmission solutions identified in local transmission planning processes.<sup>212</sup> In their initial compliance filings, Filing Parties proposed to "roll up" their local transmission plans, assess whether the local transmission plans are simultaneously feasible, and permit interested parties to propose other projects; Filing Parties did not, however, comply with the requirement to undertake an affirmative obligation to plan for the region's transmission needs in the absence of transmission solutions proposed by transmission developers. The Commission thus appropriately concluded that Filing Parties had failed to satisfy this requirement of Order No. 1000.<sup>213</sup> Filing Parties have addressed this requirement in their second round compliance filings and, as addressed more fully below in this section, we find that Filing Parties' revised proposal partially complies with this obligation.

124. In requiring Filing Parties to affirmatively plan for the needs of the transmission planning region, we disagree with Filing Parties' assertion that we are ignoring Order No. 1000's statement that a region could continue to use a "bottom up" approach to transmission planning. Nothing in Order No. 1000 or the First Compliance Order requires Filing Parties to abandon their bottom up approach. Indeed, this approach can be used as the basis for Filing Parties' regional transmission planning process. Thus, for instance, as Filing Parties' OATTs provide, in developing their local transmission plans, Filing Parties can continue to identify local transmission needs and local transmission facilities. Filing Parties can then roll up their local transmission plans. The First Compliance Order does not require Filing Parties to change their processes in this regard, nor does it require that the WestConnect regional transmission planning process to separately evaluate every local transmission project rolled into the regional transmission plan. However, once the local transmission plans are rolled up and are reviewed to identify regional needs, Order No. 1000 requires public utility transmission providers in the transmission planning region to undertake take the additional step of conducting an

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<sup>211</sup> See, e.g., *id.* PP 55, 147-48.

<sup>212</sup> As defined in Order No. 1000, the "local" transmission planning process is 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. *Id.* P 68.

<sup>213</sup> First Compliance Order, 142 FERC ¶ 61,206, at PP 114, 117-119.

analysis to determine whether there are more efficient or cost-effective transmission solutions to meet the regional transmission needs of the region.

125. Similarly, we reject Filing Parties' argument that Order No. 1000's affirmative obligation to plan runs counter to, or otherwise interferes with, state-regulated integrated resource planning. As an initial matter, we reiterate the Commission's finding in Order No. 1000-A that the regional transmission planning requirements "will provide more information and more options for consideration by public utility transmission providers and state regulators and, therefore, can hardly be seen as detrimental to state-sanctioned integrated resource planning."<sup>214</sup> Public utility transmission providers can use the results of the Order No. 1000 regional transmission planning process to inform their state-regulated integrated resource planning processes, just as they can use the results of their integrated resource planning processes to inform the regional transmission planning process. However, nothing in Order No. 1000 requires that public utility transmission providers modify their state integrated resource plans.<sup>215</sup> The regional transmission planning requirements of Order No. 1000 are not the vehicle by which state integrated resource planning is conducted, which "may be a separate obligation imposed on public utility transmission providers under the purview of the states."<sup>216</sup> Thus, to the extent the WestConnect Order No. 1000 regional transmission planning process results in the identification of transmission facilities that could provide access to lower-cost resources than those that were approved in a state-regulated integrated resource planning process, neither Order No. 1000 nor the First Compliance Order requires that Filing Parties modify their resource selections or the transmission facilities that they plan as part of the state-level integrated resource planning process to access those resources identified in the integrated resource plan. We therefore disagree with Filing Parties that the First Compliance Order is inconsistent with, or disruptive to, integrated resource planning requirements.

### (c) Compliance

#### (1) Summary of Compliance Filings

126. Filing Parties propose to revise their respective OATTs to clarify the Planning Management Committee's affirmative obligation to identify solutions that more

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<sup>214</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 190; *see also id.* P 192 (responding to argument that regional transmission planning would disrupt integrated resource planning).

<sup>215</sup> *Id.* PP 168-179.

<sup>216</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 154.



efficiently or cost-effectively meet regional transmission needs, driven by reliability, economics considerations and public policy requirements in the absence of stakeholder requests. Specifically, Filing Parties' revised OATTs provide that:

[w]here a regional transmission need is identified, the [Planning Management Committee] is to perform studies that seek to meet that need through regional projects, even in the absence of project proposals advanced by stakeholders or projects identified through the WECC process. When the [Planning Management Committee] performs a study to meet an identified regional need in circumstances where no stakeholder has submitted a project proposal to meet that regional need, the [Planning Management Committee] is to pursue such studies in a not unduly discriminatory fashion and within the means permitted by [Planning Management Committee] funds. The study methods employed by [Planning Management Committee] initiated studies will be the same as types of study methods employed for stakeholder-initiated studies. . . .<sup>217</sup>

127. Under Filing Parties' proposal, for reliability needs, once the base case is established and verified, the Planning Management Committee will perform a regional reliability assessment in which the base case system models will be checked for adherence to relevant North American Electric Reliability Corporation (NERC) Transmission Planning Standards through appropriate studies, including, but not limited to, steady-state power flow, voltage, stability, short circuit, and transient studies. If a reliability violation is identified, the violation will be referred back to the appropriate transmission owner. For regional violations that impact more than one transmission owner, the Planning Management Committee will identify projects to resolve the violation, including providing an opportunity for interested parties to propose regional reliability projects that are more efficient or cost-effective than other proposed solutions.<sup>218</sup>

128. In addition, Filing Parties explain that the Planning Management Committee will analyze whether there are projects that have the potential to provide economic benefits within the WestConnect transmission planning region through production cost modeling. This analysis will also use WECC Board-approved recommendations to further investigate congestion within the WestConnect transmission planning region and

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<sup>217</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.1.

<sup>218</sup> *E.g.*, *id.* § III.E.2.

stakeholder proposed projects or projects developed through the stakeholder input process for evaluation of economic benefits.<sup>219</sup>

129. Filing Parties state that the Planning Management Committee will also develop regional solutions to identify regional transmission needs driven by public policy requirements.<sup>220</sup> They explain that the Planning Management Committee will begin to evaluate regional transmission needs driven by public policy requirements by first identifying any public policy requirements that are driving local transmission needs of transmission owners in the WestConnect transmission planning region, and including them in the regional base case underlying the regional transmission plan. As required by Order No. 1000, Filing Parties will also engage stakeholders in identifying transmission needs driven by public policy requirements.<sup>221</sup> Next, Filing Parties explain that using the transmission needs identified through this process, the Planning Management Committee, through its subcommittees, will conduct regional transmission planning and develop regional solutions to the identified regional transmission needs driven by public policy requirements.<sup>222</sup>

## (2) Commission Determination

130. We find that Filing Parties' proposed revisions partially comply with the directives in the First Compliance Order regarding the affirmative obligation to plan. As discussed in the First Compliance Order, Order No. 1000 requires that Filing Parties participate in a regional transmission planning process that conducts a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs, including an affirmative obligation to analyze whether such transmission solutions exist regardless of whether potential transmission solutions have been proposed by transmission developers or stakeholders.<sup>223</sup>

131. As a threshold matter, Filing Parties propose that the Planning Management Committee will conduct studies to identify and meet regional needs only within the means permitted by Planning Management Committee funds. Filing Parties do not specify, however, whether such funds will be adequate to fulfill their affirmative

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<sup>219</sup> *E.g., id.* § III.E.3.

<sup>220</sup> *E.g., id.* § III.E.4.b.

<sup>221</sup> *E.g., id.* § III.E.4.a.

<sup>222</sup> *E.g., id.* § III.E.4.b.

<sup>223</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 114-116.

obligation to plan under Order No. 1000. Filing Parties' OATTs indicate that transmission planning costs will be recovered through the public utility transmission providers' transmission rate base<sup>224</sup> and, thus, any claim that Filing Parties cannot conduct studies to identify and meet regional needs due to lack of funding is not persuasive because Filing Parties may recover the costs associated with regional transmission planning through their respective OATT rates.<sup>225</sup> We therefore reject this aspect of Filing Parties' proposal. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to remove the provision that the transmission planning region will only conduct studies to identify and meet regional needs within the means permitted by the Planning Management Committee.

132. Filing Parties' respective OATTs indicate that the Planning Management Committee has an affirmative obligation to identify solutions that more efficiently or cost-effectively meet regional transmission needs, even in the absence of stakeholder requests. For reliability projects, the Planning Management Committee will utilize base case data to perform a regional reliability assessment to check for adherence to relevant NERC Transmission Planning Standards. This assessment will be performed through various types of studies, as explained above. The Planning Management Committee will identify transmission projects to resolve any violations that impact more than one transmission owner, which will subsequently be evaluated against all other alternatives as would any other project. Thus, Filing Parties have revised their OATTs both to describe the process that the Planning Management Committee will use to identify more efficient or cost-effective transmission solutions to meet reliability requirements and to explain how the regional analysis will be conducted. We find that this proposal generally complies with the First Compliance Order's directives regarding the affirmative obligation to plan. However, Filing Parties do not clearly specify in their OATTs when the Planning Management Committee will perform the regional reliability assessment or

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<sup>224</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E § IV (stating that unless Arizona Public Service Co. allocates planning-related costs to an individual stakeholder as permitted under the OATT, all costs incurred by Arizona Public Service Co. related to the regional planning process will be included in Arizona Public Service Co.'s transmission rate base).

<sup>225</sup> In Order No. 890, the Commission addressed cost recovery for planning activities and directed transmission providers to work with other participants in the planning process to develop cost recovery proposals in order to determine whether all relevant parties, including state agencies, have the ability to recover the costs of participating in the planning process. Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586.

when it will identify regional transmission projects that might result from the assessment. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that revise their respective OATTs to identify when in the regional transmission planning process the Planning Management Committee will perform the regional reliability assessment and, if necessary, identify transmission projects to resolve any violations that impact more than one transmission owner.

133. With respect to economic transmission projects, the Planning Management Committee will analyze whether there are economic transmission projects that have the potential to provide economic benefits within the WestConnect transmission planning region through production cost modeling. Filing Parties have therefore revised their OATTs to both describe the process that the Planning Management Committee will use to identify more efficient or cost-effective transmission solutions to address economic considerations and explain how the Planning Management Committee will conduct that regional analysis. As above, while we find this proposal generally complies with the First Compliance Order's directives regarding the affirmative obligation to plan, Filing Parties do not clearly specify in their OATTs when the production cost modeling will occur or when the Planning Management Committee will identify projects that might result from the production cost modeling. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that revise their respective OATTs to identify when in the regional transmission planning process the Planning Management Committee will perform the production cost modeling analysis and identify economic transmission projects.

134. For transmission projects addressing transmission needs driven by public policy requirements, Filing Parties state in their respective OATTs that the Planning Management Committee will conduct an assessment to identify whether there are more efficient or cost-effective regional transmission solutions to meet identified regional transmission needs driven by public policy requirements. However, Filing Parties have not complied with the Commission's directive in the First Compliance Order to describe the process that will be used to identify more efficient or cost-effective transmission solutions to meet transmission needs driven by public policy requirements, and how the region will conduct that regional analysis through power flow studies, production cost analyses, and/or other methods. Further, Filing Parties do not clearly specify in their OATTs when the Planning Management Committee will identify such solutions. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that clearly explain in their OATTs: (1) how the Planning Management Committee will assess whether there are more efficient or cost-effective regional transmission solutions to meet identified regional transmission needs driven by public policy requirements; and (2) when during the WestConnect regional transmission planning process the Planning Management Committee will conduct the assessment to identify such solutions.

**ii. Proposed Governance Structure****(a) First Compliance Order**

135. The Commission found that Filing Parties' proposed governance structure for the WestConnect regional transmission planning process partially complied with Order No. 1000. The Commission held that Filing Parties provided sufficient detail addressing how the Planning Management Committee membership will function and that the governance structure is open to all interested stakeholders. However, the Commission directed Filing Parties to clarify in their OATTs the relationship between the Planning Management Committee and Steering Committee to confirm that the Planning Management Committee will have sole authority over the regional transmission planning process.<sup>226</sup>

**(b) Summary of Compliance Filings**

136. Filing Parties propose to revise their OATTs to clarify that the WestConnect Steering Committee, as well as other prior WestConnect committees, will have no authority to approve or deny the actions of the Planning Management Committee. Specifically, their revised OATTs state that the "committees formed under the WestConnect [Project Agreement for Subregional Transmission Planning] and the WestConnect Steering Committee have no authority over the [Planning Management Committee] and the [Planning Management Committee's] decision making in implementing the Regional Planning Process."<sup>227</sup> As a result, Filing Parties state, the Planning Management Committee will be independent of the other committees and activities of the WestConnect regional transmission planning process.<sup>228</sup>

**(c) Protests/Comments**

137. LS Power claims that the WestConnect transmission planning region's governance structure sets up a two-tiered planning structure not based on transmission ownership, or on load serving obligations, but rather based on a combination of the two.<sup>229</sup> Thus, entities that have load serving obligations but not transmission, or transmission owners with no load obligations, are relegated to second tier status in the governance structure. LS Power asserts that the "Transmission Owners with Load Serving Obligations" sector,

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<sup>226</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 136-139.

<sup>227</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E § III.A.

<sup>228</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 8.

<sup>229</sup> LS Power Comments at 10.

which can include non-enrolled entities, can exclusively veto any action of the Planning Management Committee.<sup>230</sup> LS Power also objects to the proposed requirement that the chair of each subcommittee of the Planning Management Committee be a representative of the Transmission Owners with Load Serving Obligations member sector. It asserts that transmission developers that develop and then own transmission in the WestConnect transmission planning region should receive equal treatment for purposes of fulfilling the planning and cost allocation obligations of Order Nos. 890 and 1000.<sup>231</sup>

138. While Non-Public Utilities support Filing Parties' proposed revisions to the transmission planning process, they state that Filing Parties' OATT provision addressing "Membership Sectors"<sup>232</sup> should be revised to clarify that Non-Public Utilities are able to join any member sector for which they are eligible, in lieu of the Transmission Owners with Load Serving Obligations sector.<sup>233</sup> Specifically, they propose the following revisions:

~~Except for members qualified to join Public Utilities who are required to enroll in the Transmission Owners with Load Serving Obligations sector pursuant to Order No. 1000 may not participate in any other membership sector. Any other any entity may join any membership sector for which it qualifies, but may only participate in one membership sector at a time. Only Transmission Owners qualified transmission owners with load serving obligations may join the Transmission Owners with Load Serving Obligations membership sector. The Transmission Owners with Load Serving Obligations sector will be comprised of (a) those transmission owners that enroll in the WestConnect Planning Region for purposes of compliance with Order No. 1000; and (b) those transmission owners that elect to participate in the WestConnect Regional Planning Process as coordinating transmission owners.~~<sup>234</sup>

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<sup>230</sup> *Id.* at 10-11.

<sup>231</sup> *Id.* at 11.

<sup>232</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.B.5.a.

<sup>233</sup> Non-Public Utilities Comments at 4-6.

<sup>234</sup> *Id.* at 5-6.

**(d) Answers**

139. In response to Non-Public Utilities' concerns about their ability to join membership sectors other than the Transmission Owners with Load Serving Obligations sector, Filing Parties agree that clarifications to the sector qualification criteria could be appropriate, but argue that the OATT revisions proposed by Non-Public Utilities may grant broad discretion to non-public utility transmission providers to join other sectors. Rather, Filing Parties argue that any right to join a different sector must be within stated parameters to avoid disrupting the transmission planning process and ensure the appropriate allocation of Planning Management Committee expenses. Filing Parties state that a non-public utility transmission provider's decision to enroll in a different sector would increase the cost burden of the remaining members of the Transmission Owners with Load Serving Obligations sector. In addition, Filing Parties contend, it must be specified that the Planning Management Committee will not serve as the regional planner for the reliability, economic, and/or public policy requirement-driven needs for any non-public utility transmission provider's transmission facilities that join a sector other than the Transmission Owners with Load Serving Obligations sector. To address Non-Public Utilities' concerns while also encouraging balanced membership in all sectors and minimizing funding, Filing Parties propose to file revisions to their OATTs addressing the sector membership issue following further negotiations with Non-Public Utilities after the Commission rules on Filing Parties' second round compliance filings.<sup>235</sup>

140. Filing Parties disagree with LS Power's objection to the Independent Transmission Owner sector being separate from the Transmission Owners with Load Serving Obligations sector. Filing Parties argue that LS Power should have raised this argument on rehearing and therefore that it is an improper collateral attack on the Commission's approval of this governance structure in the First Compliance Order. Furthermore, Filing Parties argue that LS Power's changes are beyond the scope of the Commission's compliance directives in that order. In addition, contrary to LS Power's assertion that creating a separate sector for independent transmission developers appears to relegate them to second class status, Filing Parties argue that giving nonincumbent transmission developers their own sector permits nonincumbent transmission developers the opportunity to have their own voices heard and votes counted on the Planning Management Committee. Filing Parties also note that the Transmission Owners with Load Serving Obligations sector cannot carry a vote on its own, as at least three of the five sectors are required for Planning Management Committee approval. With respect to LS Power's argument that the chair of each subcommittee of the Planning Management Committee must be a representative of the Transmission Owners with Load Serving Obligations member sector, Filing Parties argue that it would be inappropriate for a

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<sup>235</sup> Filing Parties Answer at 19-20.

transmission owner that is not subject to Order No. 1000 cost allocation to chair the cost allocation subcommittee, and Filing Parties offer to propose a clarification to their OATTs to address this matter. However, should LS Power in the future enroll in the WestConnect transmission planning region and become subject to regional cost allocation in the same manner as enrolled public utility transmission providers, then Filing Parties believe it would be appropriate for the Planning Management Committee to evaluate a change in status for LS Power, including the imposition of a funding obligation for the payment of annual Planning Management Committee expenses.<sup>236</sup>

141. Non-Public Utilities explain that Filing Parties and Non-Public Utilities have come to subsequent agreement with respect to: (1) the non-public utility transmission providers' right to join a sector other than the Transmission Owners with Load Serving Obligations sector; and (2) the procedures to withdraw from the region. They state that the revisions are not proposed in the current round of compliance filings; instead, the revisions will be included within Filing Parties' next compliance filings.<sup>237</sup>

**(e) Commission Determination**

142. We find that Filing Parties' proposed OATT revisions regarding the WestConnect regional transmission planning process governance structure comply with the compliance directive in the First Compliance Order. Filing Parties clarify in their OATTs that the Planning Management Committee decisions will not be subject to the review of other WestConnect committees, including the Steering Committee. Filing Parties have therefore affirmed that the Planning Management Committee, which oversees the regional transmission planning process, will have sole authority over the regional transmission planning process.

143. We deny LS Power's requests that we alter the WestConnect transmission planning region's governance structure, which the Commission approved in the First Compliance Order. Stating in the First Compliance Order that Order No. 1000 does not mandate either a particular voting structure or that voting rights be guaranteed for all interested stakeholders, the Commission found reasonable Filing Parties' proposed governance structure, which provides representation from multiple stakeholder sectors and ensures that the Transmission Owners with Load Serving Obligations sector cannot unilaterally make decisions without the support of other sectors in the Planning Management Committee.<sup>238</sup> Similarly, the Commission previously accepted Filing

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<sup>236</sup> *Id.* at 25-28.

<sup>237</sup> See Non-Public Utilities' Supplemental Comments at 3-8.

<sup>238</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 137-138.



Parties' proposal that the chair of each subcommittee be a representative of the Transmission Owners with Load Serving Obligations sector, and we will not revisit that decision here. Pursuant to section 313(a) of the FPA, an aggrieved party must file a request for rehearing within thirty days after the issuance of the Commission's order.<sup>239</sup> Because LS Power failed to timely raise these issues in response to the First Compliance Order, it is barred by the FPA from raising them here.

144. With respect to Non-Public Utilities' concern about non-public utility transmission providers' ability to enroll in a sector other than the Transmission Owners with Load Serving Obligations sector, the Commission has already accepted the existing proposal.<sup>240</sup> However, we acknowledge that Filing Parties intend to file revisions to their OATTs to address this issue following further negotiations with Non-Public Utilities after issuance of this order. Additionally, Non-Public Utilities' state that the parties have come to agreement with respect to: (1) the non-public utility transmission providers' right to join a sector other than the Transmission Owners with Load Serving Obligations sector; and (2) the procedures to withdraw from the region, and that Filing Parties will reflect the revised proposal in their next compliance filings. We encourage Filing Parties to submit any further revisions in their next compliance filings that are due within 60 days of the date of issuance of this order.

### **iii. Planning Participation Agreement**

#### **(a) Summary of Compliance Filings**

145. Filing Parties explain that the Planning Participation Agreement, which has not been executed or filed, will formalize the relationship among entities that join the Planning Management Committee and establish the obligations of regional transmission planning among WestConnect transmission planning region participants.<sup>241</sup> For example, Filing Parties state that the Planning Participation Agreement will address timely and orderly withdrawal from enrollment in the WestConnect transmission planning region, the continuing obligations of withdrawing entities toward the WestConnect transmission planning region, and any conditions on re-enrollment.<sup>242</sup>

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<sup>239</sup> 16 U.S.C. § 8251(a) (2012); *see also* 18 C.F.R. § 713(b) (2014) (requiring that a request for rehearing "be filed not later than 30 days after issuance of any final decision . . .").

<sup>240</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 136-138.

<sup>241</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.A.1.

<sup>242</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at n.10.

Filing Parties also state that dispute arbitration provisions will be reflected in the Planning Participation Agreement.<sup>243</sup>

146. Filing Parties also propose that a potential transmission developer must sign the Planning Participation Agreement, if the transmission developer seeks to be an entity eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>244</sup> In addition, Filing Parties propose that the Planning Management Committee may terminate a transmission developer's eligibility status if the transmission developer fails to execute the Planning Participation Agreement.<sup>245</sup>

**(b) Protests**

147. Several parties express concern about the Planning Participation Agreement and ask the Commission to direct Filing Parties to file the Planning Participation Agreement with the Commission.<sup>246</sup> For instance, with respect to dispute resolution, LS Power states that the Commission cannot determine whether the proposal is just and reasonable without first seeing and understanding the unfiled Planning Participation Agreement.<sup>247</sup>

148. Colorado and Nevada Commissions likewise argue that Filing Parties should file the Planning Participation Agreement with the Commission, given the substance of the dispute resolution provisions contained in the agreement.<sup>248</sup> Colorado and Nevada Commissions explain that the dispute resolution provisions in Filing Parties' OATTs cover only high-level, procedural aspects of the dispute resolution process. In contrast, they argue that the dispute resolution provisions contained in the Planning Participation Agreement call to question their ability to participate in the region's transmission planning process as voting members of the Planning Management Committee, without compromising their ability to fulfill their regulatory responsibilities or causing the

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<sup>243</sup> *E.g., id.* at 9; Arizona Public Service Co. OATT, Attachment E § V.

<sup>244</sup> *E.g.,* Arizona Public Service Co. OATT, Attachment E, § III.D.2(m).

<sup>245</sup> *E.g.,* Arizona Public Service Co. Transmittal Letter at 18-19; Arizona Public Service Co. OATT, Attachment E, § III.D.3(c).

<sup>246</sup> Colorado and Nevada Commissions Supplemental Comments at 7-8; LS Power Comments at 8-10.

<sup>247</sup> LS Power Comments at 23.

<sup>248</sup> Colorado and Nevada Commissions Supplemental Comments at 7-8.

assumption of legal or cost sharing responsibility that state commissions lack the authority to assume.<sup>249</sup> In their Supplemental Joint Comments, Colorado and Nevada Commissions explain that they cannot sign the Planning Participation Agreement, and participate as voting members, unless they are exempt from the binding arbitration and cost-sharing provisions of the agreement, and are indemnified against judgments, damages, and expenses from third party claims brought in response to a vote of the Planning Management Committee.<sup>250</sup>

149. Colorado and Nevada Commissions further state that they have been involved in ongoing discussions over the Planning Participation Agreement, and have presented draft edits to the Planning Participation Agreement that would exempt state regulatory commissions that are voting members of the Planning Management Committee from the cost-sharing and binding arbitration dispute resolution provisions in the agreement. They also proposed provisions under which other members of the Planning Management Committee would indemnify state commissions for any judgments, damages, or expenses arising from claims brought by third parties.<sup>251</sup> Colorado and Nevada Commissions assert that state commissions must be full voting members of the Planning Management Committee in order to fulfill the formal role in the transmission planning process that the Commission envisioned in Order No. 1000-A.<sup>252</sup> Accordingly, Colorado and Nevada Commissions request that the Commission not approve the compliance filings of Black Hills Colorado, Xcel, and NV Energy unless the Planning Participation Agreement includes their proposed modifications.

150. Similarly, Public Interest Organizations argue that the Planning Participation Agreement's provisions on liability and cost-sharing will heavily prejudice stakeholders like Public Interest Organizations against becoming members of the Planning Management Committee. Public Interest Organizations explain that, because only members in good standing within one of the five Planning Management Committee membership sectors can propose a transmission project for selection in the regional transmission plan, the dispute resolution liability and cost-sharing provisions may discourage new entrants that cannot afford such liabilities from joining the Planning

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<sup>249</sup> *Id.* at 2-3.

<sup>250</sup> *Id.* at 5.

<sup>251</sup> *Id.* at 3.

<sup>252</sup> *Id.* at 5.

Management Committee, and thus render them ineligible to propose transmission projects for selection in the regional transmission plan for purposes of cost allocation.<sup>253</sup>

151. LS Power raises additional concerns about the Planning Participation Agreement and reasons for why the document should be filed with the Commission. For example, it notes that the Planning Participation Agreement will set forth the annual funding responsibilities for enrolled transmission owners and coordinating transmission owners. Further, it states that transmission developers must execute the Planning Participation Agreement to participate as project sponsors in the WestConnect transmission planning process. According to LS Power, since the Planning Participation Agreement establishes rights and responsibilities, it should be subject to Commission jurisdiction.<sup>254</sup>

(c) Answers

152. Filing Parties explain that the Planning Participation Agreement will be a contract signed by every entity on the Planning Management Committee, and will set forth the parties' rights and obligations between and among each other. They describe that the Planning Management Committee is not a legal entity itself, but rather a collection of legal entities joining together for a variety of activities, such as hiring consultants and third-parties to conduct studies, maintaining a website, holding stakeholder meetings, and forming subcommittees.<sup>255</sup> Filing Parties state that the primary issue holding up finalization of the Planning Participation Agreement is each entity's legal liability to other members in the event any Planning Management Committee member is determined to have breached the Planning Participating Agreement or is otherwise found to be legally liable for monetary damages.<sup>256</sup>

153. With respect to Public Interest Organizations' comments, Filing Parties argue that Public Interest Organizations seek a contractual framework in which they are permitted full voting rights and full indemnification from any legal liability for monetary damages. Filing Parties also contend that Public Interest Organizations would like other Planning Management Committee members to agree to pay the legal judgments rendered against Public Interest Organizations. In response, Filing Parties argue that, to the extent risk of liability prevents any individual Public Interest Organization from becoming a Planning

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<sup>253</sup> Public Interest Organizations Protest at 10-11.

<sup>254</sup> LS Power Comments at 8-10.

<sup>255</sup> Filing Parties Answer at 47.

<sup>256</sup> *Id.* at 47-48.

Management Committee member, they are still entitled to participate and provide input as a stakeholder in the regional transmission planning process.<sup>257</sup>

154. Filing Parties argue that they have treated the Planning Participation Agreement in a manner similar to the existing WestConnect project agreement in the public utility transmission providers' Order No. 890 transmission planning compliance dockets. Filing Parties also note that upon finalization and execution of the Planning Participation Agreement, they intend to update the hyperlink on the WestConnect website so that the Planning Participation Agreement replaces the prior WestConnect project agreement.<sup>258</sup>

155. In response, Public Interest Organizations reiterate that the majority of members of both the Key Interest Group and State Regulatory Commission member sectors will be unable to sign the Planning Participation Agreement if, under the agreement they are exposed to potentially unlimited liability, as they appear to be under the present dispute resolution provisions. Thus, without modifications to the dispute resolution procedures, Public Interest Organizations argue that the Planning Participation Agreement may result in two of the five member sectors with few, if any, members.

156. Public Interest Organizations also note that Filing Parties first Order No. 1000 compliance proposal reflected a single dispute resolution or liability requirement – responsibility for approving a regional transmission plan every two years and defending that plan against any adverse claims – while Filing Parties now propose potentially unlimited liability for Planning Management Committee decisions. Public Interest Organizations further argue that the combination of unequal weighting of different members' votes on the Planning Management Committee's governance structure and equal sharing of liability demonstrates that Filing Parties' current proposed Planning Participation Agreement is unreasonable and must be reworked to be more inclusive. Public Interest Organizations note that, while they do seek full voting rights on the Planning Management Committee, the voting rights available to them are minority and subject to veto by the Transmission Owners with Load Serving Obligations sector.<sup>259</sup> They argue that they accepted the weighted governance structure in recognition of the

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<sup>257</sup> *Id.* at 48.

<sup>258</sup> *Id.* at 47-49.

<sup>259</sup> Any Planning Management Committee action must be approved by either: (1) at least 2/3 of the Transmission Owner with Load Serving Obligations sector, if at least 75 percent of each of the other four member sectors approves the action; or (2) at least 75 percent of the members of the Transmission Owners with Load Serving Obligations sector, if at least 75 percent of two other member sectors also approve the action. First Compliance Order, 142 FERC ¶ 61,206 at P 125.

different roles members of different sectors will play, but that, in light of Public Interest Organizations' special role in representing the public interest in the regional transmission planning process and their minority voting position, liability as proposed by Filing Parties is particularly inappropriate.<sup>260</sup>

157. Finally, Public Interest Organizations argue that they do not seek indemnification, *per se*, but rather seek only to maintain a workable agreement and preserve the proposed governance structure. They argue that they wish to ensure that Public Interest Organizations and state regulatory commissions can sign the Planning Participation Agreement and to preserve the governance structure accepted by the Commission, and have proposed solutions to limit their liability.<sup>261</sup>

**(d) Commission Determination**

158. We direct Filing Parties to submit the Planning Participation Agreement in their OATTs with their next compliance filing. We agree with protestors that, given the provisions that Filing Parties wish to include in the Planning Participation Agreement and their significance to the WestConnect regional transmission planning process, Filing Parties must file the agreement for Commission review.

159. First, Filing Parties propose that potential transmission developers must be active members within one of the Planning Management Committee sectors to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation.<sup>262</sup> Second, Filing Parties similarly propose that a potential transmission developer must sign the Planning Participation Agreement to be a potential eligible transmission developer, and to be eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>263</sup> These are new proposals that were not included in Filing Parties' initial Order No. 1000 compliance filings, and therefore were not considered by the Commission in the First Compliance Order regarding whether to require Filing Parties to file Planning Participation Agreement as part of their Order No. 1000 compliance. While, as discussed in this order,<sup>264</sup> it may be reasonable for the WestConnect regional

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<sup>260</sup> Public Interest Organizations Answer at 5-7.

<sup>261</sup> *Id.*

<sup>262</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.5.

<sup>263</sup> *E.g.*, *id.* § III.D.2(m), III.D.3(b), and III.D.3.(c).

<sup>264</sup> *See* Qualification Criteria section of this order.

transmission planning process to require a project proponent or a transmission developer to sign the Planning Participation Agreement and become a member of the Planning Management Committee to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, the Commission cannot fully evaluate whether such a requirement complies with Order No. 1000 if it has not reviewed the Planning Participation Agreement.<sup>265</sup> Furthermore, given that Filing Parties propose to include certain of the regional transmission planning process's dispute resolution procedures in that agreement, the Commission cannot determine whether those procedures comply with Order No. 1000 if that agreement is not filed with the Commission. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that include the Planning Participation Agreement as part of their respective OATTs.<sup>266</sup>

**iv. Merchant Transmission Developers**

**(a) First Compliance Order**

160. The Commission found that Filing Parties' proposed OATT provisions regarding merchant transmission developers partially complied with the requirements of Order No. 1000. The Commission pointed out that, while the WestConnect Business Practice Manual and Filing Parties' transmittal letters indicated that merchant transmission developers must: (1) submit the same project information as required for transmission projects submitted through the regional transmission planning process; (2) be registered with NERC and WECC; and (3) comply with all applicable NERC and WECC requirements, Filing Parties did not make these information criteria clear in their OATTs.<sup>267</sup> Accordingly, the Commission directed Filing Parties to clarify in their respective OATTs the proposed information requirements that apply to merchant transmission developers.<sup>268</sup>

**(b) Summary of Compliance Filings**

161. Filing Parties propose to revise their OATTs to state that: (1) "it is necessary for merchant transmission developers to provide adequate information and data to allow the

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<sup>265</sup> See *Avista Corp.*, 143 FERC ¶ 61,255, at PP 181-182 (2013).

<sup>266</sup> See *id.* P 50. (requiring the filing of the agreement that controls the ColumbiaGrid Public Utilities' Order No. 1000 process for Commission review).

<sup>267</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 144.

<sup>268</sup> *Id.*

[Planning Management Committee] to assess the potential reliability and operational impacts of the developer's proposed transmission facilities on other systems in the region[,]” (2) “[transmission] projects proposed by merchant transmission developers are subject to the same reliability standards as projects submitted by Transmission Owners with Load Serving Obligations[,]” and (3) merchant transmission developers “are responsible for properly registering with NERC and WECC in accordance with applicable registration rules in the NERC Rules of Procedure[,]” and must “observe and comply with regional requirements as established by the applicable regional reliability organization and all local, state, regional, and federal requirements.”<sup>269</sup>

162. Filing Parties have deleted language from the Merchant Transmission Developer section in their OATTs stating that “the data required of merchant transmission developers will be listed in the Business Practice Manual.” Furthermore, Filing Parties’ OATTs propose to require merchant transmission developers to submit the following information:

- Submitting entity contact information
- Explanation of how the project is a more efficient or cost-effective solution compared to regional transmission needs
- A detailed project description including, but not limited to, the following:
  - Scope
  - Points of interconnection to existing (or planned) system
  - Operating Voltage and Alternating Current or Direct Current status
  - Circuit Configuration (Single, Double, Double-Circuit capable, etc.)
  - Impedance Information
  - Approximate circuit mileage
- Description of any special facilities (series capacitors, phase shifting transformers, etc.) required for the project
- Diagram showing geographical location and preferred route; general description of permitting challenges
- Estimated Project Cost and description of basis for that cost
- Any independent study work of or relevant to the project
- Any WECC study work of or relevant to the project
- Status within the WECC path rating process
- The project in-service date
- Change files to add the project to a standard system power flow model
- Description of plan for post-construction maintenance and operation of the proposed line

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<sup>269</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.3.



- A \$25,000 deposit to support the cost of relevant study work, subject to true-up (up or down) based upon the actual cost of the study(ies)
- Comparison Risk Score from WECC Environmental Data Task Force, if available
- Impacts to other regions. The applicant must provide transmission system impacts studies showing system reliability impacts to neighboring transmission systems or another transmission planning region. The information should identify all costs associated with any required upgrades to mitigate adverse impacts on other transmission systems.

If impact studies and costs are not available at the time of submittal, the project proponent may request that impact studies be performed, at the project proponent's expense, as part of the analysis to determine whether the project is the more efficient or cost-effective solution. Requests for transmission system impact studies are approved through the Planning Management Committee depending on whether the project proponent provides funding for the analysis and if the request can be performed within the planning cycle timeframe.<sup>270</sup>

(c) **Commission Determination**

163. We find that Filing Parties' proposed OATT revisions regarding the information to be submitted by merchant and independent transmission developers partially comply with the compliance directives in the First Compliance Order. Filing Parties have clarified in their OATTs: (1) the information to be submitted by merchant transmission developers into the regional transmission planning process; and (2) the obligations on merchant and independent transmission providers to: (a) comply with the same reliability standards governing transmission projects submitted by incumbent transmission providers; and (b) register with NERC and comply with applicable local, state, regional, and federal reliability requirements.<sup>271</sup> However, Filing Parties have not explained why certain information required of merchant transmission developers complies with Order No. 1000.

164. It appears that Filing Parties propose to apply uniform data submission requirements for all transmission projects, including merchant transmission projects, *proposed for* the regional transmission plan. This would require merchant transmission providers to provide, among other things: an explanation of how their project is a more

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<sup>270</sup> *E.g., id.* § III.C.5.

<sup>271</sup> *E.g., id.* §§ III.C.2 and III.C.3.

efficient or cost-effective solution compared to regional transmission needs, and estimated project cost and a description of basis for that cost; a \$25,000 deposit to support the cost of relevant study work, subject to true-up (up or down) based upon the actual cost of the studies; and, system impact studies showing reliability impacts to neighboring regions. Order No. 1000 requires only that merchant transmission developers provide adequate information and data to allow public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on systems in the region.<sup>272</sup> Order No. 1000 does not require that merchant transmission developers propose their project for the regional transmission plan. The Commission therefore has found that Filing Parties may not require that merchant transmission developers provide information regarding project costs and associated annual revenue requirements.<sup>273</sup> Similarly, we reject Filing Parties proposal to require merchant transmission developers to include: (1) an explanation of how their project is a more efficient or cost-effective solution compared to regional transmission needs, and estimated project cost and a description of basis for that cost; (2) a \$25,000 deposit to support the cost of relevant study work, subject to true-up (up or down) based upon the actual cost of the studies, and; (3) the requirements concerning impacts on other regions. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to clarify in Filing Parties' respective OATTs that merchant transmission developers are not subject to the aforementioned requirements.

**d. Consideration of Transmission Needs Driven by Public Policy Requirements**

165. Order No. 1000 required public utility transmission providers to amend their OATTs to include procedures for the consideration of transmission needs driven by Public Policy Requirements in both the local and regional transmission planning processes.<sup>274</sup> Public Policy Requirements are requirements established by local, state or federal laws or regulations (i.e., enacted statutes 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).<sup>275</sup>

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<sup>272</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 164, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 298.

<sup>273</sup> See *PacifiCorp*, 143 FERC ¶ 61,151, at PP 103-104 (2013) (*PacifiCorp*).

<sup>274</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

<sup>275</sup> *Id.* P 2. Order No. 1000-A clarified that Public Policy Requirements included local laws and regulations passed by a local governmental entity, such as a municipal or (*continued ...*)

166. The Commission in Order No. 1000 explained that, to consider transmission needs driven by Public Policy Requirements, public utility transmission providers must adopt procedures to: (1) identify transmission needs driven by Public Policy Requirements; and (2) evaluate potential solutions to meet those identified needs.<sup>276</sup> More specifically, public utility transmission providers must adopt procedures in their local and regional transmission planning processes for identifying transmission needs driven by Public Policy Requirements that give all stakeholders a meaningful opportunity to provide input and to offer proposals regarding what they believe are transmission needs driven by Public Policy Requirements.<sup>277</sup> Each public utility transmission provider must explain how it will determine at both the local and regional level, the transmission needs driven by Public Policy Requirements for which solutions will be evaluated<sup>278</sup> and must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that were identified for evaluation for potential solutions in the local and regional transmission planning processes and (2) why other proposed transmission needs driven by Public Policy Requirements were not selected for further evaluation.<sup>279</sup>

167. Order No. 1000 also required public utility transmission providers, in consultation with stakeholders, to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements, including transmission facilities proposed by stakeholders.<sup>280</sup> The evaluation procedures must give stakeholders the opportunity to provide input and enable the Commission and stakeholders to review the record created by the process.<sup>281</sup>

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county government. Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

<sup>276</sup> *Id.* P 205.

<sup>277</sup> *Id.* PP 206-209, P335.

<sup>278</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 208-209

<sup>279</sup> *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

<sup>280</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211 and n.191.

<sup>281</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 320-321.

i. **Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process**

(a) **First Compliance Order**

168. In the First Compliance Order, the Commission found that Filing Parties' compliance filings partially complied with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements in the regional transmission planning process. However, the Commission found that, with respect to the regional transmission planning process, Filing Parties' respective OATTs did not: define the term "public policy requirements" consistent with Order No. 1000; include clear procedures for stakeholder input with respect to the identification of transmission needs driven by public policy requirements; establish a clear and transparent process through which public utility transmission providers will identify those transmission needs driven by public policy requirements for which transmission solutions will be evaluated; and include clear procedures for stakeholder input with respect to the evaluation of potential solutions to identified transmission needs.<sup>282</sup>

169. Accordingly, the Commission directed Filing Parties to revise their respective OATTs to: (1) include a definition of public policy requirements that is consistent with Order No. 1000 for use in the regional transmission planning process;<sup>283</sup> (2) include a definition of "proposed public policy requirements" in order to make transparent the range of proposed public policy requirements that could drive transmission needs;<sup>284</sup> (3) describe how stakeholders can submit what the stakeholders believe are transmission needs driven by public policy requirements;<sup>285</sup> (4) explain whether solutions will be evaluated in the regional transmission planning process for all transmission needs driven by public policy requirements proposed by stakeholders, and if so, how the identification of transmission needs driven by public policy requirements for which solutions will be evaluated will take place;<sup>286</sup> and (5) describe how the proposed process for evaluating

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<sup>282</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 167.

<sup>283</sup> *Id.* P 168.

<sup>284</sup> *Id.* P 169.

<sup>285</sup> *Id.* P 170.

<sup>286</sup> The Commission stated that if solutions will not be evaluated for all transmission needs driven by public policy requirements proposed by stakeholders, then Filing Parties must revise their respective OATTs to describe a just and reasonable and (*continued ...*)

solutions to transmission needs in the regional transmission planning process provides an opportunity for stakeholders to provide input during the evaluation of potential solutions to identified needs, including any additional OATT revisions necessary to demonstrate compliance.<sup>287</sup>

(b) **Summary of Compliance Filing**

170. Filing Parties include the following definition of public policy requirements in their respective OATTs: “For purposes of this Attachment [K], ‘Public Policy Requirements’ means those requirements enacted by state or federal laws or regulations, including those enacted by local governmental entities, such as a municipality or county.”<sup>288</sup> While this definition is reflected in the local transmission planning sections of their respective OATTs, Filing Parties indicate that they will use the definition in both the local and the regional transmission planning processes.<sup>289</sup>

171. In response to the directive to define “proposed public policy requirements,” Filing Parties propose to eliminate the word “requirements” so it is instead “proposed public policy.” Filing Parties explain that proposed public policies have not been enacted and are therefore not yet requirements. Filing Parties propose to define “proposed public policy” in the regional transmission planning sections of their respective OATTs as “[a] public policy that is proposed, but not required (because it is not yet enacted or promulgated by the applicable governmental authority).”<sup>290</sup> Filing Parties propose to revise their respective OATTs to state that, if time and resources permit, proposed public policies may be considered through the regional transmission planning process for economic transmission projects.<sup>291</sup>

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not unduly discriminatory process for identifying the transmission needs driven by enacted public policy requirements for which solutions will be evaluated in the regional transmission planning process, including how the process determines whether to move forward regarding transmission needs driven by public policy requirements. *Id.* P 172.

<sup>287</sup> *Id.* P 176.

<sup>288</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § II.A.3.c.

<sup>289</sup> Revisions to the local transmission planning process are discussed separately below. *E.g.*, Arizona Public Service Co. Transmittal Letter at 21.

<sup>290</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 21; Arizona Public Service Co. OATT, Attachment E § III.E.4.c.

<sup>291</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.4.c.

172. Filing Parties also provide additional detail to explain how stakeholders can provide input to identify transmission needs driven by public policy requirements. Filing Parties' proposed OATT revisions state that it is anticipated that any regional transmission need that is driven by public policy requirements will be addressed initially within the local planning cycles of the individual transmission owners in the WestConnect transmission planning region through the consideration of local transmission needs driven by a public policy requirement, since a public policy requirement is a requirement that is imposed upon individual transmission owners (as opposed to a requirement that is imposed on a geographic region).<sup>292</sup> As such, stakeholders will have the opportunity to initially offer input on, or make proposals to address, what they believe are transmission needs driven by public policy requirements at the local transmission planning meetings held by the respective Filing Parties.<sup>293</sup>

173. Filing Parties' revised OATTs further explain that the Planning Management Committee will begin the evaluation of regional transmission needs driven by public policy requirements by identifying any public policy requirements that are driving local transmission needs of the transmission owners in the WestConnect transmission planning region, and including them in the transmission system models (the regional base case) underlying the development of the regional transmission plan. Then, the Planning Management Committee will seek the input of stakeholders in the WestConnect transmission planning region on those public policy requirements in an effort to engage stakeholders in the process of identifying regional transmission needs driven by public policy requirements. Further, the Planning Management Committee will communicate with stakeholders through public postings on the WestConnect website of meeting announcements and discussion forums and will establish an email distribution list for stakeholders who desire to receive information via electronic list serves.<sup>294</sup>

174. With respect to stakeholder participation, Filing Parties' OATTs state that stakeholders will have opportunities to participate in discussions during the regional transmission planning process with respect to the development of solutions to regional transmission needs driven by public policy requirements. They also provide that such participation may take the form of attending planning meetings, offering comments for consideration by the Planning Management Committee on solutions to regional needs driven by public policy requirements, and offering comments on proposals made by other stakeholders or by the Planning Management Committee. Filing Parties' OATTs further

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<sup>292</sup> *E.g., id.* § III.E.4.a.

<sup>293</sup> *E.g.,* Arizona Public Service Co. Transmittal Letter at 21-22; Arizona Public Service Co. OATT, Attachment E, § III.E.4.a.

<sup>294</sup> *E.g.,* Arizona Public Service Co. OATT, Attachment E, § III.E.4.a.

explain that stakeholders that are members of the Planning Management Committee will perform the function of regional transmission planning and developing regional solutions to identified regional transmission needs driven by public policy requirements through membership on Planning Management Committee subcommittees.<sup>295</sup>

175. With respect to the process for selecting those regional transmission needs driven by public policy requirements that will be evaluated for regional solutions in the current transmission planning cycle, Filing Parties' revised OATTs state that the Planning Management Committee will consider, on a non-discriminatory basis, factors, including but not limited to: (i) whether the public policy requirement is driving a regional transmission need that can be reasonably identified in the current planning cycle; (ii) the feasibility of addressing the regional transmission need driven by the public policy requirement in the current planning cycle; (iii) the factual basis supporting the regional transmission need driven by the public policy requirement; and (iv) whether a public policy requirement has been identified for which a regional transmission need has not yet materialized, or for which there may exist a regional transmission need but the development of a solution to that need is premature. Further, the revised OATTs emphasizes that no single factor shall necessarily be determinative in selecting among the potential regional transmission needs driven by public policy requirements.<sup>296</sup>

176. Filing Parties' OATTs also state that, with input from stakeholders participating in discussions throughout the transmission planning process, the Planning Management Committee will identify and evaluate potential solutions to regional transmission needs driven by public policy requirements following the same procedures used to evaluate any other project proposed in the regional transmission planning process.<sup>297</sup> At that point, the cost allocation provisions state among other things that except for transmission projects proposed through a transmission owner's local transmission planning process, arising out of a local need for transmission infrastructure to satisfy public policy requirements that are not submitted as transmission projects proposed for cost allocation, any transmission projects arising out of a regional need for transmission infrastructure to satisfy the public policy requirements will be considered public policy projects eligible for evaluation in the regional transmission planning process.<sup>298</sup>

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<sup>295</sup> *E.g., id.* § III.E.4.b.

<sup>296</sup> *E.g., id.* § III.E.4.a.

<sup>297</sup> *E.g., id.* § III.E.4.b.

<sup>298</sup> *E.g., id.* § VII.B.3.

(c) **Protests/Comments**

177. Public Interest Organizations first express concern with the proposed OATT language, described above, that assumes that public policy requirements will be addressed initially in the local transmission planning cycles of the individual transmission owners because such requirements are imposed upon individual transmission owners rather than a geographic region. Public Interest Organizations assert that public policy requirements are not necessarily imposed on individual transmission owners, but may instead be imposed on load-serving entities, generators, or other entities and still have regional impacts on the transmission grid. Accordingly, Public Interest Organizations argue that this OATT language should make clear that it is not meant to limit the types of public policy requirement-driven needs that can be considered in the regional transmission planning process.<sup>299</sup>

178. Next, asserting that transmission needs driven by public policy requirements may not always have corresponding local needs, Public Interest Organizations argue that the proposed OATT revisions contain insufficient detail about the procedure for identifying regional transmission needs that have not first been captured in the local transmission planning process.<sup>300</sup>

179. Public Interest Organizations also express concern with some elements of the non-exclusive list of criteria that the Planning Management Committee will use to select those regional transmission needs driven by public policy requirements that will be evaluated for regional solutions in the current transmission planning cycle. Public Interest Organizations argue that the following factors may be contrary to the goal of considering impending transmission needs driven by public policy requirements. With respect to the factor that involves the feasibility of addressing the regional transmission need driven by the public policy requirement in the current transmission planning cycle, Public Interest Organizations assert that it is unlikely that any transmission need driven by public policy requirements can be addressed in a single one- or two-year transmission planning cycle, so embracing this factor would likely eliminate consideration of solutions for almost all transmission needs driven by public policy requirements. Similarly, with respect to the factor that involves whether a public policy requirement has been identified for which a regional transmission need has not yet materialized, or for which there may exist a regional transmission need but the development of a solution to that need is premature, Public Interest Organizations assert that this factor would eliminate the planning for any transmission need driven by public policy requirements that is on a longer time-frame like five or seven years out. They state that because the WestConnect regional

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<sup>299</sup> Public Interest Organizations Protest at 4.

<sup>300</sup> *Id.* at 5.



transmission planning process intends to look out ten years, these two factors seem like arbitrary limitations on the ability to ensure just and reasonable rates through cost-effective transmission planning.<sup>301</sup> With respect to the factor that involves assessing the factual basis supporting the regional transmission need driven by the public policy requirements, Public Interest Organizations are concerned that without further explanation of what is intended by the term “factual basis,” this factor could be used to avoid consideration of solutions in a manner that risks unjust and unreasonable rates or undue discrimination. Based on these arguments, Public Interest Organizations request that Filing Parties be required to revise these factors to address the identified issues in a further compliance filing.<sup>302</sup>

180. Finally, Public Interest Organizations state that they may have additional concerns related to Filing Parties’ proposals for providing opportunity for meaningful stakeholder participation throughout the process for considering transmission needs driven by public policy requirements, depending upon the outcome of certain outstanding issues related to the Planning Participation Agreement, which is still under development.<sup>303</sup>

(d) **Answer**

181. Filing Parties argue that Public Interest Organizations’ comments take an overly restrictive view of the regional transmission planning process, overlook key aspects of that process, and wrongly assume that the regional transmission planning process will merely roll up the transmission needs driven by public policy requirements that are identified in Filing Parties’ respective local transmission planning processes without further inquiry or opportunity for stakeholder input. Filing Parties explain that identification of such needs at the local level is only a starting point, as the Planning Management Committee will begin its process by considering those needs and will then engage in a process to identify regional transmission needs driven by public policy requirements. In addition, Filing Parties state that their revised regional transmission planning process provides clear opportunities for stakeholders to propose regional transmission needs for consideration in the regional transmission planning process, including needs that were not identified at the local level. Filing Parties reject Public Interest Organizations’ assertion that the revised OATT language would preclude certain needs from being considered, and instead argue that the language reflects the fact that

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<sup>301</sup> *Id.* at 6-7.

<sup>302</sup> *Id.* at 7.

<sup>303</sup> These issues are discussed above in Planning Participation Agreement section of this order. *Id.*

Order No. 1000 requires public utility transmission providers to adopt procedures for the identification of *transmission* needs driven by public policy requirements.<sup>304</sup>

182. Filing Parties request that the Commission deny Public Interest Organizations' request to revise the factors that the WestConnect transmission planning region will use to identify transmission needs driven by public policy requirements for which solutions will be evaluated. Filing Parties note that their proposal is consistent with the factors that the Commission accepted for use in the ColumbiaGrid region.<sup>305</sup> Furthermore, while Public Interest Organizations argue that the factors proposed by Filing Parties may arbitrarily limit the solutions identified through the regional transmission planning process and undermine long-term planning, Filing Parties assert that these concerns are speculative, as no single factor is determinative and each will be considered in determining whether a transmission need will be evaluated for solutions. Moreover, according to Filing Parties, taking into account the feasibility, factual basis, and timeliness of a particular need as part of an overall consideration of whether a particular transmission need should be evaluated for solutions provides a just and reasonable way to distinguish between those needs that are ripe for consideration and those that are not.<sup>306</sup>

(e) **Commission Determination**

183. We find that Filing Parties' proposed revisions to the regional transmission planning process comply with the directives in the First Compliance Order concerning the consideration of transmission needs driven by public policy requirements.

184. With respect to the definition of public policy requirements, we find that Filing Parties' proposed definition is consistent with Order No. 1000's requirement that public policy requirements are those established by local, state or federal laws or regulations. While we directed this definition to be added to both the regional and local transmission planning sections of Filing Parties' OATTs, we accept that Filing Parties' OATTs clearly provide that the definition in the local transmission planning section applies to the regional transmission planning section as well. We likewise accept Filing Parties proposal to change "proposed public policy requirements" to "proposed public policies," and find that Filing Parties' definition of proposed public policies is consistent with Order No. 1000 in its description of the range of governmental entities that may implement relevant future public policies. Therefore, we find that the definition makes sufficiently transparent the range of potential transmission needs driven by public policy

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<sup>304</sup> Filing Parties Answer at 7-9.

<sup>305</sup> *Id.* at 9-10 (citing *Avista Corp.*, 143 FERC ¶ 61,255 at P 130).

<sup>306</sup> *Id.*

requirements that may be considered in the regional transmission planning process. We also find reasonable Filing Parties' proposal to consider, if time and resources permit, proposed public policies through the regional transmission planning process for economic transmission projects.

185. With respect to the requirement to describe how stakeholders can submit what the stakeholders believe are transmission needs driven by public policy requirements, we find that Filing Parties' proposed OATT revisions meet the requirements of Order No. 1000. While Public Interest Organizations state that this process will begin during the local transmission planning process of each Filing Party, and argue that the proposed OATT revisions contain insufficient detail about the procedures for identifying regional transmission needs that have not first been captured in the local transmission planning process, we find that Filing Parties' proposal complies with the requirements of Order No. 1000. We agree with Filing Parties that it is reasonable to begin by including public policy requirements driving local transmission needs in the regional base case underlying the development of the regional transmission plan, and then to seek further stakeholder input on those and other possible transmission needs driven by public policy requirements. This structure permits stakeholders to propose new transmission needs driven by public policy requirements, even if they were not previously identified in any local transmission planning process. Furthermore, Public Interest Organizations' argument that public policy requirements are not necessarily imposed on individual transmission owners, but may instead be imposed on load-serving entities, generators, or other entities and still have regional impacts on the transmission grid, does not alter our finding. Irrespective of what particular entity may be the subject of a public policy requirement, the obligation to plan for the resulting transmission need, whether local or regional, would apply to the relevant transmission owner or owners. In any event, Filing Parties' proposed regional transmission planning process will permit stakeholder input at both local and regional levels. Accordingly, we find that the input of data from the local transmission planning processes into the regional base case underlying the development of the regional transmission plan is indeed only a starting point for regional transmission planning, and there are sufficient additional opportunities for stakeholders to submit proposed transmission needs driven by public policy requirements into the regional transmission planning process.

186. In addition, we find that Filing Parties satisfy the requirement to explain whether solutions will be evaluated in the regional transmission planning process for all transmission needs driven by public policy requirements proposed by stakeholders, and if so, how the identification will take place. Filing Parties have proposed a non-exclusive list of factors that will be considered by the Planning Management Committee in order to select those regional transmission needs driven by public policy requirements that will be evaluated for regional solutions in the current transmission planning cycle. Public Interest Organizations protest the following factors: (1) the feasibility of addressing the regional transmission need driven by the public policy requirement in the current

transmission planning cycle; (2) the factual basis supporting the regional transmission need driven by the public policy requirement; and (3) whether a public policy requirement has been identified for which a regional transmission need has not yet materialized, or for which there may exist a regional transmission need but the development of a solution to that need is premature.<sup>307</sup> They assert that the factors would eliminate consideration of potential solutions to transmission needs driven by public policy requirements that cannot be implemented in a one- or two-year timeframe. We find this assertion unsupported and speculative, and agree with Filing Parties that this aspect of their proposal is consistent with the corresponding factors that the Commission accepted for use in the ColumbiaGrid region.<sup>308</sup> Additionally, we find that Filing Parties' proposed factor addressing whether a regional transmission need has not yet materialized or if it has, whether development of a solution would be premature, is a specific subset of the broader feasibility factor. As such, it is also consistent with the feasibility factor previously accepted for filing.<sup>309</sup>

187. In any event, we find that it is reasonable for Filing Parties to consider both whether it is feasible to address a proposed transmission need driven by public policy requirements and consider whether such a need has not yet materialized or development of a solution is premature when identifying the transmission needs driven by public policy requirements for which transmission solutions will be evaluated in the regional transmission planning process. We do not interpret Filing Parties' proposal to consider the feasibility of addressing the regional transmission need driven by the public policy requirement in the current transmission planning cycle to prohibit consideration of potential solutions to transmission needs driven by public policy requirements that cannot be implemented in a one- or two-year timeframe, as Public Interest Organizations suggest. The proposed factor does not consider the feasibility of implementing a transmission solution within the two-year transmission planning cycle, but rather whether it is feasible to develop solutions to address the proposed transmission need driven by public policy requirements during the current transmission planning cycle. Similarly, Filing Parties' proposal to consider whether a public policy requirement has been identified for which a regional transmission need has not yet materialized, or for which there may exist a regional transmission need but the development of a solution to that need is premature, will not prevent the consideration of transmission solutions to transmission needs driven by public policy requirements that are needed in the long-term, but rather allows Filing Parties to begin planning for such solutions when there is

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<sup>307</sup> Public Interest Organizations Protest at 6-7

<sup>308</sup> *See Avista Corp.*, 143 FERC ¶ 61,255, at P 130 (2013).

<sup>309</sup> *See id.*

sufficient certainty that a transmission solution will be necessary to meet the identified needs.

188. With respect to the factor considering the factual basis supporting the regional transmission need driven by the public policy requirement, we find that it is reasonable for Filing Parties to consider the factual basis supporting the regional transmission need driven by the public policy requirement when identifying the transmission needs driven by public policy requirements for which transmission solutions will be evaluated in the regional transmission planning process.<sup>310</sup> We find that this factor appropriately considers whether there is sufficient support to ensure that a transmission need driven by public policy requirements exists before transmission solutions to that transmission need are evaluated in the regional transmission planning process and, if selected in the regional transmission plan, eligible for regional cost allocation. With regard to Public Interest Organizations' concern that further explanation of what is intended by the term "factual basis" is necessary, we note that, as required by Order No. 1000, Filing Parties' OATTs provide that WestConnect will maintain on its website an explanation of why suggested regional transmission needs driven by public policy requirements will not be evaluated.<sup>311</sup> We find that this explanation will provide sufficient transparency to ensure that Public Interest Organizations can determine why a particular suggested regional transmission need driven by public policy requirements will not be evaluated such that further explanation of the term "factual basis" is unnecessary.

189. Finally, we find that Filing Parties have complied with the requirement to describe how the proposed process for evaluating solutions to transmission needs driven by public policy requirements in the regional transmission planning process provides an opportunity for stakeholders to provide input during the evaluation of potential transmission solutions to identified needs. As described earlier, Filing Parties' revised OATTs state that stakeholder participation may take the form of attending planning meetings, offering comments for consideration by the Planning Management Committee on solutions to regional transmission needs driven by public policy requirements, and offering comments on proposals made by other stakeholders or by the Planning Management Committee.<sup>312</sup>

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<sup>310</sup> *Id.*

<sup>311</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.4.d.

<sup>312</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.4.b.

ii. **Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Local Transmission Planning Process**

(a) **First Compliance Order**

190. In the First Compliance Order, the Commission found that each of the Filing Parties' compliance filings partially complied with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements in the local transmission planning process. However, the Commission found that none of Filing Parties complied with all of the relevant requirements of Order No. 1000.<sup>313</sup>

191. Accordingly, the Commission directed Filing Parties to make the following revisions to their OATTs. First, the Commission directed Filing Parties to revise their respective OATTs to include a definition of public policy requirements that is consistent with Order No. 1000,<sup>314</sup> as well as a definition of "proposed public policy requirements" as used in their local transmission planning processes.<sup>315</sup> Second, the Commission directed Filing Parties to revise their OATTs to include procedures for identifying transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by public policy requirements<sup>316</sup> and a just and reasonable and not unduly discriminatory process for identifying, out of this larger set of needs, those needs for which transmission solutions will be evaluated, as required by Order No. 1000.<sup>317</sup> The Commission also stated that Filing Parties must explain how the proposed process gives stakeholders a meaningful opportunity to submit what the stakeholders believe are transmission needs driven by public policy requirements and provides for an open and transparent transmission planning process to determine whether to move forward regarding those needs.<sup>318</sup> Third, the Commission directed each Filing Party (with the exception of Public Service Company of Colorado) to revise its OATT with respect to the local transmission planning process to provide for the posting of transmission needs

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<sup>313</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 195.

<sup>314</sup> *Id.* at P 196.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* P 200.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

driven by public policy requirements, consistent with the directives in Order No. 1000.<sup>319</sup> Finally, the Commission directed each Filing Party to describe how it complies with Order No. 1000's requirement that each public utility transmission provider establish procedures to evaluate, at the local level, potential solutions to identified transmission needs driven by public policy requirements, including those proposed by stakeholders, that provide stakeholders an opportunity to provide input, including additional OATT revisions, if necessary, to demonstrate its compliance.<sup>320</sup>

192. With respect to NV Energy's proposal to consider transmission needs driven by public policy requirements in its local transmission planning process, the Commission directed NV Energy to revise its OATT to include a definition of public policy requirements for use in its local transmission planning process that is consistent with the Commission's clarification in Order No. 1000-A that enacted statutes and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level, include local laws and regulations passed by a local governmental entity, such as a municipal or county government.<sup>321</sup> With respect to Public Service Company of Colorado's proposal to consider transmission needs driven by public policy requirements in its local transmission planning process, the Commission directed Public Service Company of Colorado to revise its OATT to include a definition of public policy requirements for use in its local transmission planning process that is consistent with Order No. 1000 and that does not limit consideration of transmission needs driven by public policy requirements to those transmission needs driven by public policy requirements that have been included in a state integrated resource planning process.<sup>322</sup> The Commission also directed Public Service Company of Colorado to revise its OATT to provide that it will post an explanation of those transmission needs driven by public policy requirements that have been identified for evaluation for potential solutions in the local transmission planning process, as required by Order No. 1000.<sup>323</sup>

**(b) Summary of Compliance Filing**

193. Filing Parties state that they have revised their respective local transmission planning processes in response to the Commission's directives in the First Compliance

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<sup>319</sup> *Id.* P 201.

<sup>320</sup> *Id.* P 203.

<sup>321</sup> *Id.* P 197

<sup>322</sup> *Id.* P 198.

<sup>323</sup> *Id.* P 202.

Order to establish procedures to identify transmission needs driven by public policy requirements that allow for stakeholder input and reflect a process for determining, from the set of needs identified, those needs for which transmission solutions will be identified.<sup>324</sup>

194. As discussed in the regional transmission planning section above, Filing Parties propose to include the following definition of public policy requirements in their respective OATTs: “For purposes of this Attachment [K], ‘Public Policy Requirements’ means those requirements enacted by state or federal laws or regulations, including those enacted by local governmental entities, such as a municipality or county.”<sup>325</sup> NV Energy and Public Service Company of Colorado adopt the same definition as the other Filing Parties in order to address the specific definition changes required of them in the First Compliance Order.<sup>326</sup>

195. As in the regional transmission planning section above, Filing Parties also propose to revise the term “proposed public policy requirements” in the local transmission planning section by eliminating the word “requirements,” and define “proposed public policy” in the local transmission planning section of their respective OATTs as “public policy proposed before a governmental authority but not yet enacted.”<sup>327</sup>

196. Filing Parties propose additional revisions to their respective local transmission planning processes detailing opportunities for stakeholders to provide input and offer proposals regarding transmission needs driven by public policy requirements. Specifically, Filing Parties propose to amend their respective OATTs to state that stakeholders may participate in the process to identify local transmission needs driven by public policy requirements by contacting a designated point of contact at an e-mail address included in the OATT. In addition, stakeholders have the opportunity to offer input or make proposals during the open transmission planning meetings held by each Filing Party, pursuant to their respective OATTs.<sup>328</sup>

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<sup>324</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 23.

<sup>325</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § II.A.3.c.

<sup>326</sup> NV Energy, Inc. OATT, Attachment K § II.A.2.c; Public Service Company of Colorado OATT, Attachment R, § II.B.3.

<sup>327</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § II.A.3.c.

<sup>328</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 23; Arizona Public Service Co. OATT, Attachment E, § II.C.1.



197. Additionally, Filing Parties' propose to revise their OATTs to include specific details about certain local transmission planning meetings in which stakeholders may participate. For example, Arizona Public Service Co.'s revised OATT states that during its second quarter public planning meeting, it will review its current study plan with stakeholders, provide an opportunity for stakeholder input on any aspect of its current study plan, including but not limited to, methodology, study inputs, public policy requirements, and potential stakeholder-suggested transmission needs driven by public policy requirements, and study results (including non-transmission alternatives). During this time it will also review any stakeholder proposals previously submitted for study plan alternatives and invite the submittal of additional stakeholder study plan proposals for review and discussion. It further provides that, after the second quarter meeting, but not less than thirty days before the fourth quarter meeting, the transmission provider will post on its OASIS an explanation of those transmission needs driven by public policy requirements that have been identified for evaluation for potential solutions in the local transmission planning process and an explanation of why any suggested transmission needs driven by public policy requirements will not be evaluated. Also during the fourth quarter public planning meeting, the transmission owner will present a draft of its ten-year plan for the following calendar year for stakeholder review and comment.<sup>329</sup>

198. While the various Filing Parties do not all hold local transmission planning-related meetings at the same time, they all include details as to the local transmission planning-related meetings in which stakeholders may participate.<sup>330</sup>

199. Similar to the WestConnect regional transmission planning process, Filing Parties have revised their respective OATTs to state that, for local transmission needs driven by public policy requirements that will be evaluated for solutions in the current transmission planning cycle, each Filing Party will consider on a non-discriminatory basis, factors including but not limited to: (1) whether the public policy requirement is driving a local transmission need that can be reasonably identified in the current transmission planning cycle; (2) the feasibility of addressing the local transmission need driven by the public policy requirement in the current transmission planning cycle; (3) the factual basis supporting the local transmission need driven by the public policy requirement; and (4) whether a public policy requirement has been identified for which a local transmission need has not yet materialized, or for which there may exist a local transmission need but the development of a solution to that need is premature. Filing Parties propose to revise their OATTs to state that no single factor shall necessarily be

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<sup>329</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § II.A.4.d.

<sup>330</sup> For example, Public Service Company of Colorado's first meeting is held in the first quarter, rather than the second quarter as is Arizona Public Service Co.'s practice. Public Service Co. of Colorado OATT, Attachment R-PSCo § II.C.4.a.

determinative in selecting among the potential local transmission needs driven by public policy requirements.<sup>331</sup>

200. Under Filing Parties' proposal, if in its respective local transmission planning process a transmission provider chooses not to identify a stakeholder-suggested local transmission need driven by a public policy requirement as a transmission need for which solutions will be evaluated, the transmission provider will post on its OASIS an explanation of why the suggested transmission need will not be evaluated. This posting will include both an explanation of those local transmission needs driven by public policy requirements that have been identified for evaluation for potential solutions in the local transmission planning process, and an explanation of why other stakeholder-suggested transmission needs driven by public policy requirements were not identified for further evaluation.<sup>332</sup> To facilitate stakeholder participation, certain of the Filing Parties include a deadline for this OASIS posting of not less than thirty days before the fourth quarter meeting,<sup>333</sup> while other Filing Parties' OATTs are less specific on timing.<sup>334</sup>

201. Ultimately, as in the regional transmission planning process described above, with input from stakeholders participating in discussions throughout the transmission planning process, each Filing Party will identify and evaluate potential solutions to local transmission needs driven by public policy requirements following the same procedures used to evaluate other projects proposed in their respective local transmission planning processes. Filing Parties propose to revise their respective OATTs to provide that stakeholders may participate in the evaluation of solutions to identified local transmission needs driven by public policy requirements by direct email communication (i.e., by

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<sup>331</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 23; Arizona Public Service Co. OATT, Attachment E, § II.C.1.

<sup>332</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 23; Arizona Public Service Co. OATT, Attachment E, §§ II.C.1, II.C.3.

<sup>333</sup> Arizona Public Service Co. OATT, Attachment E § II.A.4.d.1; Public Service Company of Colorado OATT, Attachment R-PSCo § II.C.4.a; Tucson Electric OATT, Attachment K § II.A.3.d.i.; UNS Electric OATT, Attachment K § II.A.3.d.i.; Public Service Company of New Mexico OATT, Attachment K § II.A.4.d.i; Black Hills Power Joint OATT, Attachment K § II.C.2.a.ii; NV Energy OATT, Attachment K § II.A.3.d.i.

<sup>334</sup> *E.g.*, El Paso Electric OATT, Attachment K §§ I.A.9.c.1 and I.C.2 (providing that El Paso Electric "will hold at least two open public transmission planning meetings a year. . ."); Black Hills Colorado OATT, Attachment K §§ II.C.2.a.i.a; I.C.2.c.v (providing that the deadline will be in the 3<sup>rd</sup> quarter of the transmission planning cycle); Cheyenne LF&P OATT, Attachment K § II.I.3 (no specific deadline for OASIS posting).

contacting a designated point of contact at an email address included in the OATT) and by participating in each respective Filing Party's open transmission planning meetings. Filing Parties' respective OATTs further state that stakeholders may provide comments on proposed solutions or may submit other proposed solutions to identified local transmission needs driven by public policy requirements.<sup>335</sup>

(c) **Commission Determination**

202. We find that Filing Parties' proposed revisions to their local transmission planning processes comply with the directives in the First Compliance Order concerning the consideration of transmission needs driven by public policy requirements in the local transmission planning process.

203. First, with respect to the definition of public policy requirements, the proposed definition is consistent with Order No. 1000's requirement that public policy requirements are those established by local, state or federal laws or regulations. We likewise accept Filing Parties proposal to change "proposed public policy requirements" to "proposed public policies," and find that Filing Parties' proposed definition of proposed public policies is consistent with Order No. 1000 in its description of the range of governmental entities that may implement relevant future public policies. Therefore, we find that the definition makes sufficiently transparent the range of proposed public policies that could drive transmission needs.

204. Moreover, Filing Parties have proposed to revise the procedures for identifying transmission needs driven by public policy requirements in their local transmission planning process, as required in the First Compliance Order. Filing Parties have revised their OATTs to clarify the opportunities in the local transmission planning process for stakeholders to provide input and to offer proposals regarding transmission needs driven by public policy requirements. Filing Parties have also proposed to revise their OATTs to specify the factors that they will use in determining which local transmission needs driven by public policy requirements will be evaluated for solutions. Therefore, we find that Filing Parties have complied with the Commission's directive in the First Compliance Order which required that they establish a just and reasonable and not unduly discriminatory process for identifying, out of the larger set of transmission needs driven by public policy requirements identified, those needs for which transmission solutions will be evaluated.

205. Next, Filing Parties propose that they each will post an explanation of those local transmission needs driven by public policy requirements that have been identified for

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<sup>335</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 23; Arizona Public Service Co. OATT, Attachment E, § II.C.2.

evaluation for potential solutions in the local transmission planning process, and an explanation of why other stakeholder-suggested transmission needs driven by public policy requirements were not identified for further evaluation, satisfying the directive in the First Compliance Order with respect to Order No. 1000's posting requirement. Finally, Filing Parties have provided procedures for evaluating transmission solutions to those transmission needs driven by public policy requirements for which transmission solutions will be evaluated—solutions to meet transmission needs driven by public policy requirements will be evaluated using the same criteria approved in the OATTs for other projects. The local transmission planning processes will also give stakeholders an opportunity to submit their own solutions and provide input on the solutions being evaluated. Thus, we find that Filing Parties comply with the Commission's directive in the First Compliance Order which required that they establish procedures to evaluate, at the local level, potential solutions to identified transmission needs driven by public policy requirements, including those proposed by stakeholders, and that provide stakeholders an opportunity to provide input.

### **3. Nonincumbent Transmission Developer Reforms**

206. In Order No. 1000, the Commission adopted a framework of reforms to ensure that nonincumbent transmission developers have the opportunity to participate in the transmission development process. In particular, public utility transmission providers must eliminate federal rights of first refusal from Commission-jurisdictional tariffs and agreements and develop not unduly discriminatory qualification criteria and processes governing the submission and evaluation of proposals for new transmission facilities.

#### **a. Qualification Criteria**

207. Order No. 1000 required each public utility transmission provider to revise its OATT to establish appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation.<sup>336</sup> These criteria must not be unduly discriminatory or preferential when applied to either an incumbent transmission provider or a nonincumbent transmission developer.<sup>337</sup> In addition, public utility transmission providers must adopt procedures for timely notifying transmission developers of whether they satisfy the region's qualification criteria and allowing them to remedy any deficiencies.<sup>338</sup>

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<sup>336</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

<sup>337</sup> *Id.* P 323.

<sup>338</sup> *Id.* P 324.

208. Order No. 1000-A clarified that it would be an impermissible barrier to entry to require a transmission developer to demonstrate, as part of the qualification criteria, that it has, or can obtain, state approvals necessary to operate in a state to be eligible to propose a transmission facility.<sup>339</sup>

**i. First Compliance Order**

209. In finding that Filing Parties' revised OATTs did not contain qualification criteria to establish an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, the Commission explained that Order No. 1000 requires the establishment of "appropriate qualification criteria for determining an entity's eligibility to propose a transmission project ..." noting that the qualification criteria are separate from the information that a prospective transmission developer must submit in support of a proposed transmission project.<sup>340</sup> Thus, the Commission directed Filing Parties to modify their respective OATTs to include qualification criteria and to include procedures for timely notification to transmission developers of whether they satisfy the qualification criteria and the procedures to remedy any identified deficiencies.<sup>341</sup>

**ii. Requests for Rehearing or Clarification**

**(a) Summary of Requests for Rehearing or Clarification**

210. Filing Parties seek rehearing of the Commission's directives requiring that the qualification criteria for evaluating a transmission developer's technical and financial capabilities to develop, construct, own, and operate a proposed transmission project and the provisions addressing how the regional transmission planning entity will evaluate whether a transmission developer satisfies the criteria be placed in their respective OATTs. Filing Parties allege that the Commission lacks authority under the FPA to evaluate the financial and technical qualifications of a third party to develop and construct a transmission facility, which they assert is left to the states. Because the FPA does not provide the Commission with the authority to perform such evaluation, Filing Parties assert that it similarly does not grant the Commission authority to require the Planning Management Committee do so. Although Filing Parties acknowledge that the Commission might have such authority in the context of a section 205 application by a

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<sup>339</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

<sup>340</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 218.

<sup>341</sup> *Id.* P 217.

new entity seeking to become a provider of jurisdictional transmission services, they assert that the Commission does not, in practice, perform such an evaluation. In any event, Filing Parties state that under the WestConnect regional transmission planning process all entities are eligible to submit a transmission project for regional cost allocation and that their proposal imposed no minimum standards of financial strength and transmission expertise. Filing Parties state that they do not believe it is necessary or appropriate for the Planning Management Committee to evaluate a transmission developer's financial and technical qualifications.<sup>342</sup>

**(b) Commission Determination**

211. We deny Filing Parties' request for rehearing. We affirm our finding in the First Compliance Order that Filing Parties must, as required by Order No. 1000, revise their respective OATTs to include qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, consistent with Order No. 1000, and to include procedures for timely notification to transmission developers of whether they satisfy the region's qualification criteria and the procedures to remedy any identified deficiencies.<sup>343</sup>

212. We find that Filing Parties' argument that the Commission lacks authority under the FPA to evaluate the technical and financial qualifications of third party transmission developers is an out-of-time rehearing request of Order No. 1000. As the Commission explained in the First Compliance Order, Order No. 1000 requires the establishment of "appropriate qualification criteria for determining an entity's eligibility to propose a transmission project. . . ."<sup>344</sup> Order Nos. 1000 and 1000-A addressed comments and requests for rehearing regarding the requirement that public utility transmission providers must establish such qualification criteria. Pursuant to section 313(a) of the FPA, an aggrieved party must file a request for rehearing within thirty days after the issuance of the Commission's order.<sup>345</sup> Filing Parties failed to timely raise this challenge in response to Order No. 1000 and are therefore barred by the FPA from raising it here.

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<sup>342</sup> Filing Parties Rehearing Request at 29-31.

<sup>343</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 218.

<sup>344</sup> *Id.* P 217 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323).

<sup>345</sup> 16 U.S.C. § 8251(a) (2012); *see also* 18 C.F.R. § 713(b) (2014) (requiring that a request for rehearing "be filed not later than 30 days after issuance of any final decision . . .").

**iii. Compliance****(a) Summary of Compliance Filings**

213. Under Filing Parties' proposal, any entity may propose projects for consideration in the regional transmission planning process as long as they are a member in good standing of the Planning Management Committee, but entities seeking to develop transmission projects selected in the regional transmission plan for purposes of cost allocation must meet separate qualification criteria. Thus, Filing Parties propose two types of qualification criteria: (1) qualification criteria to submit a transmission project to address an identified regional need; and (2) qualification criteria for transmission developers that seek to be eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>346</sup>

214. Under Filing Parties' proposal, any entity may propose a transmission project for selection in the regional transmission plan so long as the proponent of the project submits the necessary information and is an active member in good standing in one of the five Planning Management Committee membership sectors. Filing Parties propose that to be eligible to propose a project for selection in the regional transmission plan, a project proponent must submit the necessary information (discussed below in the Information Requirements section of this order) and be an active member in good standing within one of the five Planning Management Committee membership sectors.<sup>347</sup> To become a member of a Planning Management Committee membership sector, an entity must execute the Planning Participation Agreement, pay any dues, and comply with the applicable provisions of the agreement.<sup>348</sup> Filing Parties contend that the dues for transmission customers, state regulatory commissions, and key interest groups are minimal.<sup>349</sup>

215. Filing Parties propose separate qualification criteria for transmission developers that seek to be eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. Under Filing Parties' proposal, a transmission developer must submit the information described

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<sup>346</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 14; Arizona Public Service Co. OATT, Attachment E, §§ III.C.5, III.D.

<sup>347</sup> *E.g.*, *id.* § III.C.5.

<sup>348</sup> *E.g.*, *id.* § III.A.2.(a).

<sup>349</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 14.

below to demonstrate that it has the “necessary financial expertise and technical expertise to develop, construct, own and maintain transmission facilities.”<sup>350</sup> This information must be submitted to the Planning Management Committee during the first quarter of the West Connect transmission planning cycle.<sup>351</sup>

216. First, under the proposal, a potential transmission developer must submit a brief history and overview demonstrating that it has the capabilities to develop, construct, own, and operate the proposed transmission project consistent with Good Utility Practice in the state(s) within the WestConnect transmission planning region, and must identify all transmission projects that it has constructed, owned, operated, and/or maintained, including the states in which such projects are located.

217. Filing Parties also propose that a potential transmission developer must submit information regarding its “Business Practices.” Specifically, it must submit its experience in processes, procedures, and any historical performance related to engineering, constructing, operating and maintaining electric transmission facilities and managing teams performing these activities, together with a discussion of the types of resources, including relevant capability and experience, contemplated for licensing, design, engineering, procurement, siting and routing, right-of-way and land acquisition, construction, and project management. A potential transmission developer must also submit information relating to any experience financing, owning, constructing, operating and maintaining, and scheduling access to regional transmission facilities.<sup>352</sup>

218. Filing Parties propose that a potential transmission developer must also submit information regarding its “Compliance History.” This includes past violations of NERC reliability standards and other regulatory requirements pertaining to the development, construction, ownership, operation, and/or maintenance of transmission facilities by the potential transmission developer or any parent, owner, affiliate, or member that is an alternate qualifying entity (as discussed below under “Affiliation Agreements”). If the potential transmission developer has not developed, constructed, owned, operated or maintained electric transmission facilities, it may instead submit information on any

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<sup>350</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.D.

<sup>351</sup> *E.g.*, *id.* § III.D.2. Filing Parties note that during the first transmission planning cycle, the Planning Management Committee shall have the discretion to extend the period for submission of the required information. *Id.*

<sup>352</sup> *E.g.*, *id.* § III.D.2(b).



electric distribution or generating facilities it has developed, constructed, owned, operated or maintained, as applicable, to demonstrate its compliance history.<sup>353</sup>

219. Next, Filing Parties propose that a potential transmission developer must submit information regarding its “Participation in the Regional Planning Process.” In particular, it must submit a discussion of its participation in the regional transmission planning process or any other planning forums that concerns the identification, analysis, and communication of transmission projects.<sup>354</sup> A potential transmission developer must also demonstrate its “Project Execution” ability by submitting a discussion of its capability and experience that would enable it to comply with all scheduling, operating, and maintenance activities associated with project development and execution.<sup>355</sup>

220. Further, a potential transmission developer must submit information regarding its “Right-of-Way Ability.” Under the proposal, this information should discuss the potential transmission developer’s preexisting procedures and historical practices for siting, permitting, landowner relations and routing transmission projects including acquiring rights-of-way and land, and managing rights-of-way and land acquisition for transmission facilities. A potential transmission developer must also discuss any process or procedures that address siting or routing projects through environmentally sensitive areas or mitigation thereof. If the potential transmission developer does not have such preexisting procedures, it may provide a detailed description of its plan for acquiring rights-of-way and land and managing rights-of-way and land acquisition.<sup>356</sup>

221. A potential transmission developer must also submit information concerning its “Financial Health.” The potential transmission developer must demonstrate creditworthiness and adequate resources to finance transmission projects. The potential transmission developer must either have an investment grade credit rating from both S&P and Moody’s or provide corporate financial statements for the most recent five years for which they are available. A potential transmission developer that does not have a credit rating or is less than five years old, must provide corporate financial statements for each year that is available. Alternatively, the potential transmission developer may provide a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the Planning Management Committee. Moreover, it must provide explanations of the following financial ratios: (1) funds from operations-to-interest

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<sup>353</sup> *E.g., id.* § III.D.2(c).

<sup>354</sup> *E.g., id.* § III.D.2(d).

<sup>355</sup> *E.g., id.* § III.D.2(e).

<sup>356</sup> *E.g., id.* § III.D.2(f).

coverage; (2) funds from operations-to-total debt; and (3) total debt to total capital. A potential transmission developer must also indicate the levels of the financial ratios it will maintain during and following construction of the transmission project.<sup>357</sup>

222. Filing Parties further propose that a potential transmission developer must demonstrate that it has an adequate internal and contractor “Safety Program,” including information explaining its safety program execution and performance record.<sup>358</sup> A potential transmission developer must also demonstrate its “Transmission Operations” capabilities. The potential transmission developer must show that its control center operations capabilities (including reservations, scheduling, and outage coordination), its ability to obtain required path ratings, evidence of its NERC compliance process and compliance history (as applicable), any existing required NERC certifications or the ability to obtain them, evidence of storm/outage response and restoration plans, its record of past reliability performance, established required total transfer capability, and a statement of which entity will be operating the completed transmission facility and will be responsible for staffing, equipment, and crew training.<sup>359</sup> Moreover, a potential transmission developer must provide information concerning “Transmission Maintenance.” Specifically, it must demonstrate that it has, or has plans to develop, an adequate transmission maintenance program including staffing and crew training, experience with transmission facility and equipment maintenance, and a record of past maintenance performance. A potential transmission developer must also provide its NERC compliance process and any past history of NERC compliance or plans to develop a NERC compliance program, and must state which entity will perform maintenance on the completed transmission facilities.<sup>360</sup>

223. In addition, under Filing Parties’ proposal, a potential transmission developer must provide information about its “Regulatory Compliance.” Specifically, a potential transmission developer must demonstrate the ability, or its plans to develop its ability, to comply with Good Utility Practice, WECC criteria and regional reliability standards, NERC reliability standards, and any construction, industry, and environmental standards. A potential transmission developer must also demonstrate its ability, or plans to develop the ability to comply with applicable local, state, and federal permitting requirements.<sup>361</sup>

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<sup>357</sup> *E.g., id.* § III.D.2(g).

<sup>358</sup> *E.g., Arizona Public Service Co. OATT, Attachment E § III.D.2(h).*

<sup>359</sup> *E.g., id.* § III.D.2(i).

<sup>360</sup> *E.g., id.* § III.D.2(j).

<sup>361</sup> *E.g., id.* § III.D.2(k).

224. Filing Parties' proposal also includes an "Affiliation Agreement" option, which provides that a transmission developer can demonstrate that it meets the qualification criteria either on its own or through an "alternate qualifying entity" by relying on a corporate affiliate or third-party with relevant experience. In lieu of a contractual or affiliate relationship with one or more alternate qualifying entities, and to the extent the transmission developer intends to rely upon third-parties to meet the qualification criteria, a transmission developer must submit an affidavit from the third-party stating their willingness to perform the tasks identified by the transmission developer. Filing Parties clarify that such affidavits will not be viewed as binding statements of intent by third-parties. If a transmission developer seeks to satisfy the criteria in whole or in part by relying on one or more alternate qualifying entities, the transmission developer must submit materials demonstrating that the alternate qualifying entity meets the criteria for which the transmission developer is relying upon the alternate qualifying entity to satisfy, and a commitment to provide in any project cost allocation application an executed agreement that contractually obligates the alternate qualifying entity to perform the functions for which the transmission developer is relying on the alternate qualifying entity to satisfy.<sup>362</sup>

225. Furthermore, a potential transmission developer must be a member of the WestConnect Transmission Owners with Load Serving Obligations or Independent Transmission Developers and Owners sectors, or it must agree to join either sector and sign the Planning Participation Agreement if the transmission developer seeks to be an entity eligible to use the regional cost allocation method for a project selected in the regional transmission plan for purposes of cost allocation.<sup>363</sup> A potential transmission developer may provide any other information it believes demonstrates its expertise in the listed areas.<sup>364</sup>

226. Filing Parties propose that the Planning Management Committee will notify each transmission developer by September 30 of each year if it has satisfied the qualification criteria. Transmission developers will then be given 30 days to cure any deficiencies, and the Planning Management Committee will inform the transmission developer within 45 days of receipt of the additional information if such information satisfies the criteria. By December 31 of each year, the Planning Management Committee will post on the

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<sup>362</sup> *E.g., id.* § III.D.2(1).

<sup>363</sup> *E.g., id.* § III.D.2(m).

<sup>364</sup> *E.g., id.* § III.D.2(n).

WestConnect website a list of the transmission developers that have satisfied the qualification criteria.<sup>365</sup>

227. Finally, Filing Parties propose OATT revisions to provide for an annual recertification process for eligible transmission developers and reporting requirements for any change in status. Specifically, by June 30 of each year each eligible transmission developer must submit a notarized letter certifying that it continues to meet the qualification criteria, along with an annual certification fee equal to the amount of the WestConnect transmission planning region's annual membership fee if the developer is not a member of the WestConnect transmission planning region. In addition, an eligible transmission developer must inform the Planning Management Committee of any changes in the information provided in its application within 30 days of a change.<sup>366</sup>

228. Filing Parties propose that once a transmission developer notifies the Planning Management Committee of any such change, the Planning Management Committee may determine that the change does not affect the transmission developer's status as an eligible transmission developer, suspend the transmission developer's eligibility until it cures any deficiency, allow the transmission developer to maintain its eligibility for a limited time period (as specified by the Planning Management Committee) while the transmission developer cures the deficiency, or terminate the transmission developer's eligibility status.<sup>367</sup> In addition, Filing Parties propose to revise their respective OATTs to state that the Planning Management Committee may terminate a transmission developer's eligibility status if the transmission developer: (1) fails to submit its annual certification letter; (2) fails to pay the applicable WestConnect transmission planning region membership fees; (3) experiences a change in its qualifications and the Planning Management Committee determines that it may no longer be eligible; (4) informs the Planning Management Committee that it no longer desires to be eligible; (5) fails to notify the Planning Management Committee of a change to the information provided in its application within 30 days of such change; or (6) fails to execute the Planning Participation Agreement as agreed to in the qualification criteria within a reasonable time defined by the Planning Management Committee after seeking to be an entity eligible to

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<sup>365</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 18; Arizona Public Service Co. OATT, Attachment E, § III.D.3(a).

<sup>366</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 18; Arizona Public Service Co. OATT, Attachment E § III.D.3(b).

<sup>367</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 18; Arizona Public Service Co. OATT, Attachment E § III.D.3(b).

use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>368</sup>

(b) **Protests/Comments**

229. As an initial matter, LS Power contends that the revised OATTs do not establish that the qualification criteria apply equally to incumbent and nonincumbent transmission developers, as required by Order No. 1000. LS Power also objects to the lack of clear dispute resolution provisions for any decisions regarding a transmission developer's qualifications and of tariff provisions ensuring the confidentiality of financial statements submitted to qualify.<sup>369</sup>

230. Next, LS Power claims that the proposed provisions regarding the financial qualifications of a transmission developer are unduly restrictive. It states that the focus of the provisions on credit ratings and financial statements unduly discriminates toward certain business models and would act to restrict certain entities from transmission development. It asserts that the proposed narrow set of financial criteria would preclude from qualification entities such as its affiliate, which the Texas Public Service Commission found qualified to develop a significant transmission project.<sup>370</sup> According to LS Power, a stand-alone transmission company without a credit rating, a statement of assets, or a parent guarantee can establish that it is creditworthy to finance and operate a significant transmission expansion.<sup>371</sup> LS Power asserts that requiring transmission developers to have a credit rating, to have a rated parent that will guarantee project obligations, or to provide financial statements will effectively disqualify a large group of independent power producers.<sup>372</sup> LS Power also contends that it is unclear why guarantees, surety bonds, or letters of credit should be required to determine a transmission developer's qualifications and what amount would be required, and that any

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<sup>368</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 18-19; Arizona Public Service Co. OATT, Attachment E § III.D.3(c).

<sup>369</sup> LS Power Comments at 12-13.

<sup>370</sup> *Id.* at 13-14.

<sup>371</sup> *Id.* at 14 (citing Exhibit 2, Testimony of Joseph Esteves, Chief Financial Officer of LS Power Group and LS Power Development, LLC, Docket 35665, before the Public Utility Commission of Texas at p.10, lines 5-19).

<sup>372</sup> *Id.*

security agreement should be filed with the Commission for review.<sup>373</sup> In addition, LS Power argues that the proposed ratio analysis is vague and should not be required.<sup>374</sup>

231. LS Power also opposes the requirement that a transmission developer demonstrate that it has existing control center operations capabilities at the time of its submission of a proposed transmission project. It likewise objects to any reference that transmission operations and maintenance contracts be in place at the time of qualification. Instead, LS Power states that the focus of the criteria should be on the ability of the transmission developer to hire qualified contractors.<sup>375</sup> LS Power further objects to the proposed qualification criterion requiring a transmission developer to demonstrate that it can comply with local, state, and federal permitting requirements.<sup>376</sup> It claims that the requirement is too vague and treads into an area that the Commission determined is inappropriate as an area for transmission developer qualification.<sup>377</sup> It also states that the criterion is unclear on how the Planning Management Committee will exercise its judgment in determining the ability of a transmission developer to comply with Good Utility Practice, WECC criteria, NERC reliability standards, and construction, industry, and environmental standards.<sup>378</sup>

232. Additionally, LS Power objects to the proposed qualification criterion requiring a transmission developer that intends to rely on third-party contractors to submit an affidavit from the third party stating its willingness to perform the tasks identified. It claims that the requirement is overly burdensome and premature at the qualification stage of the transmission planning process. It further claims that there is no evidence that incumbent transmission owners are or have been required to have all contracts in place prior to submission of a transmission project for consideration in the regional transmission plan or for cost allocation.<sup>379</sup>

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<sup>373</sup> *Id.* at 13.

<sup>374</sup> *Id.* at 15.

<sup>375</sup> *Id.* at 15-16.

<sup>376</sup> *Id.* at 16.

<sup>377</sup> *Id.* at 16-17 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 441, and *Tampa Elec. Co.*, 143 FERC ¶ 61,254 at P 150 ).

<sup>378</sup> *Id.* at 17.

<sup>379</sup> *Id.* at 18.

(c) Answer

233. Filing Parties state that it is apparent from their proposal that the qualification criteria are applicable to any transmission developer, whether incumbent or nonincumbent.<sup>380</sup> Filing Parties also contend that their proposed financial criteria are adequately flexible, as prospective transmission developers are provided several options to demonstrate creditworthiness and adequate capital resources. Filing Parties explain that a prospective transmission developer may: (1) provide evidence that it has an investment-grade credit rating; (2) provide corporate financial statements for the most recent five years available or for each year available; or (3) provide a guarantee, surety, letter of credit, or other form of security that is reasonably acceptable to the Planning Management Committee. Filing Parties also argue that their proposal is distinct from the proposal that the Commission rejected in *Louisville Gas and Electric Co.*, which would have required a prospective transmission developer to demonstrate that it has and maintains a credit rating of BBB- or higher from Standard & Poor's or a credit rating of Baa3 or higher from Moody's Investors Service, Inc. without providing an alternative, such as allowing financial statements in lieu of a credit rating.<sup>381</sup> In contrast, Filing Parties argue that they have provided prospective transmission developers with several options, including the option to provide financial statements or, in the alternative, a guarantee, surety, letter of credit, or other form of security.<sup>382</sup>

234. Filing Parties also argue that LS Power's objections to the requirement to demonstrate that a prospective transmission developer has "control center capabilities" rest on a misreading of the OATTs. Filing Parties clarify that their proposed provisions do not require that a potential transmission developer have an existing control center. Instead, a potential transmission developer is required to provide evidence demonstrating that it has the ability to establish control center capabilities. Filing Parties state that this proposal is similar to the qualification criteria that the Commission accepted for the Southwest Power Pool region.<sup>383</sup> Moreover, Filing Parties state that the proposed

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<sup>380</sup> Filing Parties Answer at 29-30 (citing Public Service Company of Colorado OATT, Attachment R-PSCO § III.D.2).

<sup>381</sup> Filing Parties Answer at 32 (citing *Louisville Gas & Elec. Co.*, 144 FERC ¶ 61,054 (2013)).

<sup>382</sup> *Id.* at 32-33.

<sup>383</sup> *Id.* at 33 (citing *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 225 (2012) (accepting qualification criteria requiring that an applicant demonstrate that it has requisite expertise by describing its capability, experience, and process to address, among other things, "control center operation") (*Southwest Power Pool*)).

qualification criteria only require that a prospective transmission developer provide a statement of which entity will be operating and performing maintenance on completed transmission facilities; contrary to LS Power's claim, the proposed provision does not require that a prospective developer provide executed contracts relating to transmission operations and maintenance. Filing Parties also note that in *Southwest Power Pool* the Commission accepted a similar proposal to require a transmission developer to provide a statement of which entity will be performing necessary functions as just, reasonable, and consistent with Order No. 1000.<sup>384</sup>

235. Filing Parties contend that the Commission should reject LS Power's argument against a prospective transmission developer demonstrating that it has the ability (or plans to develop the ability) to comply with, among other things, applicable local, state, and federal permitting requirements. Filing Parties argue that their proposal is distinct from the Commission's prior finding that it would be inappropriate to require a prospective transmission developer to demonstrate that it "has, or can obtain, state approvals necessary to operate in a state."<sup>385</sup> Filing Parties explain that instead, the proposed qualification criteria only require the prospective transmission developer to provide evidence that it plans to take steps towards establishing the ability to fulfill applicable local, state, and federal requirements.<sup>386</sup>

236. Filing Parties explain that, notwithstanding LS Power's belief that it is unclear how the Planning Management Committee will be able to assess a prospective transmission developer's ability or plan to develop the ability to comply with Good Utility Practice, NERC reliability standards, and other such requirements, the Commission has previously accepted proposals to require similar demonstrations and assessments in other regions.<sup>387</sup> Filing Parties also contend that their proposal does not create a barrier to entry, as such concerns are eliminated by the OATT provisions allowing prospective transmission developers to cure any identified deficiencies in their applications. Finally, Filing Parties argue that their proposal is consistent with Order No. 1000's requirement to give a prospective transmission developer "the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities."<sup>388</sup>

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<sup>384</sup> *Id.* at 33 (citing *Southwest Power Pool*, 144 FERC ¶ 61,059 at P 227).

<sup>385</sup> *Id.* at 34 (Order No. 1000-A, 139 FERC ¶ 61,132 at P 441).

<sup>386</sup> *Id.* at 34-35.

<sup>387</sup> *Id.* at 35 (citing *Southwest Power Pool*, 144 FERC ¶ 61,059 at P 228).

<sup>388</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323).



237. Filing Parties contend that the Commission should reject LS Power's request to eliminate the requirement that a prospective transmission developer, if seeking to satisfy the qualification criteria through reliance on a third party, submit an affidavit from the third party and commit to providing an executed agreement in a future project cost allocation application. Filing Parties argue that in order for the Planning Management Committee to assess whether a prospective transmission developer has the requisite financial and technical capabilities to develop, construct, own, operate and maintain transmission facilities, the Planning Management Committee must have evidence of how the developer plans to meet the qualification criteria, including the identity of any third party on which the developer seeks to rely and that third party's willingness to perform the required tasks. Filing Parties argue that not including these provisions would be inconsistent with the Commission's directive in Order No. 1000 to create criteria to determine whether a transmission developer has the resources and expertise necessary to develop transmission facilities. Finally, Filing Parties also note that this proposal is similar to the one accepted in *Southwest Power Pool*.<sup>389</sup>

238. Finally, Filing Parties argue that the Commission should reject LS Power's request to require a separate dispute resolution process for qualification decisions, because Order No. 1000 does not require it and LS Power did not provide any reason why such a process is necessary. Filing Parties also note that, consistent with Order No. 1000, their OATTs provide that to the extent a prospective transmission developer does not qualify it will have the opportunity to submit supplemental information to address any deficiencies. Moreover, Filing Parties' note that their proposed OATT provisions a transmission developer may pursue a dispute under the dispute resolution provisions applicable to the umbrella of transmission planning disputes.<sup>390</sup>

**(d) Commission Determination**

239. We find that Filing Parties' proposed qualification criteria partially comply with Order No. 1000<sup>391</sup> and the First Compliance Order because Filing Parties have revised

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<sup>389</sup> Filing Parties Answer at 36 (citing *Southwest Power Pool*, 144 FERC ¶ 61,059 at P 227). Filing Parties also note that while the Commission rejected SPP's proposal to require transmission developers to provide executed contracts at the qualification stage, the proposed qualification criterion only requires a prospective transmission developer relying on a third party to commit to providing executed contracts at the point that it actually seeks regional cost allocation for a transmission project. Filing Parties Answer at 36-37.

<sup>390</sup> *Id.* at 31.

<sup>391</sup> We note that Filing Parties did not include any qualification criteria in their first compliance filings. As such, this is our first opportunity to consider their proposal.

their respective OATTs to establish appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation. Filing Parties propose two types of qualification criteria: (1) those applied to entities seeking to submit a project in the regional transmission plan; and (2) those applied to entities seeking to be transmission developers eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. In addition, Filing Parties have provided procedures for timely notifying transmission developers of whether they satisfy the qualification criteria and the procedures to remedy any identified deficiencies.<sup>392</sup>

240. As an initial matter, we note that under Filing Parties' proposal, to be eligible to propose a project for selection in the regional transmission plan, a project proponent must be an active member in good standing within one of the five Planning Management Committee membership sectors. Filing Parties further propose that, to qualify as a transmission developer eligible to use the regional cost method for a project selected in the regional transmission plan for purposes of cost allocation, the transmission developer must sign the Planning Participation Agreement and be a member of either the Transmission Owners with Load Serving Obligations or Independent Transmission Developers and Owners membership sectors. We do not find it unreasonable to require a project proponent to be in good standing or to require a transmission developer to execute the Planning Participation Agreement, making it a member of the Planning Management Committee. These requirements will ensure that the terms and conditions for studying transmission projects will apply in a not unduly discriminatory manner to new entrants and existing transmission providers.<sup>393</sup> However, as discussed above in the Planning Participation Agreement section of this order, the Commission must evaluate the Planning Participation Agreement to determine whether the criteria set forth in the Planning Participation Agreement are reasonable. In particular, we are concerned that the membership dues associated with the Planning Participation Agreement may be a barrier to entry or may become a barrier to entry if they increase significantly over a period of time. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that set forth the membership dues, or the formula for determining such dues, to be paid to the WestConnect transmission planning region in their respective OATTs.

241. Next, we discuss Filing Parties' proposed qualification criteria for transmission developers that seek to be eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost

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<sup>392</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 217.

<sup>393</sup> *See Avista Corp.*, 143 FERC ¶ 61,255 at PP 181-182.

allocation. As discussed below, we find that the proposed qualification criteria partially comply with the directives in Order No. 1000. Overall, Filing Parties' proposed qualification criteria are not unduly discriminatory or preferential and provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, and operate, and maintain the transmission facility that it is proposing for selection in the regional transmission plan for purposes of cost allocation.

242. Specifically, we find that requiring a potential transmission developer to provide information addressing the following qualification criteria meets the requirements of Order No. 1000: (1) general capabilities to develop, construct, own, and operate the proposed project; (2) business practices, such as the transmission developer's experience in processes, procedures, and any historical performance related to engineering, constructing, operating and maintaining electric transmission facilities and managing teams performing these activities, and a discussion of the types of resources, including relevant capability and experience, contemplated for licensing, design, engineering, procurement, and project management as well as other aspects of the construction of transmission projects; (3) compliance history, such as past violations of regulatory standards; (4) participation in the regional transmission planning process or any other planning forums involving transmission planning; (5) discussion of the developer's capability and experience that would enable it to comply with all scheduling, operating, and maintenance activities associated with project development and execution; (6) a demonstration of an adequate internal and contractor safety program, as well as adequate program execution and performance record; (7) preexisting procedures and historical practices for citing, permitting, landowner relations and routing transmission projects;<sup>394</sup> and (8) other information the transmission developer believes demonstrates its expertise in the listed areas.<sup>395</sup> We also find that Filing Parties have complied with Order No. 1000's requirement that public utility transmission providers establish procedures for timely notifying transmission developers of whether they satisfy the region's qualification criteria and allowing them to remedy any deficiencies by including in their OATTs a process for notifying transmission developers who fail to meet the qualification criteria and a process for those developers to cure any deficiencies. Finally, we find that the proposed annual recertification process is just and reasonable and is consistent with the requirements of Order No. 1000.

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<sup>394</sup> We note that if an applicant does not have any preexisting procedures, qualification criteria permit the applicant to provide a detailed description of its plan for acquiring and managing rights of way and land acquisition. *E.g.*, Arizona Public Service Co. OATT, Attachment E § III.D.2(f).

<sup>395</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.D.2.

243. Contrary to LS Power's assertions, Filing Parties' proposed qualification criteria will apply to both incumbent transmission owners and nonincumbent transmission developers who seek to become eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. We also disagree with LS Power that Filing Parties' proposed Transmission Operation criterion requires *existing* control center operations capabilities; rather, the potential transmission developer merely needs to provide evidence demonstrating that it has the ability to undertake control center operations. However, to avoid any ambiguity, we direct Filing Parties to file, within 60 days of the date of issuance of this order, further compliance filings that revise the Transmission Operations criterion to clarify that a prospective transmission developer need not have existing control center operations capabilities at the time it seeks to be eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation, but instead must demonstrate only that it has the ability to undertake such operations.

244. With regard to the proposed Financial Health qualification criterion, LS Power claims that the proposed provisions regarding the financial health of a transmission developer are unduly restrictive. We disagree. Filing Parties propose to permit a transmission developer to demonstrate creditworthiness and adequate capital resources by having investment grade credit ratings or providing corporate financial statements for the most recent five years for which they are available. Entities that do not have a credit rating or that are less than five years old may provide corporate financial statements for each year that is available or a guarantee, surety bond, letter of credit, or other form of security that is reasonably acceptable to the Planning Management Committee.<sup>396</sup> We find that Filing Parties' proposed Financial Health criterion is adequately flexible, as potential transmission developers are provided several reasonable options to demonstrate creditworthiness and adequate capital resources.

245. We agree with LS Power that the part of the proposed Regulatory Compliance criterion that requires a potential transmission developer to demonstrate the ability, or its plans to develop the ability, to comply with applicable local, state, and federal permitting requirements is an inappropriate qualification criterion. While Filing Parties' proposal requires that a potential transmission developer submit only a *plan* to develop its ability to comply with the applicable local, state, and federal permitting requirements, this is inconsistent with the Commission's statement in Order No. 1000-A that it is impermissible to require as part of the qualification criteria that a potential transmission developer demonstrate that it can obtain state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to

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<sup>396</sup> *E.g., id.* § III.D.2(g).

propose a transmission facility.<sup>397</sup> Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings revising their respective OATTs to remove the qualification criterion that requires a potential transmission developer to demonstrate its ability, or plans to develop the ability, to comply with applicable local, state, and federal permitting requirements.

246. With regard to the Transmission Operation and Transmission Maintenance qualification criteria, under the proposal, a potential transmission developer must demonstrate that it has, or has plans to develop: (1) control center capabilities, including reservation, scheduling and outage coordination; and (2) an adequate transmission maintenance program, including staffing and crew training, transmission facility and equipment maintenance, a performance maintenance record, and a NERC compliance process. For each of these criteria, a potential transmission developer must also provide a “statement” of which entity will be operating and performing maintenance on completed transmission facilities.<sup>398</sup> LS Power objects to any reference that transmission operations and maintenance contracts be in place at the time of qualification of the transmission developer. While we agree that it would be inappropriate to require that a potential transmission developer have contracts in place at the time it proposes a transmission project for selection in the regional transmission plan for purposes of cost allocation, we do not construe these provisions to require that such contracts be in place; rather, the provisions require only that the transmission developer provide a statement of which entity will be performing necessary functions. However, because this is an important distinction, to avoid any ambiguity regarding this requirement, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that revise their Transmission Operations and Transmission Maintenance criteria to clarify that a potential transmission developer will not be required to have a maintenance or operations entity under contract at the time it seeks to be eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.

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<sup>397</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441 (stating that it would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain, state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility). *See also New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059, at P 196 (2013) (rejecting a qualification criterion that required a potential transmission developer to submit its current and expected capabilities to license a potential transmission project).

<sup>398</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, §§ III.D.2.(i) and III.D.2.(j).

247. Finally, with respect to Filing Parties' Affiliation Agreements criterion, which provides that, if a potential transmission developer intends to rely on a non-affiliated third-party to develop a transmission facility selected in the regional transmission plan for purposes of cost allocation, it must obtain affidavits from the entity stating its willingness to perform the tasks identified by the transmission developer, we direct Filing Parties to remove this criterion from their respective OATTs. We agree with LS Power that it is premature at this point in the qualification stage to require a potential transmission developer to obtain affidavits from any entity the transmission developer may rely on to meet the qualification criteria. We recognize that Filing Parties' proposal provides that such affidavits will not be viewed as binding statements of intent by third-parties. However, under Filing Parties' proposal, at this stage of the qualification process, transmission providers are deemed qualified transmission developers in general (i.e., without an association to a particular transmission project), but are not selected as the particular transmission developer to use the regional cost allocation for a project selected in the regional transmission plan for purposes of cost allocation.<sup>399</sup> Requiring affidavits at this early stage of the eligibility process creates an impermissible barrier to entry and does not comply with the requirement that qualification criteria be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developers.<sup>400</sup> We note, however, that it is likely insufficient for a transmission developer to only submit a list of contractors with which it could contract to perform the tasks identified by the transmission developer if selected and nothing more. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to remove the requirement from the Affiliation Agreement criterion that third-party, alternate qualifying entities, submit affidavits on behalf of the transmission developer.

**b. Information Requirements**

248. Order No. 1000 required each public utility transmission provider to identify in its OATT the information that a prospective transmission developer must submit in support

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<sup>399</sup> This is discussed in more detail below in the Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation section of this order.

<sup>400</sup> See *Southwest Power Pool*, 144 FERC ¶ 61,059 at P 227 (“Requiring executed contracts to qualify to submit a bid creates an impermissible barrier to entry and does not comply with the requirement that qualification criteria be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developer.”).

of a transmission project proposed in the regional transmission planning process.<sup>401</sup> The information requirements must be sufficiently detailed to allow a proposed transmission project to be evaluated comparably to other transmission facilities proposed in the regional transmission planning process. The information requirements must be fair and not be so cumbersome as to effectively prohibit transmission developers from proposing transmission facilities, yet not be so relaxed that they allow for relatively unsupported proposals.<sup>402</sup> Order No. 1000 also required each public utility transmission provider to identify in its OATT the date by which a transmission developer must submit information on a proposed transmission project to be considered in a given transmission planning cycle.<sup>403</sup>

**i. First Compliance Order**

249. The Commission found that the revisions to Filing Parties' respective OATTs addressing information requirements were appropriately detailed and thus partially complied with the requirements of Order No. 1000. However, the Commission noted that the Filing Parties' draft Business Practice Manual included two information requirements – the transmission project in-service date and the stated intention of the transmission project developer to join the WestConnect transmission planning region if its transmission project is selected in the regional transmission plan for purposes of cost allocation – that Filing Parties omitted from their respective OATTs.<sup>404</sup> Therefore, the Commission directed Filing Parties to include these requirements in their respective OATTs if they intended to require transmission project developers to provide this information.<sup>405</sup>

**ii. Summary of Compliance Filings**

250. Filing Parties propose OATT revisions in response to the Commission's directives on the information requirements for proposed transmission projects. First, they propose to revise their respective OATTs to include the project in-service date in the list of required transmission project information.<sup>406</sup> Filing Parties also propose to revise their

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<sup>401</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

<sup>402</sup> *Id.* P 326.

<sup>403</sup> *Id.* P 325.

<sup>404</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 226.

<sup>405</sup> *Id.*

<sup>406</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.5.

OATTs to state that the information requirements and study cost deposit<sup>407</sup> apply to all submittals of transmission projects to address an identified regional need, whether or not the project proponent seeks regional cost allocation. Next, they propose to revise their OATTs to clarify that a single transmission project submittal may not seek multiple study requests; that is, to the extent a project proponent seeks to have its transmission project studied under a variety of alternative project assumptions, each alternative must be studied as an individual project submittal.<sup>408</sup> They additionally propose to add a requirement that project proponents provide studies showing system reliability impacts of their proposed transmission projects on neighboring transmission systems or on other transmission planning regions. The proposed OATT revisions state that the project proponents should identify all costs associated with any required upgrades to mitigate adverse impacts on other transmission systems. If the impact studies and associated costs are not available at the time the project is submitted to the WestConnect transmission planning region, the revised OATTs provide that the project proponent may request that the WestConnect transmission planning region perform the studies, at the proponent's expense, as part of the analysis. The revised OATTs further provide that the Planning Management Committee will approve requests for transmission system impact studies depending on whether: (1) the project proponent provides funding for the analysis; and (2) the request can be performed within the transmission planning cycle.<sup>409</sup> Finally, they propose to revise their OATTs to state that the submission period for information on proposed transmission projects ends by the fifth quarter of the WestConnect transmission planning cycle.<sup>410</sup>

### **iii. Protests/Comments**

251. LS Power is concerned that the requirement that a transmission developer provide studies showing system reliability impacts on neighboring systems or regions is unduly burdensome and vague. It also asserts that because the analysis, if not included with the project submittal, will only be done if the study request can be performed within the transmission planning cycle framework, incumbent transmission owners control whether they do the study.<sup>411</sup> LS Power states that Filing Parties should place the requirement in

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<sup>407</sup> The study deposit is discussed above in the Comparability section of this order.

<sup>408</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E § III.C.5.

<sup>409</sup> *E.g.*, *id.* § III.C.5.

<sup>410</sup> *E.g.*, *id.* § III.C.5.

<sup>411</sup> LS Power Comments at 12.



their OATTs as part of the evaluation process so that there can be no discrimination as to whether the study can be performed within the planning framework.<sup>412</sup>

**iv. Answer**

252. Filing Parties explain that the system impact studies requested by the WestConnect transmission planning region are the type of studies usually performed by a transmission developer as part of its effort to design and scope a transmission project. They state that these studies allow transmission developers to assess the impact of their proposed projects and determine whether or not pursuing the project is reasonable or whether the project should be modified in some way prior to submitting it for consideration in the regional transmission planning process. Filing Parties argue that Order No. 1000 does not obligate the WestConnect transmission planning region to perform, at its expense, these preliminary studies on behalf of transmission developers, and it would be inappropriate to force the WestConnect transmission planning region and its members to bear the costs for studies typically performed by transmission developers as part of their own due diligence.<sup>413</sup>

**v. Commission Determination**

253. We find that the provisions in Filing Parties' filing addressing information requirements partially comply with the directives in the First Compliance Order. As directed, Filing Parties have included the project in-service date in their respective OATTs. In addition, Filing Parties also include new information requirements in their respective second compliance filings. We accept Filing Parties' proposal to require those seeking to develop transmission projects (including stakeholders) to satisfy the information requirements for a transmission project that it wishes to propose in the regional transmission planning process. We further find that Filing Parties' proposed information requirements, with the exception discussed below, comply with the directives in Order No. 1000.

254. We find that Filing Parties' proposed information requirement regarding studies showing system reliability impacts on neighboring systems or regions and the costs associated with any upgrades required to mitigate adverse impacts partially complies with the requirements of Order No. 1000. We understand Filing Parties' proposal to provide a potential transmission developer with two options: (1) the potential transmission developer must provide transmission system impact studies showing system reliability impacts on neighboring systems or regions and must identify the costs associated with

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<sup>412</sup> *Id.*

<sup>413</sup> Filing Parties Answer at 28-29.

any upgrades required to mitigate adverse impacts; or (2) the developer must request that the transmission system impact studies and the identification of costs be performed during the regional transmission planning process at the developer's expense. With respect to the first option, we find it reasonable for Filing Parties to provide a potential transmission developer with the opportunity to perform the study and identify the relevant costs independent of the regional transmission planning process. However, a potential transmission developer may need information from the incumbent transmission owners about their transmission systems to perform the required studies and identify the relevant costs. Therefore, we require Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings revising their respective OATTs to clarify that they will provide, subject to appropriate confidentiality and CEII restrictions, the information available to Filing Parties that a potential transmission developer needs to perform the transmission system impact study and to identify the costs associated with any upgrades required to mitigate adverse impacts.

255. With regard to the second option, we find that it is reasonable for Filing Parties to require a potential transmission developer to fund studies performed in the regional transmission planning process necessary to identify system reliability impacts on neighboring systems or regions and the costs associated with any upgrades required to mitigate adverse impacts if the developer does not conduct the studies itself. However, we reject Filing Parties' proposal that the Planning Management Committee can deny a potential transmission developer's request that the transmission system impact study be performed as part of the regional transmission planning process if the request cannot be performed within the transmission planning cycle. We find that this proposal would provide too much discretion to the Planning Management Committee to decide which requests are granted and which requests are not, which could result in undue discrimination. Moreover, the potential transmission developer will be responsible for funding the required study, so the funds necessary to perform the study within a given transmission planning cycle will be available. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings revising their respective OATTs to remove the provision allowing the Planning Management Committee to deny a potential transmission developer's request that the transmission system impact study be performed as part of the regional transmission planning process if the request cannot be performed within the transmission planning cycle.

c. **Evaluation Process for Transmission Proposals Selection in the Regional Transmission Plan for Purposes of Cost Allocation**

256. Order No. 1000 required each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for

purposes of cost allocation.<sup>414</sup> The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.<sup>415</sup> In addition, the evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.<sup>416</sup>

**i. First Compliance Order**

257. The Commission found that the proposed provisions in Filing Parties' compliance filings addressing the evaluation of proposed transmission projects partially complied with the requirements of Order No. 1000.<sup>417</sup> The Commission found that Filing Parties' OATTs, with the exception of NV Energy and Public Service Company of Colorado, adequately describe the standards that the WestConnect transmission planning region will apply to select among competing projects. With respect to NV Energy and Public Service Company of Colorado, the Commission directed further revisions to their respective OATTs to incorporate the seven evaluation criteria adopted by the other Filing Parties in their OATTs.<sup>418</sup> With respect to all the Filing Parties' OATTs, the Commission found that the role of the Planning Management Committee and each committee and/or subcommittee in the evaluation process was not clear. Therefore, the Commission directed Filing Parties to make compliance filings to revise their OATTs to provide additional detail regarding the evaluation and selection process, particularly the role of each WestConnect transmission planning region committee and/or subcommittee.<sup>419</sup>

258. The Commission also directed Filing Parties to clarify a provision in their OATTs that would require the Planning Management Committee to secure the approval of a local transmission owner before modifying its local transmission plan through the selection of

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<sup>414</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

<sup>415</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

<sup>416</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

<sup>417</sup> *See* First Compliance Order, 142 FERC ¶ 61,206 at P 237.

<sup>418</sup> *Id.* P 241.

<sup>419</sup> *Id.* P 238.

a regional reliability transmission project in the regional transmission plan for purposes of cost allocation. The Commission explained that whether a transmission owner is willing to modify its local transmission plan should not determine whether a regional reliability project may be selected in the regional transmission plan for purposes of cost allocation, and that granting an incumbent transmission owner such authority would frustrate the WestConnect transmission planning region's ability to identify and select the more efficient or cost-effective regional solutions in the regional transmission plan.<sup>420</sup>

ii. **Requests for Rehearing or Clarification**

(a) **Summary of Requests for Rehearing or Clarification**

259. LS Power requests that the Commission clarify its directive requiring Filing Parties to include in their OATTs "additional detail regarding the evaluation and selection process for projects."<sup>421</sup> Specifically, LS Power requests that the Commission confirm that the "additional detail" required includes information about how each of the seven factors identified in Filing Parties' proposal are weighted in the evaluation process, noting that not all of the factors relate to the cost-effectiveness of a proposed transmission project. LS Power argues that, consistent with the Commission's order on the Midwest Independent Transmission System Operator, Inc.'s (MISO) Order No. 1000 compliance filing, cost should be the primary focus of the evaluation process, and the Commission should require Filing Parties to specifically state how they will weight the seven factors when evaluating transmission projects in the regional transmission planning process.<sup>422</sup>

260. If the Commission decides not to grant the requested clarification, LS Power requests rehearing with respect to this issue. LS Power maintains that, while it does not generally object to the seven factors, Filing Parties failed to provide clarity regarding how the factors will be used in selecting transmission projects in the regional transmission plan for purposes of cost allocation, including how they will be weighted against one another, such that the evaluation process is not transparent. LS Power points out that in other Order No. 1000 compliance proceedings, the Commission required the MISO and the California Independent System Operator Corporation (CAISO) to provide additional detail regarding the weighting and implementation of the evaluation factors they

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<sup>420</sup> *Id.* PP 237-243.

<sup>421</sup> LS Power Request for Clarification or Rehearing at 2 (quoting First Compliance Order, 142 FERC ¶ 61,206 at P 238).

<sup>422</sup> *Id.* at 2-3 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 339 (2013)).

proposed, with a particular focus on evaluation of the relative efficiency and cost-effectiveness of a proposed transmission project. By comparison, LS Power asserts, there is no indication that cost considerations are any more or less important than the other factors identified in the WestConnect regional transmission planning process. LS Power therefore requests that, consistent with its directives to CAISO, the Commission require Filing Parties to revise their evaluation factors to identify how they will use the factors to determine the more cost-effective solution and include in their OATTs a proper balancing of the importance of cost in the selection process.<sup>423</sup>

**(b) Commission Determination**

261. We deny LS Power's request for clarification or, in the alternative, rehearing. We affirm our finding in the First Compliance Order that the seven evaluation factors proposed by Filing Parties to determine a preferred solution or combination of solutions provide sufficient clarity regarding the transparent and not unduly discriminatory process for selecting transmission projects.<sup>424</sup>

262. We will not require, as LS Power requests, that Filing Parties include additional information regarding the weighting that they will apply to each of the seven factors used in the evaluation process. Order No. 1000 does not require public utility transmission providers to specify in their OATTs the relative weight of the factors considered in the evaluation process. Furthermore, the Commission recognized in Order No. 1000 that the process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation will likely vary from region to region.<sup>425</sup> As LS Power notes, certain transmission planning regions have proposed weighted criteria as an element of their region's evaluation model, and the Commission has required further information in evaluating those proposals. For example, the Commission required additional information in response to a proposal by MISO to weight the evaluation factors to ensure that its proposal was transparent and not unduly discriminatory or preferential. However, Filing Parties have made no such proposal here and we decline to require additional specifications in their respective OATTs because their proposal complies with the requirements of Order No. 1000. Similarly, the CAISO proposal referenced by LS Power indicated that certain selection factors would be deemed "key" factors, based upon the transmission facility at issue, and the Commission concluded that CAISO should provide additional information regarding how CAISO

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<sup>423</sup> *Id.* at 6-9 (citing *California Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057, at P 230 (2013) (First CAISO Compliance Order)).

<sup>424</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 238.

<sup>425</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323.

would determine which selection factors may be deemed “key” in a given instance.<sup>426</sup> By comparison, Filing Parties’ proposal does not specifically assign special significance to any individual criterion and therefore does not raise the same concerns addressed by the Commission in the First CAISO Compliance Order.

**iii. Compliance**

**(a) Summary of Compliance Filings**

263. In response to the First Compliance Order, Filing Parties propose to revise their OATTs to describe the role of the WestConnect transmission planning region committees and subcommittees in the evaluation process. Their revised OATTs state that the Planning Management Committee: (1) manages the regional transmission planning process, including approving the regional transmission plan that applies the regional cost allocation methodologies; (2) coordinates and has decision-making authority over whether to accept recommendations from the Planning Subcommittee and Cost Allocation Subcommittee; (3) develops and approves the regional transmission plan based on recommendations from those subcommittees, as well as develops and approves a scope of work, work plan, and periodic reporting for the WestConnect transmission planning region’s planning functions, including holding a minimum of two stakeholder informational sessions per year; and (4) appoints the chair of the Planning Subcommittee and Cost Allocation Subcommittee, who each must be a representative of the Transmission Owners with Load Serving Obligations member sector.<sup>427</sup>

264. Under the proposal, the Planning Subcommittee’s responsibilities include, but are not limited to, reviewing and making recommendations to the Planning Management Committee for development of study plans, establishing base cases, evaluating potential solutions to regional transmission needs, producing and recommending the regional transmission plan for Planning Management Committee approval, and coordinating with the Cost Allocation Subcommittee. The Planning Subcommittee will provide public notice of committee meetings and provide opportunities for stakeholders to provide comments on the process and proposed regional transmission plan.<sup>428</sup>

265. Further, the Cost Allocation Subcommittee’s responsibilities include, but are not limited to, performing and/or overseeing the performance of the cost allocation method. The Cost Allocation Subcommittee also reviews and makes recommendations to the

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<sup>426</sup> *California Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 at P 230.

<sup>427</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.B.5.b.

<sup>428</sup> *E.g., id.*

Planning Management Committee for modifying the definitions of benefits and the cost allocation method as necessary to meet the WestConnect transmission planning region's planning principles on identification of beneficiaries and cost allocation. The Cost Allocation Subcommittee will review and recommend transmission projects to the Planning Management Committee for purposes of cost allocation based on the subcommittee's application of the regional cost allocation method, and will provide public notice of committee meetings and opportunities for stakeholders to comment on the process and proposed cost allocation.<sup>429</sup>

266. In addressing the provision in their OATTs that would require prior approval of a local transmission owner before its local transmission plan is modified by the selection of a more efficient or cost-effective regional reliability transmission project, Filing Parties propose to revise their OATTs to state that “[b]ecause local transmission owners are ultimately responsible for compliance with NERC Reliability Standards and for meeting local needs[,] the local transmission plans will not be modified; however, the [Planning Management Committee] may identify more efficient or cost effective regional transmission projects.”<sup>430</sup> Moreover, Filing Parties propose to revise their OATTs to state that, with respect to planning for economic considerations, the Planning Management Committee will identify the more efficient or cost-effective regional transmission projects, but will not modify local transmission plans.<sup>431</sup> In addition, Filing Parties have revised their OATTs to state that “[s]hould multiple utilities have separate reliability issues that are addressed more efficiently or cost effectively by a single regional project, that regional project will be approved for selection in the [r]egional [p]lan...”<sup>432</sup>

267. Finally, NV Energy and Public Service Company of Colorado propose to revise their respective OATTs to incorporate the seven evaluation criteria that the other Filing Parties previously included in their respective OATTs.<sup>433</sup>

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<sup>429</sup> *E.g., id.* § III.B.5.b.

<sup>430</sup> *E.g., id.* § III.E.2.

<sup>431</sup> *E.g., id.* § III.E.3.

<sup>432</sup> *E.g., id.* § VII.B.1.

<sup>433</sup> Public Service Co. of Colorado OATT, Attachment R-PSCo § III.E; NV Energy OATT, Attachment K § III.F.

(b) **Commission Determination**

268. We find that the provisions in Filing Parties' respective filings addressing the evaluation of proposed transmission facilities comply with the directives in the First Compliance Order because they clarify the process for evaluating potential transmission facilities and the role that the Planning Management Committee and its subcommittees will perform in the evaluation process. Specifically, the Planning Subcommittee and the Cost Allocation Subcommittee will use the seven criteria outlined in the evaluation section of Filing Parties' OATTs<sup>434</sup> to develop a recommended regional transmission plan for approval by the Planning Management Committee. Moreover, NV Energy and Public Service Company of Colorado have included OATT revisions to adopt the evaluation criteria proposed by the other Filing Parties. We find that these revisions comply with Order No. 1000.<sup>435</sup>

269. Additionally, we find that Filing Parties addressed the concern that the Planning Management Committee would be required to secure the approval of a local transmission owner before modifying its local transmission plan through the selection of a regional reliability transmission project in the regional transmission plan for purposes of cost allocation. Specifically, Filing Parties' OATT revisions explaining that the Planning Management Committee may identify more efficient or cost-effective regional transmission projects that meet reliability needs, coupled with the revision that, if separate reliability issues are addressed more efficiently or cost-effectively by a single

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<sup>434</sup> The Commission previously accepted the evaluation criteria that will be used to evaluate proposed transmission facilities. The seven evaluation criteria are: (1) ability to fulfill the identified need practically; (2) ability to meet applicable reliability criteria or NERC Transmission Planning standards issues; (3) technical, operational and financial feasibility; (4) operational benefits/constraints or issues; (5) cost effectiveness over the time frame of the study or the life of the facilities, as appropriate (including adjustments, as necessary, for operational benefits/constraints or issues, including dependability); (6) where applicable, consistency with public policy or regulatory requirements, including cost recovery through regulated rates; and (7) whether the project is determined by the Planning Management Committee to be more efficient or cost-effective. First Compliance Order, 142 FERC ¶ 61,206 at P 238.

<sup>435</sup> We note, however, that the seventh evaluation criterion in NV Energy's and Public Service Company of Colorado's proposed OATTs uses the phrase "more efficient cost-effective." As discussed below in the Reevaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Proposes of Cost Allocation section of this order, Filing Parties must use the "more efficient *or* cost-effective" criterion established by Order No. 1000.



regional transmission project, that regional transmission project will be approved for selection in the regional transmission plan for purposes of cost allocation, sufficiently addresses the Commission's concern and thus complies with the directive in the First Compliance Order.

**d. Reevaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation**

270. To ensure the incumbent transmission provider can meet its reliability needs or service obligations, Order No. 1000 required each public utility transmission provider to amend its OATT to describe the circumstances and procedures for reevaluating the regional transmission plan to determine if alternative transmission solutions must be evaluated as a result of delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation.<sup>436</sup> If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.<sup>437</sup>

**i. First Compliance Order**

271. The Commission found that Filing Parties' provisions addressing the reevaluation of the regional transmission plan partially complied with the requirements of Order No. 1000. First, the Commission, noting that Order No. 1000 specifically requires public utility transmission providers to reevaluate the regional transmission *plan*, rather than to reevaluate transmission *projects*, directed Filing Parties to clarify their OATTs accordingly. Second, the Commission indicated an understating of Filing Parties' reevaluation proposal as implementing Order No. 1000's requirement that Filing Parties set forth the circumstances under which they will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative transmission solutions. Thus, the Commission directed Filing Parties to revise their OATTs to: (1) conform the provisions, as needed, to reflect the Commission's understanding; (2) allow each incumbent transmission provider to propose solutions that it would implement, within its retail distribution service territory or footprint, if an

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<sup>436</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 263, 329, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

<sup>437</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

evaluation of alternatives is needed; and (3) if the proposed solution is a transmission facility, provide for the facility's evaluation for possible selection in the regional transmission plan for purposes of cost allocation.<sup>438</sup>

272. Third, the Commission expressed concern that Filing Parties provided only a non-exhaustive list of the circumstances under which the regional transmission plan will be reevaluated, and directed Filing Parties to revise their OATTs to: (1) provide additional detail regarding the circumstances under which the regional transmission plan will be reevaluated, including defined triggers for reevaluation; (2) clarify the procedures under which the Planning Management Committee will decide to reevaluate; and (3) clarify that only the Planning Management Committee, and not "the transmission owners and providers," will have authority to remove a transmission project selected for purposes of cost allocation from the regional transmission plan.<sup>439</sup>

273. With respect to the specific reevaluation triggers, the Commission concluded that Filing Parties' proposal to reevaluate the regional transmission plan to determine if delays in the development of: (1) transmission projects that are delayed and fail to meet their submitted in-service date by more than two years; and (2) transmission projects with significant project changes (e.g., kilovolt, megavolt ampere, or path rating changes) require evaluation of alternative transmission solutions complied with Order No. 1000. However, the Commission rejected Filing Parties' proposal to reevaluate the regional transmission plan to determine if delays in the development of transmission projects that are not fully funded require evaluation of alternative transmission solutions, because the Commission indicated that cost allocation determinations for transmission projects selected in the regional transmission plan for purposes of cost allocation must be binding on identified beneficiaries. The Commission also directed Filing Parties to provide additional information regarding their proposal to reevaluate the regional transmission plan to determine if delays in the development of transmission projects with a change in the calculation of benefits or benefit to cost ratio require evaluation of alternative transmission solutions, because Filing Parties did not explain when such benefit to cost ratio for a transmission project selected in the regional transmission plan for purposes of cost allocation may be recalculated or the process for doing so.<sup>440</sup>

274. The Commission also directed Filing Parties to revise their OATTs to clarify that any delay in the development of a local or single system transmission project that has been selected in a regional transmission plan for purposes of cost allocation trigger a

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<sup>438</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 252-254.

<sup>439</sup> *Id.*

<sup>440</sup> *Id.* PP 257-258.

reevaluation of the regional transmission plan under the same circumstances as would delays in the development of any other transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>441</sup> The Commission also directed Filing Parties to describe the circumstances and procedures under which they will reevaluate the regional transmission plan for alternative solutions if delays exist in the development of: (1) planned transmission system upgrades to existing facilities; and (2) transmission projects that have been approved by WestConnect in prior transmission planning cycles (unless agreed upon by the project's beneficiaries). The Commission determined that additional detail was needed because both categories of transmission projects may be selected in the regional transmission plan for purposes of cost allocation.<sup>442</sup>

275. Finally, the Commission accepted Filing Parties' proposal to require: (1) the developer of a transmission project selected in the regional transmission plan for purposes of cost allocation to submit a development schedule that indicates the required steps necessary to develop and construct the transmission facility; and (2) the transmission owners and providers in the WestConnect transmission planning region to establish a date by which the steps required to construct the facility must be achieved.<sup>443</sup>

## ii. Summary of Compliance Filings

276. Filing Parties propose that their reevaluation procedures will begin with the second transmission planning cycle following the effective date for their implementation of the regional transmission planning process. Under Filing Parties' revised reevaluation procedures, the Planning Management Committee will be responsible for deciding whether to reevaluate the regional transmission plan and transmission facilities selected in the regional transmission plan for purposes of cost allocation to determine if alternative transmission solutions are necessary.<sup>444</sup>

277. The regional transmission plan and any transmission project selected in the regional transmission plan for purposes of cost allocation, including any local or single-system transmission projects or planned transmission system upgrades to existing facilities selected for purposes of cost allocation, will be subject to reevaluation in each subsequent transmission planning cycle according to the following criteria: (1) the

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<sup>441</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 260.

<sup>442</sup> *Id.* P 261.

<sup>443</sup> *Id.* P 262.

<sup>444</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 19-20; Arizona Public Service Co. OATT, Attachment E, § III.E.7.

underlying project characteristics and/or regional or interregional needs change in the regional transmission plan (e.g., a project fails to secure a developer, a developer fails to maintain qualifications necessary to utilize regional cost allocation, the identified beneficiaries of a project change, the status of a large load that contributes to the need for a project changes, or a project is affected by a change in law or regulation); (2) a transmission project is delayed and fails to meet its in-service date by more than two years, including projects delayed by funding, regulatory approval, contractual administration, legal proceedings (including arbitration), and construction or other delays; (3) there are significant physical changes to the project, including, but not limited to, kilovolt, megavolt ampere, or path rating changes, and changes to the number of circuits, transmission elements, or interconnection locations; or (4) there is a change in the calculation of benefits or the benefit to cost ratio of the project that may affect whether the project remains an efficient or cost-effective solution to meeting regional needs.<sup>445</sup> Filing Parties' OATTs provide the following examples with respect to this last point:

- a. Where an increase in the selected project's costs, including but not limited to, material, labor, environmental mitigation, land acquisition, operations and maintenance, and mitigation for identified transmission system and region, causes the total project costs to increase above the level upon which the project was initially selected for inclusion in the regional plan for purposes of cost allocation, the inclusion of the regional project in the regional plan will be reevaluated to determine if the regional project continues to satisfy the region's benefit to cost ratio and can be found to be a more efficient and cost-effective solution under current cost information.
- b. A selected project's benefits may include identification of a reliability benefit in the form of remedying a violation of a reliability standard. If the identified beneficiary implements improvements, such as a remedial action scheme, to achieve reliability in compliance with the reliability standard at issue, inclusion of the regional project in the regional plan will be reevaluated to determine if the regional project continues to satisfy the region's benefit to cost ratio and can be found to be a more efficient and cost-effective solution under current benefit information.
- c. Where a project's estimated benefits include benefits in the form of avoided costs (e.g., a regional project's ability to avoid a local project), and the project is not avoided, the inclusion of the regional project in the Regional Plan will be reevaluated to determine if the regional project continues to satisfy the region's

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<sup>445</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 19-20; Arizona Public Service Co. OATT, Attachment E, § III.E.7.

benefit to cost ratio and can be found to be a more efficient and cost-effective solution under current facts and circumstances.<sup>446</sup>

278. Under the proposal, transmission projects selected in the regional transmission plan for purposes of cost allocation are subject to reevaluation until: (1) state and federal approval processes are completed and approved (including cost recovery approval under section 205 of the Federal Power Act as appropriate); (2) all local, state, and federal siting permits have been approved; and (3) major construction contracts have been issued. When reevaluation is required as a result of the conditions listed above, Filing Parties propose that the Planning Management Committee will apply the same planning processes and procedures used to identify solutions to regional needs to determine whether alternative transmission solutions are needed. Furthermore, Filing Parties propose to revise their OATTs to state that, if an alternative solution is needed, an incumbent transmission owner may propose one or more solutions that it would implement within its retail distribution service or footprint and may submit any proposed transmission project for possible selection in the regional transmission plan for purposes of cost allocation.<sup>447</sup>

279. Moreover, Filing Parties propose to revise their OATTs to clarify that the Planning Management Committee is required to reevaluate the regional transmission plan, not just individual transmission projects, and that only the Planning Management Committee has authority to modify the status of a transmission project selected in the regional transmission plan for purposes of cost allocation. Filing Parties also propose to revise their OATTs to state that upon reevaluation, the regional transmission plan and any transmission projects selected for purposes of cost allocation may be subject to modification, including the status as a transmission project selected for purposes of cost allocation, with any costs reallocated pursuant to the regional cost allocation method as if it were a new transmission project.<sup>448</sup> Finally, Filing Parties clarify that local or single system transmission projects that have been selected in the regional transmission plan for purposes of cost allocation are subject to reevaluation, and they eliminate exemptions from reevaluation for planned transmission system upgrades selected in the regional transmission plan for purposes of cost allocation and projects that have been approved by the Planning Management Committee in previous transmission planning cycles.<sup>449</sup>

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<sup>446</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.7.

<sup>447</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 19-20; Arizona Public Service Co. OATT, Attachment E, § III.E.7.

<sup>448</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.7.

<sup>449</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 20.

**iii. Protests/Comments**

280. LS Power states that, as a general matter, it does not object to the proposed OATT provision allowing for reevaluation of a transmission project delayed beyond its in-service date by more than two years. However, it opposes the inclusion of a delay attributable to “legal proceedings” as a delay that would trigger the reevaluation process. LS Power asserts that the inclusion of this factor could spur litigation as a means to remove projects from transmission developers. It also contends that reevaluation of a transmission project should be prohibited if the delay results from the action of a member of the Planning Management Committee.<sup>450</sup>

**iv. Answer**

281. Filing Parties argue that the language with which LS Power takes issue, concerning the reevaluation of the regional transmission plan, merely provides additional detail to the proposal already accepted by the Commission in the First Compliance Order and was added at the request of stakeholders. Filing Parties disagree with LS Power’s assertion that allowing for a delay due to legal proceedings would spur litigation as a means of preventing transmission projects from being developed. Filing Parties explain that if an identified regional need cannot be satisfied as a result of litigation that delays a transmission project for years, the regional need must be satisfied another way. Moreover, according to Filing Parties, it would be unjust, unreasonable, and unduly discriminatory and burdensome to preclude reevaluation of transmission projects that have been delayed for more than two years solely because a member of the Planning Management Committee may contribute to that delay. Filing Parties provide an example of a state regulatory commission that may join the Planning Management Committee and oversee siting and permitting of transmission projects. They explain that if the process results in an extended delay of a transmission project, the rest of the region should not be forever bound to including that project in the regional transmission plan, particularly if those siting or permitting issues were not timely resolved. Moreover, Filing Parties contend that the fact that the dispute resolution process could potentially result in the delay of a transmission project should not serve to categorically prevent reevaluation or prevent the members of the Planning Management Committee from seeking out other projects if the delay extends beyond a reasonable period of time.

**v. Commission Determination**

282. We find that Filing Parties’ proposal concerning the reevaluation of the regional transmission plan complies with the directives in the First Compliance Order because it adopts sufficiently detailed provisions regarding the procedures the Planning

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<sup>450</sup> LS Power Comments at 20-21.

Management Committee will follow for reevaluating the regional transmission plan. Filing Parties' OATTs provide that the Planning Management Committee is responsible for reevaluating the regional transmission plan, the circumstances under which the regional transmission plan will be reevaluated and, as part of the reevaluation of the regional transmission plan, indicate that the Planning Management Committee will monitor each transmission facility selected in the regional transmission plan for purposes of cost allocation. Specifically, Filing Parties' proposed revisions clarify that reevaluation of the regional transmission plan and any transmission project selected in the regional transmission plan for purposes of cost allocation will occur when: (1) the underlying project characteristics and/or regional or interregional needs change in the regional transmission plan; (2) a transmission project is delayed and fails to meet its in-service date by more than two years, including projects delayed by legal proceedings such as arbitration; (3) there are significant physical changes to the project; or (4) there is a change in the calculation of benefits or the benefit to cost ratio of the project that may affect whether the project remains an efficient or cost-effective solution to meeting regional needs. Filing Parties have also complied with the Commission's directive to provide additional information regarding their proposal to reevaluate the regional transmission plan to determine if delays in the development of transmission projects with a change in the calculation of benefits or benefit to cost ratio require evaluation of alternative transmission solutions, because they revised their OATTs to provide examples of the types of changes in the calculation of benefits or the benefit to cost ratio of the project that may affect whether the project remains an efficient or cost-effective solution to meeting regional needs.<sup>451</sup> The proposal also allows each incumbent transmission provider to propose solutions within its retail distribution service territory or footprint if an evaluation of alternatives is needed, and provides an opportunity for the incumbent transmission provider's proposed transmission facility to be selected in the regional transmission plan for purposes of cost allocation. Finally, as directed, Filing Parties have removed the provision providing for the reevaluation of the regional transmission plan to determine if delays in the development of transmission projects that are not fully funded require evaluation of alternative transmission solutions. Accordingly, Filing Parties' revised OATTs comply with the directives in the First Compliance Order.

283. However, we find that Filing Parties' OATTs use the phrase "more efficient *and* cost effective"<sup>452</sup> in the examples explaining when transmission projects might be subject to reevaluation, instead of the "more efficient *or* cost-effective" criterion established by

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<sup>451</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.7.

<sup>452</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.7.

Order No. 1000.<sup>453</sup> Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to conform to the correct Order No. 1000 standard.<sup>454</sup>

284. With respect to LS Power's concern that allowing delays resulting from legal proceedings as a trigger for reevaluation could spur litigation as a means to remove projects from transmission developers, we find it reasonable to reevaluate transmission facilities selected in the regional transmission plan for purposes of cost allocation if they are delayed for over two years as a result of legal proceedings. We agree with Filing Parties that if an identified regional need cannot be satisfied as a result of litigation that delays a transmission project for years, an evaluation of alternative solutions would be appropriate. Thus, we will not require any further revisions to the proposal.

e. **Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation**

285. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that provides nonincumbent transmission developers and incumbent transmission developers the same eligibility to use a regional cost allocation method or methods for any transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>455</sup> Order No. 1000 also required that the regional transmission planning process have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission

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<sup>453</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148 (requiring that public utility transmission providers evaluate, through the regional transmission planning process, “alternative transmission solutions that might meet the needs of the transmission planning region more efficiently *or* cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process” (emphasis added)).

<sup>454</sup> We note that Filing Parties must use the “more efficient *or* cost-effective” criterion established by Order No. 1000 throughout Filing Parties’ OATTs. *See, e.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.1 (stating that the regional transmission planning process is intended to identify “more efficient or cost-effective” solutions).

<sup>455</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.



developer the right to use the regional cost allocation method for transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>456</sup>

**i. First Compliance Order**

286. The Commission found that the provisions in Filing Parties' compliance filings addressing eligibility to use the regional cost allocation method did not comply with the requirements of Order No. 1000 because they did not include a process for determining whether a transmission developer is eligible to use the regional cost allocation method. While noting that nothing in Filing Parties' proposal denies nonincumbent transmission developers an opportunity comparable to that of an incumbent transmission developer to allocate the cost of a transmission facility through a regional cost allocation method, the Commission found Filing Parties' respective OATTs did not include a process for determining whether a transmission developer is eligible to use the regional cost allocation method for a transmission project selected in the regional plan for purposes of cost allocation. Further, the Commission stated that Filing Parties' argument that Order No. 1000 did not require beneficiaries of a transmission project to accept a transmission developer for the project is misplaced. The Commission explained that Order No. 1000 expressly requires the adoption of qualification criteria to evaluate a transmission developer's technical and financial capabilities, and that the qualification criteria relate directly to the transmission developer's possible designation as the entity eligible to use the regional cost allocation method for a transmission project that is selected in the regional transmission plan for purposes of cost allocation. Accordingly, the Commission directed Filing Parties to include a process in their OATTs for determining which transmission developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>457</sup>

**ii. Requests for Rehearing or Clarification**

**(a) Summary of Requests for Rehearing or Clarification**

287. Filing Parties seek rehearing of the Commission's requirement that they revise their respective OATTs to specify a process for designating the transmission developer that may use the WestConnect regional cost allocation method to allocate costs for a transmission project selected in the regional transmission plan for purposes of cost allocation. Filing Parties assert that individual states, not the Commission, have

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<sup>456</sup> *Id.* P 336.

<sup>457</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 268.

jurisdiction to select transmission developers, and that the Commission's requirement contradicts the statements in Order No. 1000 that it was not infringing upon the transmission siting, permitting, or construction authority that is historically within the purview of the states.

288. Filing Parties further allege that section 206 of the FPA does not grant the Commission authority to select transmission developers, arguing that developer selection for a transmission project lacks even an indirect effect on transmission rates. Filing Parties argue that by requiring a process to identify and select the developer for a transmission project selected in the regional transmission plan for purposes of cost allocation, and guaranteeing full recovery for those allocated costs, the Commission is effectively selecting the only entity that could qualify for a certificate of public convenience and necessity at the state level, thereby dictating the manner in which the process for selection at the state level will be conducted. Filing Parties also assert that selection of a transmission developer cannot be separated from the management of transmission construction and, thus, contrary to its statements in Order No. 1000, the Commission is infringing on states' authority to regulate transmission construction. According to Filing Parties, if the Commission has altered its decision in Order No. 1000 to avoid interfering with state transmission siting, permitting, or construction authority, it has failed to explain why it has changed its policy.<sup>458</sup>

289. Filing Parties also argue that the Commission's determination that the regional transmission planning process must identify the transmission developer that can use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation, coupled with the determination that the selected transmission developer would not be granted the right to construct the project, is internally inconsistent and a departure from Order No. 1000. Specifically, Filing Parties assert that this determination creates an inconsistency between what it means to develop a transmission project and what it means to construct a facility, two functions that Filing Parties claim are inextricably linked. Filing Parties state that the transmission developer will be the entity that manages construction of the transmission facility, even if it does not ultimately own the facility. Filing Parties also claim that this requirement effectively creates a right to construct the transmission project, because only the selected transmission developer will be able to use the binding regional cost allocation method for that project. According to Filing Parties, no other transmission developer would attempt to build the same project because that developer would not be guaranteed cost allocation or cost recovery and the Commission or a state regulatory body is unlikely to find the costs of a duplicative transmission project to be prudently incurred. Filing Parties further argue that the Commission has failed to explain its change in position from Order No.

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<sup>458</sup> Filing Parties Rehearing Request at 32-36.

1000, where, according to Filing Parties, the Commission decided against granting selected transmission developers a right to construct a transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>459</sup>

290. In the alternative, Filing Parties request that the Commission clarify what rights a transmission developer would have regarding the development of the transmission project for which it is selected as eligible to use the regional cost allocation method. Specifically, Filing Parties ask the Commission to explain what rights the transmission developer has to oversee the development of the transmission project, if it lacks a right to construct it.<sup>460</sup>

**(b) Commission Determination**

291. We deny Filing Parties' request for rehearing. We affirm our finding in the First Compliance Order that Order No. 1000 requires Filing Parties to include in their OATTs a process for determining which transmission developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.

292. We find that Filing Parties' argument that the Commission improperly and impermissibly required them to revise their OATTs to include procedures for designating the transmission developer that may use regional cost allocation determinations made through the WestConnect regional transmission planning process is barred as an out-of-time rehearing request of Order No. 1000. As explained in the First Compliance Order,<sup>461</sup> Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that provides a nonincumbent transmission developer an opportunity comparable to that of an incumbent transmission developer to allocate the cost of a transmission facility through a regional cost allocation method or methods.<sup>462</sup> Order No. 1000 further requires that a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>463</sup> If a transmission project is

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<sup>459</sup> *Id.* at 36-38.

<sup>460</sup> *Id.* at 38-39.

<sup>461</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 263.

<sup>462</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

<sup>463</sup> *Id.*

selected in a regional transmission plan for purposes of cost allocation, Order No. 1000 further requires that the transmission developer of that transmission facility (whether incumbent or nonincumbent) must be able to rely on the relevant cost allocation method or methods within the region should it move forward with its transmission project.<sup>464</sup> While Filing Parties' rehearing request of the First Compliance Order challenges these findings of Order No. 1000, pursuant to section 313(a) of the FPA, an aggrieved party must file a request for rehearing within thirty days after the issuance of the Commission's order.<sup>465</sup> Because Filing Parties failed to timely raise this challenge in response to Order No. 1000, they are therefore barred by the FPA from raising it here.

293. With respect to Filing Parties' clarification request, Order No. 1000 does not grant a transmission developer that has been selected as eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation the right to construct that transmission project. In Order No. 1000, the Commission declined to adopt any provisions that would require public utility transmission providers to revise their OATTs to incorporate a regional transmission planning process that provides a right to construct and own a transmission facility.<sup>466</sup> Moreover, the Commission stated in Order No. 1000 "[n]othing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities."<sup>467</sup>

### iii. Compliance

#### (a) Summary of Compliance Filings

294. Under Filing Parties' proposal, the Planning Management Committee will not be responsible for choosing a transmission developer for a transmission project selected in

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<sup>464</sup> *Id.* P 339.

<sup>465</sup> 16 U.S.C. § 8251(a) (2012); *see also* 18 C.F.R. § 713(b) (2014) (requiring that a request for rehearing "be filed not later than 30 days after issuance of any final decision . . .").

<sup>466</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 338.

<sup>467</sup> *Id.* PP 287. *See also id.* at P 107 (acknowledging that there is longstanding state authority over certain matters that are relevant to transmission planning and expansion, such as matters relevant to siting, permitting, and construction, and stating that nothing in Order No. 1000 involves an exercise of siting, permitting, and construction authority).

the regional transmission plan for purposes of cost allocation.<sup>468</sup> Instead, the Planning Management Committee will identify the transmission developers that have satisfied the proposed qualification criteria discussed above,<sup>469</sup> and those transmission developers will be deemed “Eligible Transmission Developers.”<sup>470</sup> In particular, Filing Parties have revised their OATTs to state that “[a] transmission developer that seeks to be eligible to use the regional cost allocation methodology for a transmission project selected in the Regional Plan for purposes of cost allocation must identify its technical and financial capabilities to develop, construct, own, and operate a proposed transmission project,” by submitting the qualification criteria discussed above.<sup>471</sup> Filing Parties’ also propose to make clear that satisfaction of the qualification criteria does not confer upon the transmission developer any right to: (1) construct, own, and/or operate a transmission project; (2) collect costs associated with the construction, ownership, and/or operation of a transmission project; or (3) provide transmission services on the transmission facilities constructed, owned, and/or operated. Furthermore, the proposal expressly states that “governing governmental authorities are the only entities empowered to confer any such rights to a transmission developer [and] the [Planning Management Committee] is not a governmental authority.”<sup>472</sup> Further, Filing Parties propose that to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation, a transmission developer must be a member of the Transmission Owners with Load Serving Obligations or the Independent Transmission Developers and Owners sector, or must agree to join one of those sectors and sign the Planning Participation Agreement.<sup>473</sup> Transmission developers must also be current with their membership dues (or submit the equivalent certification fee if they are not yet members).<sup>474</sup> Filing Parties explain that this ensures that no entity is unduly advantaged

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<sup>468</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.6.

<sup>469</sup> Filing Parties’ proposed qualification criteria are discussed above in the Qualification Criteria section of this order.

<sup>470</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 18; Arizona Public Service Co. OATT, Attachment E, § III.D.3.a.

<sup>471</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.D.1.

<sup>472</sup> *Id.*

<sup>473</sup> *Id.* § III.D.3.b.

<sup>474</sup> *Id.*

(or disadvantaged) based on membership in the WestConnect transmission planning region.<sup>475</sup>

(b) **Protests/Comments**

295. LS Power states that the proposed OATT provision addressing approval of the regional transmission plan by the Planning Management Committee contains no specific statement that nonincumbent transmission developers can access regional cost allocation on the same terms as incumbent transmission developers. It asserts that Filing Parties' OATTs should explicitly state that access to regional cost allocation is available to both incumbent and nonincumbent transmission developers.<sup>476</sup>

(c) **Answer**

296. In response to LS Power's recommendation that Filing Parties' OATT contain an explicit statement that nonincumbent transmission developers can access regional cost allocation, Filing Parties state that in seeking "access to" Planning Management Committee cost allocation LS Power appears to seek a form of assurance that it is entitled to cost recovery under section 205 of the FPA. However, Filing Parties note that a determination by the Planning Management Committee that a specific developer (whether incumbent or nonincumbent) satisfies the qualification criteria does not bestow any right to cost recovery, as neither Order No. 1000 nor the OATTs provide for cost recovery for any transmission project addressing an identified regional need and selected in the regional transmission plan for purposes of cost allocation.<sup>477</sup>

(d) **Commission Determination**

297. We find that the provisions in Filing Parties' filing addressing eligibility for cost allocation for nonincumbent transmission facilities partially comply with the directives in the First Compliance Order. While the proposed process offers nonincumbent transmission developers and incumbent transmission developers the same eligibility to use the regional cost allocation methods, it does not provide a process for eligible transmission developers to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.

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<sup>475</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 18.

<sup>476</sup> LS Power Comments at 18-19.

<sup>477</sup> Filing Parties Answer at 30.

298. First, Filing Parties' revisions comply with the requirement to provide nonincumbent transmission developers and incumbent transmission developers the same eligibility to use the regional cost allocation methods for any transmission facility selected in the regional transmission plan for purposes of cost allocation. As discussed above in the Qualification Criteria section, the proposed criteria to qualify as an eligible transmission developer apply equally to all potential transmission developers, without regard to whether the potential transmission developer is an incumbent or nonincumbent or whether a project is sponsored or unsponsored.<sup>478</sup> The proposed qualification criteria thus serve to identify *all* transmission developers that are eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>479</sup>

299. However, as Filing Parties explicitly state, the Planning Management Committee will not be responsible for choosing a transmission developer for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>480</sup> Thus, Filing Parties have not complied with the directive in the First Compliance Order to "include a process in their OATTs for determining *which transmission developer* is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation."<sup>481</sup> In other words, this proposal does not comply with Order No. 1000 because no particular transmission developer will have the right to use the regional cost allocation method for a specific transmission project selected in the regional transmission plan for purposes of cost allocation. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to include a process in their OATTs for determining which transmission developer has the right to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.

300. In complying with this directive, Filing Parties could, for example, propose to adopt a sponsorship model, under which the transmission developer that proposed a regional transmission project for selection in the regional transmission plan for purposes of cost allocation has the right to use the regional cost allocation method for its proposed transmission project if the project is selected.<sup>482</sup> Filing Parties could also develop a

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<sup>478</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E § III.D.1.

<sup>479</sup> *Id.*

<sup>480</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E § VII.B.6.

<sup>481</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 268 (emphasis added).

<sup>482</sup> *See PacifiCorp*, 143 FERC ¶ 61,151 at P 200.

competitive bidding process to identify which particular transmission developer, out of the pool of transmission developers that have met the qualification criteria, has the right to use the regional cost allocation method for a specific transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>483</sup> In addition, Filing Parties' revised OATTs should address the process for determining which transmission developer will have the right to use the regional cost allocation method for an unsponsored transmission project selected in the regional transmission plan for purposes of cost allocation if the transmission project remains unsponsored (e.g., because no developer proposed to develop the transmission project, a transmission developer becomes ineligible, or an unsponsored transmission project is identified through the regional transmission planning process). The revisions directed here also address LS Power's concern that the OATTs do not contain a specific statement that transmission developers can access the regional cost allocation method.

301. We next turn to Filing Parties' proposal to expressly state that satisfaction of the qualification criteria (discussed above) does not confer upon the transmission developer any right to construct, own, and/or operate a transmission project, collect costs associated with a transmission project, or provide transmission services on such facilities.<sup>484</sup> We agree that solely satisfying the qualification criteria does not confer upon a transmission developer the right to construct, own, and/or operate a transmission project, collect costs associated with a transmission project, or provide transmission services on such facilities. However, we note that Order No. 1000 requires that the transmission developer developing a transmission project selected in the regional transmission plan for purposes of cost allocation must have the right to use the regional cost allocation method for that project.<sup>485</sup>

302. Finally, we conditionally accept Filing Parties' proposed OATT provision stating that governing governmental authorities are the only entities empowered to confer upon the transmission developer any right to construct, own, and/or operate a transmission project. We also conditionally accept Filing Parties' proposed OATT provisions stating that governing governmental authorities are the only entities empowered to confer upon

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<sup>483</sup> Filing Parties may also propose other mechanisms, or combination of mechanisms, that may comply with Order No. 1000. *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

<sup>484</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.D.1.

<sup>485</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 335 (stating that each public utility transmission provider must participate in a regional transmission planning process that makes each transmission facility selected in the regional transmission plan for purposes of regional cost allocation eligible for such cost allocation).



the transmission developer any right to collect costs associated with the construction, ownership, and/or operation of a transmission project, or provide transmission services on the transmission facilities constructed, owned, and/or operated. While we generally find it reasonable for Filing Parties to include such a statement in their respective OATTs, we are concerned that this proposed language may be unclear because it could be read to suggest that there is only one set of “governing governmental authorities” for the categories listed in the provision, and that is not the case. As an illustration of the confusion created by the proposed language as it pertains here, this Commission is the applicable “governing governmental authority” with respect to the collection of costs associated with a transmission project, as well as with respect to the provision of transmission services over a transmission facility, while the applicable state or local “governing governmental authorities” may exercise jurisdiction in other areas.<sup>486</sup> There may also be an overlap of federal, state, and/or local authorities with respect to some of the categories listed in the provision. Therefore, to make this provision clearer, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their respective OATTs to replace “governing governmental authorities” with “applicable governing governmental authorities.”

#### 4. Cost Allocation

303. Order No. 1000 required each public utility transmission provider to have in its OATT a method, or set of methods, for allocating the costs of any new transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>487</sup> Each public utility transmission provider must demonstrate that its cost allocation method satisfies six regional cost allocation principles.<sup>488</sup> In addition, while Order No. 1000 permitted participant funding, participant funding cannot be the regional cost allocation method.<sup>489</sup>

304. Regional Cost Allocation Principle 1 requires that the cost of transmission facilities 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.

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<sup>486</sup> *Id.* at P 253 n.231 (“Nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.”).

<sup>487</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 558, 690.

<sup>488</sup> *Id.* P 603.

<sup>489</sup> *Id.* P 723.

The cost allocation methods must clearly and definitively specify identifiable benefits and the class of beneficiaries, and the transmission facility costs allocated must be roughly commensurate with that benefit.<sup>490</sup>

305. Regional Cost Allocation Principle 2 requires that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, not be involuntarily allocated any of the costs of those transmission facilities.<sup>491</sup>

306. Regional Cost Allocation Principle 3 specifies that, if a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, the threshold must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. Such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.<sup>492</sup>

307. Regional Cost Allocation Principle 4 specifies that the regional cost allocation methods must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. In addition, each regional transmission planning process must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.<sup>493</sup>

308. Regional Cost Allocation Principle 5 specifies that the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.<sup>494</sup>

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<sup>490</sup> *Id.* PP 625, 678.

<sup>491</sup> *Id.* P 637.

<sup>492</sup> *Id.* P 646.

<sup>493</sup> *Id.* P 657.

<sup>494</sup> *Id.* P 668.

309. Regional Cost Allocation Principle 6 specifies that a transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, but there can be only one cost allocation method for each type of transmission facility.<sup>495</sup> If a transmission planning region chooses to use a different cost allocation method for different types of transmission facilities, each cost allocation method must be determined in advance for each type of facility.<sup>496</sup> A regional cost allocation method may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.<sup>497</sup>

**a. Cost Allocation Principles**

**i. First Compliance Order**

310. The Commission found that Filing Parties' compliance filings partially complied with the Regional Cost Allocation Principles of Order No. 1000. The Commission held that, to fully comply with the cost allocation requirements of Order No. 1000, cost allocation determinations for transmission projects selected in the regional transmission plan for purposes of cost allocation "must be binding upon identified beneficiaries."<sup>498</sup> The First Compliance Order stated that a regional cost allocation method that is not binding on identified beneficiaries does not comply with the principle that costs must be allocated in a manner that is roughly commensurate with estimated benefits.<sup>499</sup> The Commission explained that a cost allocation determination that is not binding on identified beneficiaries is directly inconsistent with the stated goals in Order No. 1000 to minimize the problem of free ridership and to increase the likelihood that transmission facilities in the transmission plan will move forward to construction. The Commission noted that Order No. 1000 expressly rejected the notion that an entity may opt out of a Commission-approved cost allocation for a specific transmission project if it merely asserts that it receives no benefits from the project, because such an opportunity to opt out would not minimize the regional free rider problem. In support, the Commission referenced Order No. 1000's statement that "[w]hether an entity is identified as a beneficiary that must be allocated costs of a new transmission facility is not determined by the entity itself but rather through the applicable, Commission-approved transmission

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<sup>495</sup> *Id.* PP 685-686.

<sup>496</sup> *Id.* P 560.

<sup>497</sup> *Id.* P 689.

<sup>498</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 306-307.

<sup>499</sup> *Id.* P 308.

planning processes and cost allocation methods.”<sup>500</sup> The Commission also explained that a non-binding cost allocation method does not provide the required certainty about who is obligated to pay for transmission facilities selected in the regional transmission plan for purposes of cost allocation and, as a result, would be a disincentive for nonincumbent transmission developers to propose more efficient or cost-effective solutions. Finally, the Commission highlighted that there is a notable distinction between a binding cost allocation determination and an obligation to construct. The Commission noted that “while Order No. 1000 *does* require binding cost allocation, it expressly does *not* impose an obligation to build.”<sup>501</sup>

311. Next, the Commission analyzed separately whether the cost allocation methods for reliability, economic, and public policy transmission projects proposed by Filing Parties complied with each of the regional cost allocation principles. The Commission first discussed the cost allocation method for reliability transmission projects. The Commission determined that Filing Parties’ avoided cost approach to identifying the beneficiaries of reliability transmission projects complied with Regional Cost Allocation Principle 1. It explained that “because the transmission owners would otherwise have to propose new transmission facilities to meet the reliability need fulfilled by the transmission facilities selected in the regional transmission plan for purposes of cost allocation, the avoided cost approach appropriately reflects the beneficiaries of a reliability transmission project at the regional level.”<sup>502</sup> However, the Commission required further clarification in the OATTs with respect to which entities may be allocated costs for a reliability transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>503</sup>

312. With respect to Filing Parties’ proposed cost allocation method for economic transmission projects, the Commission found that that Filing Parties’ proposal to assess production cost savings and reductions in reserve sharing requirements to account for economic benefits is reasonable, and that allocating the costs of an economic transmission project among beneficiaries based on the proportional value of the economic benefits that each beneficiary receives would allocate costs in a manner that is at least

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<sup>500</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 640).

<sup>501</sup> *Id.* P 309.

<sup>502</sup> *Id.* P 312.

<sup>503</sup> The Commission noted that while it appeared that Filing Parties intended to designate transmission owners as the beneficiaries of reliability transmission projects and allocate them costs, this point was not clear in the OATTs. *Id.* P 313.

roughly commensurate with estimated benefits.<sup>504</sup> Filing Parties also proposed that any transmission owners' retail distribution service territory or footprint with benefits less than or equal to one percent of total project benefits would be excluded from cost allocation for economic transmission projects. The Commission determined that this proposal appeared reasonable; however, to provide further clarity Filing Parties were directed to describe how costs for an economic transmission project that are less than or equal to one percent of total project benefits, that would otherwise have been allocated to beneficiaries, would be allocated.<sup>505</sup> Moreover, the Commission also directed Filing Parties to provide further clarification in the OATTs with respect to which entities may be allocated costs for an economic transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>506</sup>

313. With respect to public policy transmission projects, the Commission found that Filing Parties' proposal to identify beneficiaries, define benefits, and allocate costs based on the number of megawatts of public policy resources enabled, allocates costs in a manner that is at least roughly commensurate with estimated benefits, because it reflects which entities are expected to rely on particular public policy resources to meet applicable public policy requirements.<sup>507</sup>

314. Further, the Commission found that Filing Parties' proposal to consider multiple benefits for a single transmission project and to allocate the costs for such a transmission project according to the amount of cost that is justified by each type of benefit partially complied with Order No. 1000. While the Commission approved this approach in principal, the Commission directed Filing Parties to further explain in their respective OATTs how the determination of whether multiple types of benefits will be considered for a single transmission project will be conducted in a transparent and not unduly discriminatory or preferential manner.<sup>508</sup> Further, the Commission rejected Filing Parties' proposal to, when analyzing whether a single transmission project provides multiple types of benefits, only consider the value of economic benefits if the benefits result from a WECC Board-approved recommendation to study congestion. The Commission held that the WestConnect regional transmission planning process must give stakeholders an opportunity to provide input and consider all economic benefits,

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<sup>504</sup> *Id.* P 314.

<sup>505</sup> *Id.* P 315.

<sup>506</sup> *Id.* P 316.

<sup>507</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 317.

<sup>508</sup> *Id.* P 318.

regardless of whether those benefits are associated with a WECC Board-approved recommendation to study congestion.<sup>509</sup>

315. The Commission found that Filing Parties' proposed regional cost allocation methods complied with Regional Cost Allocation Principle 2, because under their proposal, entities that receive no benefit from transmission facilities are not involuntarily allocated any of the costs of such transmission facilities.<sup>510</sup>

316. Regarding Regional Cost Allocation Principle 3, the Commission found that Filing Parties' proposed regional cost allocation methods for reliability transmission projects and public policy transmission projects complied with Regional Cost Allocation Principle 3.<sup>511</sup> However, the Commission also found that Filing Parties' proposal to use a benefit to cost ratio for economic transmission projects and the method for calculating such ratio lacked transparency and were not adequately described in Filing Parties' OATTs.<sup>512</sup> First, the Commission directed Filing Parties to clarify the benefit to cost ratio that will apply for economic transmission projects.<sup>513</sup> Next, the Commission also required Filing Parties to revise their OATTs to specify: (1) how the aggregate load-weighted benefit to cost ratio will be calculated; and (2) to the extent that Filing Parties intend to use scenario analyses to calculate the benefit to cost ratio, how such analyses will be used in that calculation.<sup>514</sup>

317. The Commission found that Filing Parties' proposed OATT revisions did not comply with the Regional Cost Allocation Principle 4 requirement that the regional transmission planning process identify the consequences of a transmission facility

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<sup>509</sup> *Id.* P 319.

<sup>510</sup> *Id.* P 320.

<sup>511</sup> *Id.* P 321.

<sup>512</sup> *Id.* P 322.

<sup>513</sup> The Commission noted an inconsistency because Filing Parties' transmittal letters explained that to be selected in the regional transmission plan for purposes of cost allocation, an economic transmission project must have a benefit to cost ratio greater than 1.0 under the various reasonable scenarios evaluated and an average benefit to cost ratio of at least 1.25 across all reasonable scenarios. In contrast, Filing Parties' OATT revisions provided that the benefit to cost ratio for a transmission project to be considered economically-justified and receive cost allocation will be 1.25.

<sup>514</sup> *Id.*

selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that might be required in another region. In addition, the Commission stated that Filing Parties did not address whether the WestConnect transmission planning region agrees to bear the costs associated with any required upgrades in another transmission planning region or, if so, how such costs will be allocated within the WestConnect transmission planning region. The Commission therefore directed Filing Parties to address both of these requirements in their compliance filings.<sup>515</sup>

318. Further, the Commission found that Filing Parties' proposed regional cost allocation methods for reliability, economic, and public policy transmission projects only partially complied with Regional Cost Allocation Principle 5, which requires that the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.<sup>516</sup> While the Commission stated that that the description provided in Filing Parties' OATTs would result in a transparent identification of beneficiaries and determination of benefits for reliability and public policy transmission projects, the proposed OATT revisions did not provide for adequate documentation to allow a stakeholder to determine how the regional cost allocation methods for reliability and public policy transmission projects were applied to a proposed transmission facility.<sup>517</sup> Furthermore, with respect to Filing Parties' proposed regional cost allocation method for economic transmission projects, the Commission found that Filing Parties' proposed OATT revisions did not clearly describe how production cost savings or reductions in reserve sharing requirements will be determined or provide for adequate documentation to allow a stakeholder to determine how the regional cost allocation method for economic transmission projects was applied to a proposed transmission facility.<sup>518</sup>

319. The Commission found that Filing Parties' proposed regional cost allocation methods complied with Regional Cost Allocation Principle 6.<sup>519</sup>

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<sup>515</sup> *Id.* P 323.

<sup>516</sup> *Id.* P 324.

<sup>517</sup> *Id.* P 325.

<sup>518</sup> *Id.* P 326.

<sup>519</sup> *Id.* P 327.

**ii. Requests for Rehearing or Clarification****(a) Summary of Requests for Rehearing or Clarification**

320. Filing Parties and Non-Public Utilities argue that the Commission erred in concluding that the proposed regional cost allocation method does not provide for mandatory, binding cost allocation. Filing Parties and Non-Public Utilities contend that the proposed method is binding upon identified beneficiaries when the identified project beneficiaries enter into a negotiated agreement to fund a transmission project selected in the regional transmission plan for purposes of cost allocation and are allocated benefits in the form of transmission capacity or project ownership, rather than when potential beneficiaries are identified.<sup>520</sup> Filing Parties state that this proposal is consistent with Order No. 1000, citing the Commission’s holding that “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 [through the Order No. 1000 process]. The results of that evaluation, including the identification of *potential beneficiaries* of the transmission project, could facilitate negotiations among potentially interested parties.”<sup>521</sup> They argue that this holding indicates that the Commission contemplated that the regional transmission planning process would provide for identification of “potential beneficiaries,” which is what Filing Parties assert their compliance filings intended to identify. To the extent that it requires that the initial application of the regional cost allocation method be binding with no allowance for further voluntary negotiation among potential beneficiaries, Filing Parties contend that the First Compliance Order is in error.<sup>522</sup>

321. Filing Parties also challenge the Commission’s conclusion that Order No. 1000 mandated binding cost allocation, arguing that this conclusion is arbitrary and capricious because it is unexplained and rendered without a new notice and comment period. They argue that Order No. 1000 required only that public utility transmission providers “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,” a requirement that Filing Parties deem “procedural in character.”<sup>523</sup> Filing Parties assert

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<sup>520</sup> Filing Parties Rehearing Request at 12; Non-Public Utilities Rehearing Request at 4-5.

<sup>521</sup> Filing Parties Rehearing Request at 12 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 561 (emphasis added)).

<sup>522</sup> *Id.* at 12-13.

<sup>523</sup> *Id.* at 13 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558).



that their proposed regional cost allocation method complies with this procedural requirement because each of their OATTs include clear criteria that must be met for a transmission project to be eligible for regional cost allocation and clear methods for identifying the costs to be allocated. Filing Parties explain that their proposal establishes a process that will result in a cost allocation for a transmission project selected in the regional transmission plan for purposes of cost allocation, consistent with Order No. 1000. According to Filing Parties, this process does not establish binding cost allocation upon initial application of the regional cost allocation method, but rather is designed to account for the unique characteristics of the WestConnect transmission planning region and to create a robust, inclusive regional transmission planning process that accomplishes Order No. 1000's goals.<sup>524</sup>

322. Filing Parties argue that the Commission's directive requiring cost allocation determinations made by the Planning Management Committee be binding violates sections 205 and 206 of the FPA, as well as the FPA's prohibition against construction mandates. First, Filing Parties argue that the Commission has violated section 205's ratemaking requirements by requiring beneficiaries identified by the Planning Management Committee (a non-jurisdictional, non-legal entity with no authority to impose rates) to become customers of a third-party transmission project (i.e., to pay transmission rates designed to collect the allocated costs). By comparison, according to Filing Parties, section 205 of the FPA requires the entity seeking to provide new transmission services to make a filing with a proposed revenue requirement and resulting rates, and places a legal burden on that entity to establish that such rates are just and reasonable, subject to protest and appeal. Filing Parties claim that the First Compliance Order upends this process by allowing a new transmission service provider to use the binding cost allocation in a subsequent section 205 filing, thereby eliminating the opportunity for a customer to challenge the rates as unjust and unreasonable before the Commission and the courts, as well as eliminating the burden of proof on the section 205 applicant.<sup>525</sup>

323. Second, Filing Parties argue that the Commission failed to satisfy the requirements under section 206 of the FPA, arguing that the Commission has instead blurred the parameters of its authority under sections 205 and 206. Filing Parties assert that FPA section 206 requires the Commission, in instituting the proceeding, to: (1) find that the public utility's rates and/or services are unjust and unreasonable; (2) find that a different set of rates and/or services are just and reasonable; (3) provide notice to the affected public utility, and a forum which provides the public utility an opportunity to be heard, including the opportunity to present evidence demonstrating that its existing rates and/or

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<sup>524</sup> *Id.* at 13-15.

<sup>525</sup> *Id.* at 15-17.

services are just and reasonable, and that the alternative proposed rates and/or services are unjust and unreasonable; and (4) perform these tasks itself. Filing Parties contend that the Commission may not delegate these tasks to another entity. Filing Parties claim that the Commission, by requiring binding cost allocation, fails to meet these requirements and impermissibly vests in a non-public utility third party, i.e., the Planning Management Committee, the right and obligation to allocate costs and has immunized that cost allocation from challenge under sections 205 and 206 of the FPA. Filing Parties contend that section 206 of the FPA does not permit the Commission to delegate this authority (i.e., the authority to approve the cost allocation underlying rates for jurisdictional services) to a third party.<sup>526</sup>

324. In addition, Filing Parties claim that under section 206 of the FPA, the Commission must demonstrate that there is a legitimate and specific harm that must be remedied, as well as that the remedy it seeks to impose is designed to correct the problem. Filing Parties state that Order No. 1000's goal was to ensure just and reasonable transmission rates and to eliminate barriers to entry for new, nonincumbent transmission service providers. However, Filing Parties assert, the Commission did not support its determination of undue discrimination with facts and analysis that constitute a reasonable factual determination and, in any case, the Commission's requirement that the Planning Management Committee render binding cost allocation decisions without Commission adjudication pursuant to section 205 of the FPA is not a reasonable remedy. Filing Parties assert that instead, the Commission should require that Planning Management Committee decisions withstand full ratemaking review under section 205 of the FPA at the time a transmission developer files an OATT.<sup>527</sup>

325. Finally, Filing Parties claim that, by directing the Planning Management Committee to bind beneficiaries to its cost allocation determinations, the Commission is impermissibly mandating the construction of transmission facilities. Filing Parties argue that directing a public utility to fund the cost of another entity's transmission project is substantially the same as directing the utility to construct the project, which the Commission lacks authority to do. Filing Parties assert that the Commission is not permitted to do indirectly, what it cannot do directly.<sup>528</sup>

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<sup>526</sup> *Id.* at 17-18.

<sup>527</sup> *Id.* 19.

<sup>528</sup> *Id.* at 20 (citing *National Fuel Gas Supply Corp. v. FERC*, 909 F.2d 1519, 1522 (D.C. Cir. 1990); *Richmond Power & Light v. FERC*, 574 F.2d 610, 620 (D.C. Cir. 1978)).

326. Non-Public Utilities similarly dispute the Commission's conclusion that Filing Parties' proposal violated Order No. 1000 by allowing an entity to opt out of being allocated costs for a proposed transmission project if it merely asserts that it does not benefit from the project.<sup>529</sup> Non-Public Utilities argue that Filing Parties' proposal provided that costs would be allocated *only* to beneficiaries, i.e., those entities that accept cost allocation and thus receive benefits in the form of transmission transfer capability.<sup>530</sup> In contrast, Non-Public Utilities assert, if a transmission provider elects not to take service or obtain an ownership interest in the transmission project, the transmission provider will not receive the transfer capability that would allow it to derive benefits from the transmission project. Therefore, Non-Public Utilities contend, the Commission's concerns regarding the free rider problem as expressed in the First Compliance Order are not applicable.<sup>531</sup>

327. Non-Public Utilities argue that the Commission incorrectly conflates the WestConnect transmission planning region's initial, non-binding cost allocation determination (i.e., the identification of entities that might become beneficiaries) with the ultimate binding cost allocation, which is developed in an iterative process that assures full funding by beneficiaries and provides participants a full opportunity to evaluate the transmission project and obtain necessary approvals. Non-Public Utilities argue that the only difference between Filing Parties' proposal and the process ordered by the Commission is that the Commission wants the initial, preliminary determination of costs and benefits to be binding on all parties. Non-Public Utilities assert that Filing Parties' proposal provides that the preliminary assessment of costs and benefits is not binding, and if an entity does not accept the allocation of transfer capability or ownership rights and cost allocation, then the project is re-studied and a new allocation of costs and benefits is performed. Non-Public Utilities state that a transmission project that does not elicit full participation from preliminarily-identified candidates who may become beneficiaries is not approved for cost allocation purposes, but is submitted to the regional transmission planning process for reevaluation as if it is a new project.<sup>532</sup> Non-Public Utilities further contend that, consistent with Order No. 1000, the transmission providers in the WestConnect transmission planning region do not decide who is a beneficiary, rather the cost allocation method defines beneficiaries as those who subscribe to and

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<sup>529</sup> Non-Public Utilities Rehearing Request at 6 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 300).

<sup>530</sup> *Id.* at 6.

<sup>531</sup> *Id.* at 5 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 308).

<sup>532</sup> *Id.* at 6-9.

receive transmission transfer capability on or an ownership interest in a new transmission facility.<sup>533</sup>

328. Non-Public Utilities state that, if the Commission concludes that Filing Parties' proposed OATT language was unclear, they would support submitting revised OATT language clarifying that enrolled transmission providers that accept transmission service over, or ownership in, a transmission project are bound to the cost allocation determinations made for that project. Non-Public Utilities point, as an example, to the "Allocation of Ownership and Capacity Rights" section of Public Service Company of Colorado's regional transmission planning process, which provides that "[t]o the extent a *beneficiary* elects to participate in a project approved for cost allocation in the regional transmission plan, the *beneficiary* will receive transmission transfer capability on the project in exchange for transmission service payments."<sup>534</sup> Non-Public Utilities assert that the use of the term "beneficiary" could suggest that an entity that elects not to receive transmission service over, or ownership in, a transmission project selected in the regional transmission plan for purposes of cost allocation would still be a beneficiary of that project. Non-Public Utilities state that their understanding of the intent of this language was to permit entities identified as potential beneficiaries to decide whether to participate in a transmission project, with only those entities that elect to do so ultimately being designated as beneficiaries. They note that the regulatory/governance approval provision could similarly be misconstrued to suggest that participants in a transmission project, having approved the project and having received the requisite regulatory/governance approval, could nonetheless elect not to participate, which was not the drafters' intent. Non-Public Utilities therefore state that they would not object to revised OATT language that would clarify the operation of the cost allocation mechanism, consistent with the drafters' intent. If the Commission does not grant rehearing, Non-Public Utilities alternatively request clarification that, with modification of the language as described above, Filing Parties' proposed cost allocation method is binding and complies with the First Compliance Order.<sup>535</sup>

329. Filing Parties and Non-Public Utilities argue that the Commission's failure to approve the compliance filings will discourage, not facilitate, regional transmission planning and new transmission development. They point to the long and successful history of coordinated transmission planning between public and non-public utility

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<sup>533</sup> *Id.* n.6 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 308).

<sup>534</sup> Non-Public Utilities Rehearing Request at 13 (citing Public Service Company of Colorado OATT, Attachment R § VI.B.5 (emphasis added by Non-Public Utilities)).

<sup>535</sup> *Id.* at 12-14.

transmission providers in the WestConnect transmission planning region,<sup>536</sup> and state that approval of Filing Parties' cost allocation method as proposed and the pragmatic framework for establishing workable timetables will preserve the relationships and enhance regional transmission planning in the WestConnect region.<sup>537</sup>

330. Non-Public Utilities also assert that Filing Parties' proposed cost allocation provisions were carefully crafted to enable Non-Public Utilities to participate, while recognizing certain administrative and statutory funding limitations. Non-Public Utilities note that Order No. 1000-A clarified that non-public utility transmission providers may participate in development of regional transmission planning proposals to address their cost allocation concerns and argue that the Commission's rejection of Filing Parties' proposal places non-public utility transmission providers' ongoing participation in WestConnect's regional transmission planning process at risk.<sup>538</sup> Non-Public Utilities note that several non-public utility transmission providers have discussed whether to revise the WestConnect documents to permit Non-Public Utilities to participate as WestConnect transmission planning region members in roles other than as transmission providers.<sup>539</sup>

331. Similarly, Filing Parties argue that imposing binding cost allocation will discourage non-public utility transmission providers from participating in the WestConnect regional transmission planning process by upsetting the balance struck among the public and non-public utility transmission providers in the region. As a result, Filing Parties state, the regional transmission planning process will be less efficient, less cost-effective, and less productive by excluding the non-public utility transmission providers that historically participated in transmission planning in the WestConnect footprint, undermining the goals of Order No. 1000.<sup>540</sup> According to Filing Parties, because the public utility transmission providers in the WestConnect transmission planning region are not contiguous, meaningful transmission development in the region is dependent on the participation of the non-public utilities.<sup>541</sup> Filing Parties are also

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<sup>536</sup> Filing Parties Rehearing Request at 20-21; Non-Public Utilities Rehearing Request at 9-10.

<sup>537</sup> Non-Public Utilities Rehearing Request at 10.

<sup>538</sup> *Id.* at 10-11 (quoting Order No. 1000-A, 139 FERC ¶ 61,132 at P 279).

<sup>539</sup> *Id.* at 9-12.

<sup>540</sup> Filing Parties Rehearing Request at 21-23.

<sup>541</sup> *Id.* at 20-21, 23.

concerned that without the non-public utilities' participation in the regional transmission planning process, transmission developers would be incentivized to manipulate the size, scope, and footprint of their projects to fit those projects solely within public utility transmission provider footprints, thereby reducing the scope of potential beneficiaries of new transmission facilities.<sup>542</sup>

332. Filing Parties also argue that the Commission's decision to make cost allocation mandatory without providing for cost recovery is arbitrary and capricious because it would impose cost responsibility without a legal mechanism for costs to be recovered. Filing Parties argue that the Commission has not explained how a transmission developer will collect the prudently incurred costs of a transmission project selected in the regional transmission plan for purposes of cost allocation, other than to indicate that cost recovery would occur through Commission-jurisdictional tariffs. Filing Parties explain that, because there was no provision for cost recovery, cost allocation determinations under their proposal will not be binding until the beneficiaries of a transmission project negotiate and enter into appropriate agreements, which provide a legal mechanism for cost collection and thus certainty for the transmission developer. Filing Parties further argue that entities identified as potential beneficiaries must have the flexibility to negotiate participation in a transmission project because if they are bound by the initial application of the regional cost allocation method, they may be unwilling to enroll in the transmission planning region. As a result, Filing Parties state, the transmission project will likely fail, and the transmission developer would need to pursue a broad participant-funded project outside of the Order No. 1000 transmission planning process or to limit the size and scope of its project to the footprints of the public utility transmission provider members of the WestConnect transmission planning region.<sup>543</sup>

333. Filing Parties also argue that the Commission, in finding that cost allocation determinations must be binding, effectively directed that entities being allocated costs pursuant to the regional cost allocation method must enter into contracts for new transmission services with a new transmission provider (i.e., the transmission developer). They argue that this determination violates the *Mobile-Sierra* doctrine<sup>544</sup> because the

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<sup>542</sup> *Id.* at 23-24.

<sup>543</sup> *Id.* at 24-28.

<sup>544</sup> The *Mobile-Sierra* doctrine, which originated in the Supreme Court's decisions in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*), requires that the Commission "presume that a rate set by a 'freely negotiated wholesale-energy contract' meets the statutory 'just and reasonable requirement.' The presumption may be overcome only if [the Commission] concludes that the contract seriously harms the public

(continued ...)

Commission failed to satisfy the public interest standard. In support of this assertion, Filing Parties state that if the Commission cannot terminate or change a contract entered into between private parties without a public interest finding, then it also may not require private parties to enter into a contract without a public interest finding.<sup>545</sup>

**(b) Commission Determination**

334. We deny the requests for rehearing. We affirm our finding in the First Compliance Order that to comply with the cost allocation requirements of Order No. 1000, cost allocation determinations for transmission projects selected in the regional transmission plan for purposes of cost allocation must be binding. In the Enrollment and Participation by Transmission Providers section of this order, we clarify whether the regional cost allocation method must be binding on non-public utility transmission providers that do not enroll in the transmission planning region.

335. We reject arguments that binding cost allocation was not required by Order No. 1000 but, instead, is a new policy that was first established in the First Compliance Order. Contrary to these allegations, Order No. 1000 established a requirement that cost allocation determinations be binding on enrolled transmission providers that are identified as beneficiaries.<sup>546</sup> In Order No. 1000, the Commission stated that the cost allocation requirements of Order No. 1000 are based on the principle of cost causation, which requires that costs be allocated in a way that is roughly commensurate with benefits.<sup>547</sup> The Commission noted that any entity connected to the transmission grid could benefit from a transmission facility, whether or not it was connected to, or specifically requested service from, a particular transmission facility for which costs had been allocated.<sup>548</sup> The Commission made clear that beneficiaries of service provided by

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interest.” *NRG Power Marketing, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165, 167 (2009) (citations omitted).

<sup>545</sup> Filing Parties Rehearing Request at 28-29.

<sup>546</sup> For example, Filing Parties define beneficiaries as “beneficiaries enrolled in the WestConnect Region.” *E.g.*, Arizona Public Service Co. OATT, Attachment E, §§ VII.B, VII.B.1.

<sup>547</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 578.

<sup>548</sup> *Id.* P 592. The Commission stated that, given the nature of transmission operations, it was possible that an entity that uses part of the transmission grid would obtain benefits from improvements in another part of that grid, regardless of whether they had a contract for service on that part of the grid or regardless of whether they pay for those benefits. *Id.* P 562.

specific transmission facilities would be required to bear the costs of providing those benefits.<sup>549</sup> In other words, consistent with the principle of cost causation entities that are found to be beneficiaries and that are allocated costs pursuant to a regional cost allocation method must pay the costs associated with those benefits.<sup>550</sup> The Commission clarified that use of a public utility transmission provider's facility was voluntary, but that such voluntary use entailed acceptance of the terms and conditions of use set forth in the tariff, including an applicable cost allocation.<sup>551</sup> Thus, as the Commission stated in Order No. 1000, "[t]he obligation under the FPA to pay costs allocated under a regional or interregional cost allocation method is imposed by a Commission-approved tariff concerning the charges made by a public utility transmission provider for the use of the public utility transmission provider's facility. Such use is voluntary, and it does not become less so because it is determined in part by immutable laws of physics. Voluntary use therefore also entails voluntary acceptance of the terms and conditions of use set forth in the tariff, including an applicable cost allocation."<sup>552</sup> The D.C. Circuit has affirmed

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<sup>549</sup> The Commission stated that the cost allocation provisions of Order No. 1000 are consistent with the statement in *Illinois Commerce Commission* that "[a]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them." *Id.* P 565 (citing *Illinois Commerce Commission*, 576 F.3d 470 at 476). *See also id.* P 539 ("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."); *id.* P 568 ("The obligation under the FPA to pay costs allocated under a regional or interregional cost allocation method is imposed by a Commission-approved tariff concerning the charges made by a public utility transmission provider for the use of the public utility transmission provider's facility").

<sup>550</sup> The Commission noted an argument raised by a petitioner, which stated that the court in *Illinois Commerce Commission* indicated that costs must be recovered from entities that have a preexisting contractual relationship with the entity seeking cost allocation. The Commission stated that such an interpretation would inappropriately revise the court's statement of the cost causation principle by adding a further requirement that the customer must also *agree* to be responsible for such costs. Noting that the court did not reach such conclusion, the Commission rejected this interpretation. Order No. 1000-A, 139 FERC ¶ 61,132 at P 565 (emphasis added).

<sup>551</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 568.

<sup>552</sup> *See id.*



the Commission's authority to mandate that the costs of new transmission facilities be allocated *ex ante* to those who would benefit from those facilities.<sup>553</sup>

336. Additionally, arguments that Order No. 1000 did not require binding cost allocation run contrary to Order No. 1000's goals of providing upfront cost certainty, addressing free rider problems, and ensuring that practices that affect transmission rates are just and reasonable and not unduly discriminatory or preferential. In Order No. 1000, the Commission stated that the purpose of its cost allocation requirements was 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.<sup>554</sup> Further, noting that free riders for the purposes of Order No. 1000 are entities "who do not bear cost responsibility for benefits that they receive in their use of the transmission grid"<sup>555</sup> and that "are being subsidized by those who pay the costs of the benefits that free riders receive for nothing,"<sup>556</sup> the Commission stated that it was seeking to eliminate this form of subsidization by eliminating free riders on the transmission grid.<sup>557</sup> The Commission found that the lack of an *ex ante* regional cost allocation method, which identified the beneficiaries of proposed regional transmission facilities and that was known in advance to transmission planners, as well as the existence of free riders on the transmission grid, resulted in inefficient transmission planning that impeded the development of more efficient and cost-effective new transmission facilities, with the result that jurisdictional rates were higher than they would otherwise be.<sup>558</sup> Thus, if enrolled transmission

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<sup>553</sup> *S. C. Pub. Serv. Auth. v. FERC*, No. 12-1232, 2014 WL 3973116, at \*34-39 (D.C. Cir. Aug. 15, 2014).

<sup>554</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 561. The Commission noted that it was appropriate for this cost consideration to take place during the regional transmission planning process, as it would increase the likelihood that transmission facilities selected in regional transmission plans for purposes of cost allocation would be actually constructed, rather than later encountering cost allocation disputes that would prevent their construction. *Id.* P 562.

<sup>555</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 576.

<sup>556</sup> *Id.* P 578.

<sup>557</sup> *Id.*

<sup>558</sup> *Id.* PP 562, 592. *See also id.* P 588 ("The absence of a cost allocation method or methods also has an adverse effect on rates by making it difficult to deal with free rider problems related to new facilities. The Commission's authority to require the adoption of a cost allocation method or methods arises directly from its authority under (*continued ...*)

providers that are identified as beneficiaries have the option not to accept transmission costs allocated pursuant to a regional cost allocation method, in reliance that other beneficiaries would fund the costs needed for a transmission project's development, this could lead to the scenario where the potential transmission developer did not have the required certainty to move forward with the transmission project. Because we find that the foundation of Order No. 1000's cost allocation reforms is dependent on binding cost allocation, we dismiss arguments that Order No. 1000 did not require binding cost allocation as without merit.

337. Furthermore, the Commission required that a regional cost allocation method must be consistent with Regional Cost Allocation Principle 1, which states that costs 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.<sup>559</sup> As we noted in the First Compliance Order, and for the reasons discussed above in this section, because nonbinding cost allocation would not provide the assurance that costs will be allocated roughly commensurate with estimated benefits, it would not comply with Regional Cost Allocation Principle 1.<sup>560</sup> We deny rehearing on this issue.

338. We also find that allowing enrolled transmission providers that are identified as beneficiaries to simply opt out of cost allocation determinations made through the Order No. 1000 regional transmission planning process would discourage nonincumbent transmission developers from proposing transmission projects, given the lack of upfront certainty as to which beneficiaries would be responsible for paying the costs of transmission facilities selected in the regional transmission plan for purposes of cost allocation. This is inconsistent with Regional Cost Allocation Principle 5, which required that the cost allocation method for determining benefits and identifying beneficiaries for a transmission facility must be transparent.<sup>561</sup> Nonbinding cost allocation conflicts with this principle because if cost allocation determinations were nonbinding on enrolled transmission providers that are identified as beneficiaries, the transparency and certainty inherent in this principle would not be achieved. The Commission also explained in Order No. 1000 that the transparency required by Regional Cost Allocation Principle 5 will allow stakeholders to see clearly who is benefiting from, and subsequently who is

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section 206 to ensure that practices that affect transmission rates, such as transmission planning, are just and reasonable and not unduly discriminatory or preferential.”).

<sup>559</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622.

<sup>560</sup> First Compliance Order, 142 FERC ¶ 61,255 at PP 306-309.

<sup>561</sup> *Id.* P 668.

paying for, the transmission investment.<sup>562</sup> If regional cost allocation determinations for transmission projects selected in the regional transmission plan for purposes of cost allocation were not binding on enrolled transmission providers that are identified as beneficiaries, stakeholders will not be able to determine how the cost allocation method was applied to any particular transmission project. Thus, we conclude that non-binding cost allocation violates this principle. In addition, a binding cost allocation method is a fundamental component needed to achieve Order No. 1000's stated goals to minimize the problem of free ridership<sup>563</sup> and "increase the likelihood that transmission facilities in the transmission plan will move forward to construction."<sup>564</sup> Accordingly, we reject Filing Parties' assertions that Order No. 1000 did not require that the regional cost allocation methods be binding on enrolled transmission providers that are identified as beneficiaries.

339. Next, we discuss Filing Parties' and Non-Public Utilities' arguments that the Commission erred in concluding that their proposal does not provide for mandatory, binding cost allocation. Filing Parties assert that their proposal is binding upon identified beneficiaries when project beneficiaries enter into a negotiated agreement to fund a transmission project selected in the regional transmission plan for purposes of cost allocation. This argument undermines Filing Parties' position as it highlights the voluntary nature of the decision by enrolled transmission providers that are identified as beneficiaries to accept their allocated costs and enter into a negotiated agreement for those costs; in effect, cost allocation determinations are binding only *after* beneficiaries agree to accept them. Moreover, Filing Parties' argument that the Commission contemplated that the regional transmission planning process would provide for identification of "potential beneficiaries" is not convincing. First, the discussion that Filing Parties refer to was in the context of participant funding, not the transmission planning region's cost allocation method or methods. Second, Order No. 1000 clearly required public utility transmission providers to identify the beneficiaries of a transmission project selected in the regional transmission plan for purposes of cost allocation, rather than *potential* beneficiaries.<sup>565</sup>

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<sup>562</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 669.

<sup>563</sup> *Id.* P 640.

<sup>564</sup> *Id.* P 42.

<sup>565</sup> *Id.* P 11 (stating that 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), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 585.

340. We also disagree with Non-Public Utilities' argument that allocating costs *only* to those entities that accept cost allocation and receive transmission transfer capability is sufficient to satisfy Order No. 1000. Similarly, we are not persuaded by Non-Public Utilities' assertion that the intent of the term "beneficiary" in Filing Parties' OATTs was to permit entities identified as potential beneficiaries to decide whether to participate in a transmission project, with only those entities that elect to do so ultimately being designated as beneficiaries, and that reflecting this in future compliance filings would comply with Order No. 1000. Order No. 1000 expressly rejected the notion that an enrolled transmission provider that is identified as a beneficiary may opt out of a Commission-approved cost allocation for a specific transmission project if it merely asserts that it receives no benefits from the project, stating that such an opportunity to opt out would not minimize the regional free rider problem.<sup>566</sup> Order No. 1000 stated that "[w]hether an entity is identified as a beneficiary that must be allocated costs of a new transmission facility is not determined by the entity itself but rather through the applicable, Commission-approved transmission planning processes and cost allocation methods."<sup>567</sup> Moreover, Non-Public Utilities' argument fails to recognize that Order No. 1000 did not require use of any particular implementation mechanism with respect to its cost allocation requirements nor did it determine the types of benefits that regional transmission planning processes could consider. While the Commission noted that it would follow a flexible approach to accommodate the needs and characteristics of particular regions and encouraged non-public utility transmission providers to participate in the regional transmission planning process, public utility transmission providers must comply with the Order No. 1000 requirements and cannot contravene the requirements of the rule.

341. We reject Filing Parties' argument that, in requiring that cost allocation determinations made through the regional transmission planning process be binding on enrolled transmission providers that are identified as beneficiaries, the Commission is acting in violation of sections 205 and 206 of the FPA. Nothing in Order No. 1000 is intended to deprive parties of rights they would otherwise have under sections 205 or 206 of the FPA to challenge transmission rates before the Commission. As explained in Order No. 1000-B, the regional transmission planning processes approved as compliant with Order No. 1000 will establish an open and transparent transmission planning process and adopt a cost allocation method or methods that provide *ex ante* certainty. Order No. 1000 requires that the regional transmission planning process and associated cost allocation method(s) have built-in mechanisms to help ensure that the processes and cost

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<sup>566</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 640.

<sup>567</sup> *Id.*

allocation methods are transparent for beneficiaries.<sup>568</sup> The Commission specifically rejected arguments that the cost allocation method could result in burden shifting under section 205 of the FPA,<sup>569</sup> and the Commission did not *require* that transmission developers file specific applications of the cost allocation method with the Commission, nor did it prohibit regions from proposing such filings as part of their Order No. 1000 compliance.<sup>570</sup> Accordingly, we reject Filing Parties' argument that the Commission eliminated the burden of proof under the FPA on transmission developers seeking to recover costs of transmission facilities selected in the regional transmission plan for purposes of cost allocation, or otherwise deprived beneficiaries of the opportunity under sections 205 or 206 of the FPA to challenge those costs before the Commission.

342. Filing Parties argue that the Commission erred in imposing cost responsibility without a legal mechanism for costs to be recovered. Filing Parties argue that the Commission has not explained how a transmission developer will collect the prudently incurred costs of a transmission project selected in the regional transmission plan for purposes of cost allocation, other than to indicate that cost recovery would occur through Commission-jurisdictional tariffs. Contrary to Filing Parties' argument, cost allocation is binding prior to costs being recovered through Filing Parties' OATT rates. Order No. 1000 requires that determinations made under a Commission-approved regional cost allocation method are binding on enrolled transmission providers that are identified as beneficiaries. Thus, the enrolled transmission providers that are identified as beneficiaries of a proposed transmission project selected in the regional transmission plan for purposes of cost allocation are bound by the initial application of the WestConnect regional cost allocation method. This creates certainty for transmission projects selected in the regional transmission plan for purposes of cost allocation and provides an avenue for those transmission projects to come to fruition. However, we acknowledge that Order No. 1000 made a distinction between cost allocation and cost recovery. Cost allocation involves the identification of beneficiaries and the costs they cause, while cost recovery involves *how* those allocated costs will be recovered under specific mechanisms to collect the costs.<sup>571</sup> We disagree that an obligation to have in place a cost allocation method is a matter of cost recovery; instead, cost recovery involves *how* cost allocations will be implemented or recovered. Further, the Commission stated that entities that receive benefits are subject to a Commission-approved transmission tariff, which will contain the

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<sup>568</sup> Order No. 1000-B, 141 FERC ¶ 61,044 at P 18.

<sup>569</sup> *Id.* P 25.

<sup>570</sup> *Id.* P 23.

<sup>571</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 616; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 26, 537 n.427.

appropriate cost allocation method.<sup>572</sup> What the Commission did not do, however, is establish a specific mechanism describing how costs are to be recovered under the relevant Commission-approved transmission tariff.<sup>573</sup> Accordingly, we are not persuaded by the assertion that, because Order No. 1000 did not specify how costs can be recovered for transmission projects that are selected in the regional transmission plan for purposes of cost allocation, Filing Parties cannot comply with Order No. 1000's binding cost allocation requirement.

343. We turn next to Filing Parties' assertion that by directing the Planning Management Committee to bind beneficiaries to its cost allocation determinations, the Commission is impermissibly mandating the construction of transmission facilities. We disagree. The First Compliance Order explained that while Order No. 1000 *does* require binding cost allocation for a transmission project selected in the regional transmission plan for purposes of cost allocation, it expressly does *not* impose an obligation to construct the project.<sup>574</sup> As explained above, the purpose of a binding regional cost allocation method is to determine the allocation of the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation to enrolled transmission providers that are identified as beneficiaries. Thus, while the regional cost allocation method binds the enrolled transmission providers that are identified as beneficiaries to the resultant cost allocation determinations, nothing within Order No. 1000 or the First Compliance Order compels any entity to construct the transmission project; indeed, construction of the project may ultimately be affected by factors outside

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<sup>572</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 615, 618. *See also id.* P 568.

<sup>573</sup> The Commission noted that, while it would not address cost recovery in the Order No. 1000 proceeding, public utility transmission providers could include cost recovery provisions in their compliance filings to the extent those provisions were considered in connection with a regional cost allocation method. Order No. 1000-A, 139 FERC ¶ 61,132 at P 616. The Commission accepted a proposal by public utility transmission providers in the Florida region to include provisions in their OATTs that allow an incumbent transmission provider that constructs a transmission project selected in a regional transmission plan for purposes of cost allocation to recover costs of the project from other incumbent transmission providers that are identified as beneficiaries. *Tampa Elec. Co.*, 143 FERC ¶ 61,254 at PP 265-268, 284-291.

<sup>574</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 309.

of the regional transmission planning process.<sup>575</sup> Accordingly, we reject Filing Parties' assertion that the Commission is mandating the construction of transmission facilities.

344. Finally, we turn to Filing Parties' argument that the Commission's determination that cost allocation determinations made through the regional transmission planning process must be binding on beneficiaries violates the *Mobile-Sierra* doctrine, and deny rehearing. We disagree with Filing Parties' argument that the First Compliance Order compelled them to enter into contracts to implement binding cost allocation. Order No. 1000 did not require use of any particular implementation mechanism with respect to its cost allocation requirements. Moreover, there is at least one other mechanism available to Filing Parties to implement the payments by beneficiaries to transmission developers for Order No. 1000 regional cost allocation determinations: the use of a tariff mechanism (e.g., rates paid by beneficiaries to a transmission developer through a tariff schedule). Indeed, the Commission has already accepted a proposal reflecting such an alternative mechanism.<sup>576</sup> Filing Parties may not circumvent a requirement of Order No. 1000 by attempting to render the *Mobile-Sierra* doctrine applicable through their choice of an implementation mechanism.

### iii. Compliance

#### (a) Summary of Compliance Filings

345. Filing Parties propose to add a new section to their OATTs to address the Commission's directive that the cost allocation determinations for transmission projects selected in the regional transmission plan for purposes of cost allocation must be binding upon identified beneficiaries. Filing Parties' revised OATTs state that "the cost allocation methods ... are binding on identified beneficiaries enrolled in the WestConnect planning region."<sup>577</sup> Additionally, the revised OATT language provides that the binding

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<sup>575</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 287 ("Nothing in [Order No. 1000] is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities").

<sup>576</sup> *See, e.g., Tampa Elec. Co.*, 143 FERC ¶ 61,254 at PP 265-268 & 284-291 (accepting a proposal by public utility transmission providers in the Florida region to include provisions in their OATTs that allow an incumbent transmission provider that constructs a transmission project selected in a regional transmission plan for purposes of cost allocation to recover costs of the project from other incumbent transmission providers that are identified as beneficiaries).

<sup>577</sup> *E.g., Arizona Public Service Co. OATT, Attachment E, § VII.B.10.*

cost allocation methods are without prejudice to: (1) the right and obligation of the Planning Management Committee to reevaluate a transmission facility previously selected for inclusion in the regional transmission plan for purposes of cost allocation; (2) the right and obligation of a transmission developer to make a filing under section 205 or other applicable provision of the FPA in order to seek approval from the Commission to recover the costs of any transmission facility selected in the regional transmission plan for purposes of cost allocation; (3) the right and obligation of any interested party, including identified beneficiaries, to intervene, support, or protest in any FPA proceeding initiated by a transmission developer; and (4) the right and obligation of the Commission to act under section 205 or other applicable provision of the FPA to approve or deny any cost recovery sought by a transmission developer for a transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>578</sup> In addition, Filing Parties propose to remove an OATT provision stating that project costs will be allocated to identified beneficiaries for a regional transmission project “who agree to participate in such regional project.” Filing Parties instead propose to state that project costs will be allocated to beneficiaries “enrolled in the WestConnect [p]lanning [r]egion.”<sup>579</sup>

346. To comply with the Commission’s directives concerning Regional Cost Allocation Principle 1, Filing Parties clarify that enrolled transmission owners are the entities that may be allocated costs for reliability transmission projects selected in the regional transmission plan for purposes of cost allocation.<sup>580</sup> Moreover, Filing Parties propose to revise their OATTs to state that “should multiple utilities have separate reliability issues that are addressed more efficiently or cost effectively by a single regional project, that regional project will be approved for selection in the regional transmission plan and the cost will be shared by those enrolled transmission owners in proportion to the cost of alternatives that could be pursued by the individual transmission owners to resolve the reliability issue.”<sup>581</sup> Filing Parties also propose to revise their OATTs to state that “[t]he ultimate responsibility for maintaining system reliability and compliance with NERC Transmission Planning Standards rests with each transmission owner.”<sup>582</sup>

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<sup>578</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 26; Arizona Public Service Co. OATT, Attachment E, § VII.B.10.

<sup>579</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.

<sup>580</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 26; Arizona Public Service Co. OATT, Attachment E, § VII.B.1.

<sup>581</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.1.

<sup>582</sup> *E.g.*, *id.* § VII.B.1.



347. With respect to the cost allocation method for economic transmission projects, Filing Parties clarify that enrolled transmission owners are the entities that may be allocated costs for economic transmission projects selected in the regional transmission plan for purposes of cost allocation.<sup>583</sup> Filing Parties also provide detail regarding the production cost savings and reduction in reserve sharing requirements that determine economic benefits. Filing Parties explain that production cost savings are determined by the Planning Management Committee by performing a production cost simulation to model the impact of the transmission project on production costs and congestion.<sup>584</sup> They further explain that production cost savings will be calculated as the reduction in production costs between a production cost simulation with the transmission project included compared to a simulation without the project.<sup>585</sup>

348. Filing Parties also explain that reductions in reserve sharing requirements will be determined by the Planning Management Committee in identifying a transmission project's impact on the reserve requirements of individual transmission systems.<sup>586</sup> Filing Parties state that the production cost models also consider the hurdle rates between transmission systems.<sup>587</sup> According to Filing Parties, the following production cost principles may be applied: (1) the production cost savings from a transmission project must be present in each year extending out at least ten years; (2) cost savings must be expressed in present-value dollars and should consider the impact of various fuel cost forecasts; (3) the production cost study must account for contracts and agreements related to the use of the transmission system, such as paths in transmission systems that might be contractually limited but not reliability limited; and (4) the production cost study must account for contracts and agreements related to the access and use of generation, such as generators that might only use spot purchases for fuel rather than firm purchases, or generation that has been designated as network resources for some entities and thus

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<sup>583</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 26; Arizona Public Service Co. OATT, Attachment E, § VII.B.2.

<sup>584</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E § VII.B.2.

<sup>585</sup> *E.g.*, *id.* § VII.B.2.

<sup>586</sup> *E.g.*, *id.* § VII.B.2.

<sup>587</sup> Filing Parties' Business Practice Manual defines hurdle rate as "a price adder included in production cost modeling to reflect transactional friction to power exchanges occurring." WestConnect Regional Planning Process Business Practice Manual (Working Version 11 rev. 10/12/12) § 4.3.6.2, *available at* [http://www.westconnect.com/filestorage/wc\\_draft\\_regional\\_planning\\_bpm\\_version\\_112\\_012\\_1012.pdf](http://www.westconnect.com/filestorage/wc_draft_regional_planning_bpm_version_112_012_1012.pdf).

cannot be accessed at will by non-owners.<sup>588</sup> Moreover, to comply with the Commission's directive to explain how the costs less than or equal to one percent of the total costs of a transmission project selected in the regional transmission plan for purposes of cost allocation will be allocated, Filing Parties propose to reallocate such costs among all other enrolled beneficiaries on a *pro rata* basis, based on each entity's share of the total project benefits.<sup>589</sup>

349. Moreover, Filing Parties provide additional detail concerning the determination of whether multiple types of benefits will be considered for a single transmission project. They explain that first, interested stakeholders are given the opportunity to provide input to determine whether to consider multiple benefits for a single transmission project.<sup>590</sup> Next, in determining whether a transmission project would provide multiple benefits, the Planning Management Committee will categorize the benefits as: (1) meeting NERC Transmission Reliability Standards for reliability benefits; (2) achieving production cost savings or a reduction in reserve sharing requirements for economic benefits; or (3) necessary to meet transmission needs driven by public policy requirements.<sup>591</sup> Filing Parties also state that the Planning Management Committee will identify all three benefits through the regional cost allocation process, and if the transmission project cannot pass the cost allocation threshold for any one of the three benefit categories alone, the sum of benefits from each benefit category may be considered.<sup>592</sup> As directed, Filing Parties have also removed a provision from their OATTs stating that, when analyzing whether a single transmission project provides multiple types of benefits, they will only consider the value of economic benefits if the benefits result from a WECC Board-approved recommendation to study congestion.

350. Regarding Regional Cost Allocation Principle 3, Filing Parties clarify the benefit to cost ratio that will apply to economic transmission projects. First, Filing Parties' proposed revisions state that cost allocation for economic transmission projects will

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<sup>588</sup> *E.g., id.* § VII.B.2.

<sup>589</sup> *E.g., Arizona Public Service Co. Transmittal Letter at 26-27; Arizona Public Service Co. OATT, Attachment E, § VII.B.2.*

<sup>590</sup> *E.g., Arizona Public Service Co. Transmittal Letter at 27; Arizona Public Service Co. OATT, Attachment E, § VII.B.4.*

<sup>591</sup> *E.g., Arizona Public Service Co. Transmittal Letter at 27; Arizona Public Service Co. OATT, Attachment E, § VII.B.4.*

<sup>592</sup> *E.g., Arizona Public Service Co. Transmittal Letter at 27; Arizona Public Service Co. OATT, Attachment E, § VII.B.4.*

include scenario analyses to ensure that: (1) benefits will actually be received by beneficiaries with relative certainty; and (2) projects for which benefits and beneficiaries are uncertain and vary beyond reasonable parameters, based on assumptions about future conditions, will not be selected for purposes of cost allocation.<sup>593</sup> In addition, Filing Parties explain, in order for an economic transmission project to be justified and receive cost allocation, it must have a benefit to cost ratio that is greater than 1.0 under each reasonable scenario evaluated, and have an average ratio of at least 1.25 under all reasonable scenarios evaluated.<sup>594</sup> Filing Parties clarify that costs will be allocated on the basis of the average of all scenarios evaluated.<sup>595</sup> Filing Parties also provide an example to explain how the aggregate load-weighted benefit to cost ratio will be calculated. Filing Parties' revised OATTs state that "[t]he cost of any project that has an aggregate 1.25 [benefit to cost] ratio or greater will be divided among the enrolled transmission owners that show a benefit based on the amount of benefits calculated to each respective transmission owner."<sup>596</sup> In addition, Filing Parties propose to revise their OATTs to state that other than through the reevaluation process, the benefits and costs used in the evaluation shall only be calculated during the planning period and shall be compared on a net present value basis.<sup>597</sup>

351. To comply with the Commission's directives concerning Regional Cost Allocation Principle 4, Filing Parties propose to revise their OATTs to state that the Planning Management Committee will study the impact of a regional transmission project on neighboring transmission planning regions and that the WestConnect transmission planning region does not agree to bear the costs of any mitigation measures.<sup>598</sup> Specifically, Filing Parties propose that the Planning Management Committee will consider whether there is a need for mitigation measures in neighboring transmission

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<sup>593</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 27-28; Arizona Public Service Co. OATT, Attachment E, § VII.B.2.

<sup>594</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 27-28; Arizona Public Service Co. OATT, Attachment E, § VII.B.2.

<sup>595</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 27-28; Arizona Public Service Co. OATT, Attachment E, § VII.B.2.

<sup>596</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 27-28; Arizona Public Service Co. OATT, Attachment E, § VII.B.2.

<sup>597</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.2.

<sup>598</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 28; Arizona Public Service Co. OATT, Attachment E, § VII.B.11.

planning regions resulting from: (a) the WECC path rating process; (b) OATT requirements; (c) NERC Reliability Standards requirements; and/or (d) any negotiated arrangements between the interconnected entities.<sup>599</sup> Additionally, as proposed by Filing Parties, the Planning Management Committee will include the costs of any mitigation measures in the regional transmission project's total project costs for purposes of determining the project's eligibility for regional cost allocation, including application of the region's benefits-to-costs analysis.<sup>600</sup> Further, Filing Parties propose that the WestConnect transmission planning region will not be responsible for compensating a neighboring transmission planning region or any other entity for the costs of any required mitigation measures.<sup>601</sup> They state that the Planning Management Committee does not direct the construction of (or operate) transmission facilities, charge to collect revenues, or provide transmission service.<sup>602</sup> Filing Parties therefore state that the Planning Management Committee does not agree to bear the costs of any mitigation measures.<sup>603</sup> However, under the proposal, the Planning Management Committee will request that the developer of a regional transmission project selected in the regional transmission plan for purposes of cost allocation design and build its project to mitigate the project's identified impacts on neighboring transmission planning regions.<sup>604</sup> The proposed OATT revisions state that, if a transmission project is identified as impacting a neighboring transmission planning region that accords less favorable mitigation treatment to the WestConnect transmission planning region than the WestConnect transmission planning region accords to it, the Planning Management Committee will request that the transmission developer reciprocate by using the lesser of: (1) the neighboring region's mitigation treatment applicable to the mitigation of impacts of its own regional transmission projects on the WestConnect transmission planning region; or (2) the Planning Management Committee's mitigation treatment (i.e., (a) through (d) above).<sup>605</sup>

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<sup>599</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 28; Arizona Public Service Co. OATT, Attachment E, § VII.B.11.

<sup>600</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.11.

<sup>601</sup> *E.g.*, *id.* § VII.B.11.

<sup>602</sup> *E.g.*, *id.* § VII.B.11.

<sup>603</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 28; Arizona Public Service Co. OATT, Attachment E, § VII.B.11.

<sup>604</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.11.

<sup>605</sup> *E.g.*, *id.* § VII.B.11.

352. With respect to Regional Cost Allocation Principle 5, Filing Parties propose to revise their OATTs to state that the regional transmission plan will document how the Planning Management Committee applied its methodology to allocate the costs of each regional reliability, economic, and public policy transmission project.<sup>606</sup> With respect to economic transmission projects, Filing Parties further propose to revise their OATTs to state that stakeholders that are members of the Planning Management Committee will have firsthand knowledge of the way in which the regional cost allocation method was applied to a particular transmission project given that the Planning Management Committee is responsible for applying the regional cost allocation method, and that stakeholders that choose not to become members of the Planning Management Committee may access such information through the WestConnect regional stakeholder process.<sup>607</sup> Finally, Filing Parties propose to revise their OATTs to provide that the regional transmission plan will describe the manner in which the applicable regional cost allocation method was applied to each transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>608</sup>

**(b) Protests/Comments**

353. LS Power asserts that Filing Parties should delete the proposed OATT subsection titled Binding Order No. 1000 Cost Allocation Methods.<sup>609</sup> It maintains that the

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<sup>606</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 28; Arizona Public Service Co. OATT, Attachment E, §§ VII.B.1, VII.B.2, and VII.B.3.

<sup>607</sup> *E.g.*, *i.d.* § VII.B.2.

<sup>608</sup> *E.g.*, *i.d.* § III.E.6.

<sup>609</sup> LS Power Comments at 20. The revised section provides that the binding cost allocation methods are without prejudice to: (1) the right and obligation of the Planning Management Committee to reevaluate a transmission facility previously selected for inclusion in the regional transmission plan for purposes of cost allocation; (2) the right and obligation of a transmission developer to make a filing under section 205 or other applicable provision of the FPA in order to seek approval from the Commission to recover the costs of any transmission facility selected in the regional transmission plan for purposes of cost allocation; (3) the right and obligation of any interested party, including identified beneficiaries, to intervene, support, or protest in any FPA proceeding initiated by a transmission developer; and (4) the right and obligation of the Commission to act under section 205 or other applicable provision of the FPA to approve or deny any cost recovery sought by a transmission developer for a transmission facility selected in the regional transmission plan for purposes of cost allocation. *E.g.*, Arizona Public Service Co. OATT, Attachment E § VII.B.10.

subsection either lacks a meaningful purpose or seeks to create rights in the guise of recounting rights that already exist.<sup>610</sup>

354. SoCal Edison asserts that the proposed OATT revisions appear to exonerate the WestConnect transmission planning region's transmission owners from all responsibility for costs that they impose on a neighboring transmission system. SoCal Edison also expresses general concern that the various transmission planning regions are developing inconsistent approaches to mitigate costs associated with any required transmission system upgrades in a neighboring transmission planning region. SoCal Edison asserts that the proposed provisions could result in transmission owners in CAISO and in other neighboring transmission planning regions paying more than their share of costs and could encourage gaming. SoCal Edison states that, in contrast to the WestConnect transmission planning region's proposal, CAISO's approach authorizes it to unilaterally commit to assume costs associated with any required upgrades in a neighboring transmission planning region and imposes costs on the participating transmission owner that caused them through inclusion in the participating transmission owner's transmission access charge. SoCal Edison argues that the WestConnect transmission planning region's refusal to assume any costs to mitigate the impact it causes on a neighboring transmission system is unreasonable and contrary to Commission precedent. SoCal Edison contends that Commission precedent indicates that if adverse impacts are shown, one transmission owner may have to mitigate impacts on another transmission owner's system. SoCal Edison provides an example, stating that the Commission has explained that where circumstances warrant, a transmission owner can impose charges on another transmission owner to mitigate adverse impacts, such as unscheduled loop flow.<sup>611</sup> Finally, SoCal Edison notes that if the intent of the proposed OATT revisions is to indicate that the WestConnect transmission planning region will not bear the costs of the impacts on neighboring transmission owners, but that the WestConnect individual transmission owners or responsible transmission developers may agree or be required to do so, Filing Parties should make this clear in the proposed OATT revisions.<sup>612</sup>

(c) **Answers**

355. Filing Parties argue that deleting the proposed OATT subsection titled Binding Order No. 1000 Cost Allocation Methods,<sup>613</sup> as requested by LS Power, would directly

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<sup>610</sup> LS Power Comments at 20.

<sup>611</sup> SoCal Edison Comments at 4 (citing *American Electric Power Service Corp.*, 49 FERC ¶ 61,377 (1989)).

<sup>612</sup> *Id.* at 3-5.

<sup>613</sup> *E.g.*, Arizona Public Service Co., OATT, Attachment E, § VII.B.10.

contravene the clear directive from the Commission to include such language in the OATTs. Filing Parties also contend that, rather than create rights, the section clarifies that binding cost allocation does not mean cost recovery, does not entitle anyone to transmission rate increases, and does not prejudice any participant's rights and obligations under the FPA. Filing Parties argue that such disclosures are essential to achieve transparency in the regional transmission planning process.<sup>614</sup>

356. With respect to SoCal Edison's comments, Filing Parties argue that Order No. 1000 does not require the WestConnect transmission planning process to assume cost responsibility for the impact of transmission projects on other transmission planning regions. Filing Parties point out that the First Compliance Order directed the public utility transmission providers to explain "*whether* the WestConnect transmission planning region has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated within the WestConnect transmission planning region."<sup>615</sup> In addition, Filing Parties assert that SoCal Edison's concern that a WestConnect transmission project requiring mitigation on other regions' systems could be developed without a mechanism for compensating those utilities implementing the mitigation is overblown. Filing Parties explain that the WestConnect transmission planning process leverages the WECC Path Rating Process, the Commission's OATT requirements, and the applicable Reliability Standards to identify whether any mitigating measures would be required on other systems if a given transmission project is developed, and that this will ensure that the impacts are appropriately quantified and included in the cost-benefit analysis for each project.<sup>616</sup> Moreover, they argue that because the Planning Management Committee does not direct the construction of transmission facilities, does not operate transmission facilities or provide transmission services, and does not charge or collect revenues for the performance of any transmission or other services, it will not assume the responsibility for compensating other regions for the cost of mitigation measures.<sup>617</sup>

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<sup>614</sup> Filing Parties Answer at 43.

<sup>615</sup> *Id.* at 50 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 323).

<sup>616</sup> For example, Filing Parties note that the WECC Path Rating Process, which applies to new transmission project developments in the western interconnection, protects existing path ratings by requiring that later-in-time projects be developed without negatively affecting existing path ratings. As a result, external systems are protected against having to pay for the costs of mitigating a new WestConnect transmission project.

<sup>617</sup> Filing Parties Answer at 50-52.

357. Finally, Filing Parties argue that SoCal Edison's citation to the Commission's loop flow precedent is misplaced. They explain that the Commission has not imposed an obligation on public utilities to compensate neighboring utilities for the unavoidable consequences of utility operations on other systems, such as loop flow; instead, if such consequences occur, the Commission has asked utilities to work together to ensure that their operations do not jeopardize reliability or economic operation on neighboring systems by establishing operating practices that are mutually acceptable to the affected parties. Filing Parties contend that this policy continues to be appropriate as a mechanism for addressing any inadvertent impacts of WestConnect projects on external systems to the extent such concerns are not addressed through the WECC Path Rating Process, and that SoCal Edison has not provided evidence that this policy would be unworkable.<sup>618</sup>

**(d) Commission Determination**

358. We find that Filing Parties' compliance filings partially comply with the Commission's directives in the First Compliance Order regarding the Regional Cost Allocation Principles of Order No. 1000. As discussed below, Filing Parties have met, with a few exceptions described below, the Order No. 1000 requirement that each 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.<sup>619</sup> However, to fully comply with Order No. 1000 requirement that cost allocation determinations for transmission projects selected in the regional transmission plan for purposes of cost allocation must be binding upon enrolled transmission providers that are identified as beneficiaries, we direct Filing Parties to revise certain aspects of their proposed cost allocation method. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings, as discussed below.

359. First, we note that Filing Parties have failed to remove language that contradicts Order No. 1000's requirement for binding cost allocation. In particular, in No Obligation to Construct section (III.B.9), Filing Parties propose to retain in their OATTs language providing that:

The WestConnect [r]egional [p]lanning [p]rocess is intended to determine and recommend the more efficient or cost-effective transmission solutions for the WestConnect [p]lanning [r]egion. After the [r]egional [p]lan is approved, ... the [r]egional [p]lanning

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<sup>618</sup> *Id.* at 52-53.

<sup>619</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558.



[p]rocess shall not obligate any entity to construct, nor obligate any entity to commit to construct, any facilities, including any transmission facilities, regardless of whether such facilities are included in any plan. [Additionally n]othing in this [transmission planning process], the Business Practice Manual or the Planning Participation Agreement, or any cost allocation shall...*(3) obligate any entity to implement or effectuate, or commit to implement or effectuate, any cost allocation, [or] (4) obligate any entity to pay, or commit to pay, costs of any project or proposed project in accordance with any cost allocation...*<sup>620</sup>

360. We find that these provisions violate Order No. 1000's binding cost allocation requirement for the same reasons explained in the First Compliance Order.<sup>621</sup>

Accordingly, we reject the aforementioned provisions and direct Filing Parties to remove them from their respective OATTs.

361. With the exception just noted, we find that Filing Parties have complied with the Commission's directives with respect to Regional Cost Allocation Principle 1 for reliability, economic, and public policy transmission projects.<sup>622</sup> Filing Parties have clarified in their OATTs that enrolled transmission owners, if identified as beneficiaries, are the entities that may be allocated costs for reliability and economic transmission projects selected in the regional transmission plan for purposes of cost allocation. Accordingly, Filing Parties have complied with this directive of the First Compliance Order.

362. We also find that Filing Parties have complied with the requirement to describe how the costs for an economic transmission project selected in the regional transmission plan for purposes of cost allocation that will not be allocated to the beneficiary because that transmission owner's retail distribution service territory or footprint receives benefits less than or equal to one percent of total project benefits would be allocated. Filing Parties propose that such benefits will be re-allocated to all other enrolled beneficiaries on a pro-rata basis, in relation to each entity's share of total project benefits. We find that this proposal complies with Regional Cost Allocation Principle 1 because it would

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<sup>620</sup> *E.g.*, Arizona Public Service Co., OATT, Attachment E § VII.B.9 (emphasis added).

<sup>621</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 306-309.

<sup>622</sup> The Commission previously found that Filing Parties complied with Regional Cost Allocation Principle 1 for public policy transmission projects. *Id.* P 317.

allocate costs in a manner that is at least roughly commensurate with the estimated benefits of a transmission project.

363. With respect to transmission projects that produce multiple types of benefits (e.g., reliability, economic, and public policy benefits), we find that Filing Parties' proposed revisions comply with the directive in the First Compliance Order to explain in their respective OATTs how the determination of whether multiple types of benefits will be considered for a single transmission project will be conducted in a transparent and not unduly discriminatory or preferential manner. Filing Parties' proposed revisions provide sufficient information to explain how the WestConnect transmission planning process will perform this analysis. In particular, stakeholders are given the first opportunity to provide input to determine whether to consider multiple benefits for a single transmission project. The WestConnect transmission planning region committees will then make the determination of whether a transmission project would provide multiple benefits. However, it is not clear what Filing Parties mean by the "cost allocation threshold" in their proposal that, if a transmission project cannot pass the "cost allocation threshold" for any one of the three benefit categories, the Planning Management Committee may consider the sum of benefits from each category. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to clarify the term "cost allocation threshold".

364. We additionally find that Filing Parties have complied with the directives in the First Compliance Order regarding Regional Cost Allocation Principle 3. Filing Parties have clarified the benefit to cost ratio that will apply for economic transmission projects and how scenario analysis will assist in the determination of the benefit to cost ratio. They explain that, in order for an economic transmission project to be justified and receive cost allocation, it must have a benefit to cost ratio that is greater than 1.0 under each scenario evaluated, and have an average ratio of at least 1.25 under all scenarios evaluated. Costs will be allocated on the basis of the average of all scenarios evaluated. Further, the cost of any transmission project that has an aggregate benefit to cost ratio equal to or greater than 1.25 will be divided among the enrolled transmission owners that show a benefit based on the amount of benefits calculated to each respective transmission owner; this will ensure that each entity has a benefit to cost ratio equal to the total project benefit to cost ratio.

365. Further, Filing Parties have complied with the Commission's directives in the First Compliance Order concerning Regional Cost Allocation Principle 4. Filing Parties' revised their OATTs to provide that the Planning Management Committee will consider whether there is a need for mitigation measures on neighboring transmission planning regions, as a result of a regional transmission project selected in the regional transmission plan for purposes of cost allocation. Additionally, the Planning Management Committee will include the costs of any mitigation measures in the regional transmission project's total project costs for purposes of determining the project's eligibility for regional cost

allocation, including application of the region's benefits-to-costs analysis. They further propose that the WestConnect transmission planning region will not be responsible for compensating a neighboring planning region for the costs of any required mitigation measures on their systems. Filing Parties also clarify that the Planning Management Committee will not bear the costs of any mitigation measures. Instead, the Planning Management Committee will request that the transmission developer of a regional transmission project selected in the regional transmission plan for purposes of cost allocation design and build its project to mitigate the project's identified impacts on neighboring transmission planning regions. We interpret this to mean that the design of a regional transmission project selected in the regional transmission plan for purposes of cost allocation will include any mitigation measures necessary to address impacts on neighboring transmission planning regions, and that the associated costs will be allocated pursuant to the WestConnect transmission planning region's cost allocation method. We find that Filing Parties' proposal complies with Order No. 1000 and, therefore we will not require Filing Parties to make changes as requested by SoCal Edison. Order No. 1000 does not require the WestConnect transmission planning region to assume cost responsibility for the impact of transmission projects on other transmission planning regions. We note that the WestConnect transmission planning region will include the costs of any mitigation measures in a project's total costs for purposes of determining the project's eligibility for regional cost allocation and in its benefits-to-costs analysis. While we find that Filing Parties' proposal complies with Regional Cost Allocation Principle 4, we encourage Filing Parties to work with neighboring regions pursuant to any existing arrangements, as well as considering new opportunities that might arise to address impacts on other regions. Order No. 1000 was not intended to disrupt or impede any such arrangements.

366. Finally, we find that Filing Parties have complied with the Commission's directives in the First Compliance Order related to Regional Cost Allocation Principle 5, because they have revised their OATTs to state that the manner in which the WestConnect regional transmission planning process applied its methodology for cost allocation will be documented in the regional transmission plan.

**b. Local Transmission Projects and Participant Funding**

**i. First Compliance Order**

367. The Commission found that Filing Parties' proposal to allow for participant funding of transmission facilities not selected in the regional transmission plan for purposes of cost allocation is reasonable.<sup>623</sup> The Commission held that Order No. 1000 permitted participant funding of transmission facilities, but not as a regional or

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<sup>623</sup> First Compliance Order, 142 FERC ¶ 61,206 at PP 334-336.

interregional cost allocation method. Protestors were concerned that allowing participant funding as an alternative cost sharing arrangement will allow transmission owners to bypass the regional transmission planning process. However, the Commission explained that all participant-funded projects will be included in the regional transmission plan through their incorporation into local transmission plans, and that nothing in the WestConnect regional transmission planning process prohibits nonincumbent transmission providers, or other entities, from proposing alternative solutions to those projects, even if they are not selected in the regional transmission plan for purposes of cost allocation.<sup>624</sup>

ii. **Requests for Rehearing or Clarification**

(a) **Summary of Requests for Rehearing or Clarification**

368. LS Power requests that the Commission clarify that its discussion of participant funding for transmission projects that are not selected in the regional transmission plan for purposes of cost allocation was not intended to overrule prior statements regarding the use of participant funding by incumbent transmission providers. Specifically, LS Power seeks clarification that the Commission’s statements in the First Compliance Order regarding participant funding were not intended to change its *Final Policy Statement on New Cost-Based Participant-Funded Transmission Projects (Policy Statement)*, in which the Commission stated that “[c]ost-based participant-funded projects are similar to merchant projects in that both involve willing customers assuming part of the risk of a transmission project in return for defined capacity rights, i.e., there is no direct assignment of costs to captive customers.”<sup>625</sup> According to LS Power, a “willing customer” must have the ability to negotiate and refuse to participate if it does not want the participant-funded transmission project at the cost proposed.<sup>626</sup> LS Power argues that the Commission justified development of policies only for nonincumbent cost-based participant funded projects by noting that incumbent transmission developers were in a different position, “including participation in a regional planning process. . . .”<sup>627</sup> LS Power requests that the Commission clarify that its statements in the First Compliance Order are intended to refer to participant-funded transmission projects that are in the

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<sup>624</sup> *Id.* P 335.

<sup>625</sup> LS Power Request for Clarification or Rehearing at 4 (citing *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038, at P 6 (2013) (*Policy Statement*)).

<sup>626</sup> *Id.* at 4-5.

<sup>627</sup> *Id.* at 4 (citing *Policy Statement*, 142 FERC ¶ 61,038 at P 41).

nature of merchant projects and that “participant funding” cannot be used by incumbent load-serving entities to circumvent Order No. 1000 by using participant funding for captive customers.<sup>628</sup>

369. LS Power also seeks clarification that a transmission project participant-funded by an incumbent transmission provider must be located within its retail distribution service territory or footprint. Because Filing Parties define local transmission projects as “projects located within a Transmission Owner’s retail distribution service territory or footprint unless such projects are submitted and selected in the [r]egional [transmission p]lan for purposes of cost allocation,” LS Power argues that participant-funded projects that involve more than one transmission owner, by definition, cannot be local transmission projects.<sup>629</sup> LS Power argues that incorporating participant-funded transmission projects involving more than one incumbent transmission owner into their respective “local transmission plans” and then including the project in the regional transmission plan would be an improper end-run around the Order No. 1000 regional transmission planning requirements.<sup>630</sup>

**(b) Commission Determination**

370. We grant limited clarification of our holdings in the First Compliance Order regarding the use by incumbent transmission providers of participant funding to fund new transmission in the WestConnect transmission planning region footprint. First, we clarify that the Commission’s discussion of participant funding in the First Compliance Order was not intended to, and did not, alter the *Policy Statement*’s discussion of participant funding by incumbent transmission providers. We deny clarification with respect to LS Power’s assertion that participant funding cannot be used by incumbent transmission providers for regional transmission projects. The *Policy Statement* did not alter the Commission’s policy for participant-funded transmission projects by incumbent transmission providers. The *Policy Statement* states that “[t]he Commission is not changing its case-by-case evaluation of requests for cost-based participant-funded transmission projects by incumbent transmission providers” and that the *Policy Statement* “does not affect incumbent transmission development for the purpose of serving native load.”<sup>631</sup> Thus, to the extent that LS Power is arguing that the *Policy Statement* has altered the Commission’s historical approach to many forms of participant funded

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<sup>628</sup> *Id.* at 3-5.

<sup>629</sup> *Id.* at 5 (citing Arizona Public Service Co. OATT, Attachment E § VII.A).

<sup>630</sup> *Id.* at 5-6.

<sup>631</sup> Policy Statement at P 41.

transmission projects developed by incumbent transmission owners, we reject this argument as inconsistent with this discussion in the *Policy Statement*. Accordingly, we affirm, consistent with Order No. 1000 and the First Compliance Order, that incumbent transmission providers may use participant funding to develop new transmission facilities to serve native load, but may not use participant funding as the regional or interregional cost allocation method.<sup>632</sup>

371. We further deny LS Power's requested clarification that a transmission project participant-funded by an incumbent transmission provider must be located solely within its retail distribution service territory or footprint. Order No. 1000 did not prohibit incumbent transmission providers from continuing to develop transmission projects located in more than one incumbent transmission provider's retail distribution service territory or footprint whose costs are not allocated pursuant to the regional cost allocation method required as part of the regional transmission planning process. While incumbent transmission providers' obligations to serve exist within their own service territory, neither the *Policy Statement* nor Order No. 1000 and the First Compliance Order preclude incumbent transmission providers from satisfying those obligations through the development of transmission projects located in more than one incumbent transmission provider's retail distribution service territory or footprint, including projects that are developed through participant funding. Other transmission developers may, of course, propose regional transmission projects for selection in the regional transmission plan for purposes of cost allocation into the regional transmission planning process to displace such projects, provided that the proposed project is determined to be a more efficient or cost-effective transmission solution.

**c. Transmission Service and Ownership Rights**

**i. First Compliance Order**

372. The Commission found that that Filing Parties' proposal to provide beneficiaries with transmission transfer capability on a transmission project selected in the regional transmission plan for purposes of cost allocation in exchange for transmission service payments is just and reasonable and not unduly discriminatory and complied with Order No. 1000.<sup>633</sup> However, the Commission rejected Filing Parties' proposal to allow a beneficiary who makes a direct capital contribution to a transmission project's construction cost to receive an ownership percentage in proportion to its capital contribution. The Commission stated that Filing Parties did not show that the proposal is

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<sup>632</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 334 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 723).

<sup>633</sup> *Id.* P 339.

just and reasonable and not unduly discriminatory or preferential. The Commission noted that, while it appeared that the proposal could allow a transmission developer to agree to terms of ownership with a beneficiary, neither the transmittal letters nor the proposed OATT revisions provide additional information regarding how this proposed agreement is effectuated (e.g., when an agreement must be reached) or what consequences result if the transmission developer and beneficiary are unable to reach agreement on terms of an ownership arrangement between them.<sup>634</sup>

ii. **Requests for Rehearing or Clarification**

(a) **Summary of Requests for Rehearing or Clarification**

373. Filing Parties request that the Commission clarify that its determination regarding Filing Parties' proposal to allow an identified beneficiary of a transmission project selected in the regional transmission plan for purposes of cost allocation to receive an ownership interest in such project in proportion to its direct capital contribution did not find the proposal unjust, unreasonable, and unduly discriminatory or preferential on its face. Filing Parties seek further clarification that the proposal would be permissible, so long as Filing Parties address the issues raised by the Commission with respect to the intended operation and implementation of the relevant OATT provisions. Filing Parties also request that the Commission clarify that, in approving its proposal to allow a beneficiary to receive transfer capability on a transmission project selected for purposes of cost allocation in the regional transmission plan in exchange for transmission service payments, the Commission intended to allow a beneficiary the option of *either*: (1) paying its allocated share of the project costs through transmission service payments (in exchange for associated transfer capability); or (2) with the agreement of the transmission developer, making a capital contribution to the transmission project. Filing Parties seek verification that the Commission would not expect a project beneficiary to pay for its benefits from the transmission project twice (i.e., once through a capital contribution and again through transmission service payments) and would not impose on a nonincumbent transmission developer an obligation to disburse ownership shares in lieu of accepting service payments.<sup>635</sup>

374. Filing Parties argue that their ownership proposal is just and reasonable and not unduly discriminatory or preferential because it allows a beneficiary that contributes capital towards the construction of a regional transmission project to obtain (should it elect to do so and the transmission developer agrees) a proportionate ownership interest

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<sup>634</sup> *Id.* P 340.

<sup>635</sup> *Id.* 48-49.

in the project. Filing Parties assert that the proposal: (1) affords an entity that is willing to pay, up front, a portion of the cost of a transmission project the opportunity to be fairly compensated for its contribution, in a manner proportionate to its investment in the project; (2) complies with Cost Allocation Principle 1 by permitting a beneficiary to obtain an ownership share in proportion to its allocated costs and earn a return on its investment; and (3) allows beneficiaries that might not necessarily benefit from additional transfer capability on a new transmission project to otherwise realize benefits through an ownership option. Filing Parties explain that, following selection of a transmission project in the regional transmission plan for purposes of cost allocation and assignment of the costs to beneficiaries, a variety of arrangements for the method of payment of such costs could be made through voluntary contractual agreements between the transmission developer (whether incumbent or nonincumbent) and identified beneficiaries.<sup>636</sup>

**(b) Commission Determination**

375. We grant Filing Parties' clarification requests and affirm that the Commission, in rejecting Filing Parties' prior proposal to allow a beneficiary who makes a direct capital contribution to a transmission project's construction cost to receive an ownership percentage in proportion to its capital contribution, did not intend to preclude transmission developers from *voluntarily* entering into such agreements with beneficiaries. Rather, the Commission's concern, as detailed in the First Compliance Order, was that the language as proposed could grant beneficiaries a *right* to ownership in the transmission project, thereby allowing beneficiaries, simply by virtue of their beneficiary status, to assume ownership of the transmission project. We therefore also clarify that the Commission finds acceptable either: (1) allowing a beneficiary to pay its allocated share of project costs through transmission service payments in exchange for associated transfer capability; or (2) allowing a beneficiary to make a direct capital contribution to the transmission project, subject to the agreement of the transmission developer. The Commission affirms that it would not expect a beneficiary to pay for its benefits from the transmission project twice.

**iii. Compliance**

**(a) Summary of Compliance Filings**

376. Filing Parties clarify that: (1) an identified beneficiary may receive transfer capability on a transmission project in exchange for its allocation of costs; or (2) alternatively, upon the agreement of the transmission developer, an identified

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<sup>636</sup> *Id.* 49-51.



beneficiary that contributes capital toward the construction of a regional transmission project may obtain a proportionate ownership interest in the project.<sup>637</sup>

377. The proposed OATT revisions explain that a transmission developer that is subject to the Commission's jurisdiction may not recover project costs from beneficiaries enrolled in the WestConnect transmission planning region without securing approval for project cost recovery from the Commission through a separate proceeding brought by the transmission developer under section 205 of the FPA.<sup>638</sup> In addition, beneficiaries from whom project costs are sought to be recovered under section 205 may not be denied either transmission transfer capability or ownership rights proportionate to their allocated costs, as determined by the Commission in such proceeding.<sup>639</sup> Moreover, a transmission developer that is not a public utility may seek cost recovery from beneficiaries either: (1) through bilateral agreements that are voluntarily entered into between the transmission developer and the beneficiaries; or (2) by obtaining Commission approval for project cost recovery pursuant to any other applicable section of the FPA.<sup>640</sup> Filing Parties also maintain that if a beneficiary receives transmission transfer capability on the project in exchange for transmission service payments, the beneficiary may resell the transfer capability.<sup>641</sup>

378. The proposed OATT revisions also offer an alternative for transmission developers. The proposed alternative provides that, if the transmission developer agrees, an identified beneficiary may make a direct capital contribution to the project construction cost and receive an ownership percentage in proportion to their capital contribution in lieu of making transmission service payments.<sup>642</sup> Under this proposal, a transmission developer and the beneficiaries will enter into arms-length contract negotiations to address the details of such contract, including capital funding, timing,

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<sup>637</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 24.

<sup>638</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 24; Arizona Public Service Co. OATT, Attachment E, § VII.B.5.

<sup>639</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 24; Arizona Public Service Co. OATT, Attachment E, § VII.B.5.

<sup>640</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 24; Arizona Public Service Co. OATT, Attachment E, § VII.B.5 and n.5.

<sup>641</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.5.

<sup>642</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 24; Arizona Public Service Co. OATT, Attachment E, § VII.B.5.

responsibility for operations and maintenance, administrative tasks, and compliance with governing laws and regulations, among other things.<sup>643</sup>

379. Filing Parties also clarify in their OATTs that under this proposal a beneficiary is permitted an ownership share in a transmission project that is in the same proportion to the identified beneficiary's allocable costs.<sup>644</sup> Filing Parties explain in their OATTs that this will allow the identified beneficiary to earn a return on its investment and, if the identified beneficiary does not necessarily benefit from additional transfer capability on a new transmission project, it will allow it to realize the benefits through an ownership option.<sup>645</sup> Further, Filing Parties clarify in their OATTs that a beneficiary may not be expected to pay for its benefits from the project twice (i.e., once through a capital contribution and again through transmission service payments).<sup>646</sup>

380. In addition, the revised OATTs provide that nothing in the regional transmission planning process imposes any new service on beneficiaries; nor does it impose on a transmission developer an obligation to become a transmission provider to identified beneficiaries simply as a result of a transmission project's having been selected in the regional transmission plan for purposes of cost allocation (unless the transmission developer seeks authorization to provide transmission services to beneficiaries or others).<sup>647</sup> Filing Parties also propose to revise their OATTs to clarify that the purpose of this proposal is solely to: (1) provide an option to a transmission developer to negotiate ownership rights in the project with identified beneficiaries; (2) specify that identified beneficiaries have the opportunity to discuss with the transmission developer the potential for entering into transmission service agreements for transmission capacity rights in the project; and (3) ensure that regional cost allocation does not mean that a transmission developer may recover project costs from identified beneficiaries without providing transmission transfer capability or ownership rights, and without securing approval for project cost recovery by contract and/or under a separate proceeding under the FPA.<sup>648</sup>

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<sup>643</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E § VII.B.5.

<sup>644</sup> *Id.*

<sup>645</sup> *Id.*

<sup>646</sup> *Id.*

<sup>647</sup> *Id.*

<sup>648</sup> *Id.*

(b) Protests/Comments

381. LS Power supports stating in the section entitled “Allocation of Ownership and Capacity Rights” that a transmission developer must seek Commission approval of costs under section 205 of the FPA to recover project costs from identified beneficiaries enrolled in the WestConnect transmission planning region.<sup>649</sup> However, it argues that including anything more in this OATT section is inappropriate and unnecessary. Specifically, it argues that a section 205 filing should only confirm the costs to be recovered from identified beneficiaries, without the condition that an identified beneficiary may not be denied either transmission transfer capability or ownership rights proportionate to their allocated costs, as determined by the Commission in such proceeding. Further, it points to a provision that spells out how a transmission developer that is not a public utility may seek cost recovery from identified beneficiaries enrolled in the WestConnect transmission planning region.<sup>650</sup> It does not believe there can be a transmission developer not subject to the jurisdiction of the Commission under section 205 of the FPA because, by definition, any transmission developer will have to meet the requirements under Filing Parties’ tariff, which would make it a public utility transmission developer subject to the Commission’s jurisdiction. Even if such an entity exists, it continues, a Commission-jurisdictional tariff cannot determine how a non-public utility entity may seek cost recovery.<sup>651</sup> Finally, LS Power asserts that the OATT language referring to ownership rights should be deleted in its entirety.<sup>652</sup> It states that the language merely provides an option to the transmission developer to negotiate a contractual arrangement for an ownership right. LS Power claims that this option exists without the OATT provision, and therefore the provision should be omitted. It adds that the inclusion of such extraneous matter has the potential to create confusion or to be used inappropriately.<sup>653</sup>

(c) Answers

382. Filing Parties and Non-Public Utilities argue that the Commission should reject LS Power’s arguments concerning the allocation of ownership and capacity rights. First, Filing Parties and Non-Public Utilities argue that LS Power’s arguments are a collateral

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<sup>649</sup> *Id.*

<sup>650</sup> LS Power Comments at 19.

<sup>651</sup> LS Power Comments at 19.

<sup>652</sup> *Id.*

<sup>653</sup> *Id.*

attack on the First Compliance Order because the Commission has already accepted the allocation of ownership and capacity rights proposal.<sup>654</sup> Similarly, with respect to whether a transmission planning region can permit a beneficiary to make a direct capital contribution toward a transmission project selected in the regional transmission plan for purposes of cost allocation and receive an ownership percentage in return, Filing Parties note that while the Commission found that the proposal lacked detail, it did not reject the concept of capital cost payments by beneficiaries as an option for a transmission developer.<sup>655</sup>

383. Filing Parties and Non-Public Utilities state that the language that LS Power claims to be “inappropriately included” is included to address the Commission’s concerns in the First Compliance Order. Filing Parties claim that the proposed language clearly delineates how the proposed agreement is to be effectuated and indicates that if a transmission developer and a beneficiary were not able to reach agreement on terms of an ownership agreement, then that beneficiary would still be entitled to receive transmission transfer capability. Filing Parties also contend that LS Power’s argument that Filing Parties are attempting to “condition” cost recovery upon receipt of transmission transfer capability or ownership rights misreads the plain language in the proposed Allocation of Ownership and Capacity Rights section. According to Filing Parties, this language merely clarifies that in a proceeding where an eligible transmission developer is seeking to recover project costs from a beneficiary enrolled in the region, that beneficiary shall not be denied either transmission transfer capability or ownership rights proportionate to its allocated costs. Thus, the proposed language does not condition the Commission’s determination, in a subsequent proceeding under the FPA, of the justness and reasonableness of a transmission developer’s proposed cost recovery through rates. Filing Parties reiterate that their proposal simply does not provide for cost recovery of any kind to any transmission developer for any transmission project.<sup>656</sup>

384. Next, Filing Parties and Non-Public Utilities assert that LS Power’s arguments concerning the existence of a transmission developer that is not subject to section 205 of the FPA and the inclusion of provisions addressing how such an entity recovers its costs are inconsistent with the First Compliance Order, which approved the inclusion of non-public utility entities in the WestConnect transmission planning region. First, Non-Public Utilities explain that non-public utilities, such as those exempt from the Commission’s jurisdiction under section 201(f) of the FPA, can be transmission developers. Second, they argue that LS Power is incorrect that an entity that is eligible under the tariff to

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<sup>654</sup> Filing Parties Answer at 39; Non-Public Utilities Answer at 10.

<sup>655</sup> Filing Parties Answer at 39-40.

<sup>656</sup> *Id.* at 40-41.

submit a transmission project for selection in the regional transmission plan for purposes of cost allocation is by definition subject to the Commission's jurisdiction, because there is nothing in the tariffs or in the FPA that makes such an entity subject to the Commission's jurisdiction.<sup>657</sup> Moreover, Filing Parties state that such entities' participation in the regional transmission planning region process does not in any way implicate the application of section 205 to how they recover their costs. Filing Parties also assert that these provisions provide clarity given the existence of transmission providers that are not public utilities in the transmission planning region, arguing that participation in the regional transmission planning process does not provide an entitlement to cost recovery and that a transmission developer must seek cost recovery under whatever statutory framework applies to it. Further, Filing Parties argue that LS Power has not provided substantive justification as to why this clarifying language should be deleted.<sup>658</sup>

385. Finally, Filing Parties and Non-Public Utilities assert that LS Power's argument that the ownership language should be removed is misplaced because the language is included to address the concerns in the First Compliance Order.<sup>659</sup> Filing Parties aver that the provision creates clarity as to the parameters of the ownership proposal and provides transmission developers an alternative structure through which to fund their transmission project, allowing for mutually-agreed upon capital contributions instead of transmission service payments.<sup>660</sup>

386. Non-Public Utilities likewise disagree with LS Power that including detailed language in the "Allocation of Ownership and Capacity Rights" section is inappropriate. They assert that the section is critical to ensure that costs will be allocated commensurate with benefits by linking the obligation to pay for the allocated costs to the receipt of benefits, in the form of transmission transfer capability or ownership rights. They argue that this is a fundamental part of Order No. 1000.

**(d) Commission Determination**

387. We find that, as revised, Filing Parties' proposal to allow an identified beneficiary to negotiate ownership rights with a transmission developer is just and reasonable and not unduly discriminatory and complies with Order No. 1000. The Commission previously

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<sup>657</sup> Non-Public Utilities Answer at 12.

<sup>658</sup> Filing Parties Answer at 41-42.

<sup>659</sup> Non-Public Utilities Answer at 10-11.

<sup>660</sup> Filing Parties Answer at 42.

rejected the proposal because Filing Parties did not provide adequate detail. Now, Filing Parties' revisions clarify that, if the transmission developer agrees, an identified beneficiary may make a direct capital contribution to the project construction cost and receive an ownership percentage in proportion to their capital contribution in lieu of making transmission service payments. The proposed revisions further provide that a transmission developer and the beneficiaries will enter into arms-length contract negotiations to address the details of such contract, including capital funding, timing, responsibility for operations and maintenance, administrative tasks, and compliance with governing laws and regulations, among other things. We find that, contrary to LS Power's concern that details about the process for transmission service and ownership rights are inappropriate and unnecessary in the OATTs, the proposed details add transparency to the process, and thus are appropriately included in Filing Parties' OATTs. As we explain above, the Commission's concern in the First Compliance Order with the proposal regarding ownership rights was that the language as proposed could grant beneficiaries a *right* to ownership in the transmission project whether or not the transmission developer agreed to such an arrangement, not that the proposal was inappropriately included in Filing Parties' respective OATTs. Accordingly, we will deny LS Power's request to direct Filing Parties to remove most of the detail from the "Allocation of Ownership and Capacity Rights" section in the OATTs.

388. In particular, we will not require Filing Parties to remove the provision stating that an identified beneficiary may not be denied either transmission transfer capability or ownership rights proportionate to their allocated costs. This detail is necessary because it explains Filing Parties' proposal to address the issue of access to new transmission facilities for which an entity has been allocated costs pursuant to the regional cost allocation method. While Order No. 1000 did not prescribe how transmission providers should address the issue of access to new transmission facilities for which an entity has been allocated costs pursuant to a regional cost allocation method, the Commission stated that the appropriate forum to consider such issues is in the regional transmission planning process for each transmission planning region. The Commission allowed public utility transmission providers, in consultation with stakeholders, to address the issue of access to new transmission facilities as they developed the regional cost allocation method for their transmission planning region.<sup>661</sup> Thus, we find that the proposed tariff revisions regarding the allocation of ownership and capacity rights are within the scope of this proceeding and appropriately included in Filing Parties' OATTs.<sup>662</sup>

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<sup>661</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 624.

<sup>662</sup> We note that once the costs of the transmission project are allocated among beneficiaries, the use of such transmission transfer capability is governed by the Commission's long-standing open access policies as adopted in Order Nos. 888 and 890.

389. Similarly, we find reasonable Filing Parties' proposed revisions clarifying how transmission developers that are not public utilities may seek cost recovery from identified beneficiaries. We disagree with LS Power that a public utility transmission provider's OATT cannot include options for a transmission developer that is not a public utility to seek cost recovery. We find that Filing Parties' proposal, which provides that transmission developers that are not public utilities may use the OATT of a filing party to obtain cost recovery, is reasonable. We note that the proposal does not obligate a transmission developer that is not a public utility to obtain cost recovery in this manner. Specifically, as an alternative to obtaining Commission approval to recover costs from identified beneficiaries, Filing Parties' proposal provides that a transmission developer that is not a public utility may seek cost recovery through bilateral agreements that are voluntarily entered into between the transmission developer and the beneficiaries.<sup>663</sup> Moreover, LS Power has not explained why including this language in Filing Parties' OATTs is unjust and unreasonable.

## **5. Local Transmission Planning Processes**

### **a. First Compliance Order**

390. The Commission noted that Filing Parties proposed numerous changes to their respective local transmission planning processes that were unrelated to compliance with Order No. 1000 requirements to modify the local transmission planning process to incorporate procedures for planning for transmission needs driven by public policy requirements. The Commission therefore directed Filing Parties to identify and justify those changes that they believe are properly within the scope of Order No. 1000's compliance requirements, and to eliminate from their OATTs those revisions that are outside the scope of Order No. 1000's compliance requirements.<sup>664</sup>

### **b. Summary of Compliance Filings**

#### **i. Public Service Company of Colorado**

391. Public Service Company of Colorado explains that it revised its local transmission planning procedures to reflect the new governance structure for the WestConnect transmission planning region, including the removal of language related to sub-regional transmission planning groups that do not have a direct planning role under Order

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<sup>663</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E § VII.B.5 and n.5.

<sup>664</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 353. The Commission further noted that any changes outside the scope of Order No. 1000 compliance should be filed separately under section 205 of the FPA.

No. 1000 transmission planning and the use of the WestConnect transmission planning region study process.<sup>665</sup> In addition, Public Service Company of Colorado proposes changes to its OATT to: (1) reflect the definition of public policy requirements;<sup>666</sup> (2) address interregional economic planning studies for the Order No. 1000 interregional transmission planning process;<sup>667</sup> (3) indicate that it files a transmission plan with the state of Colorado, which contains valuable information for parties interested in its local transmission planning process;<sup>668</sup> (4) explain that economic planning study requests submitted to regional transmission planning organizations such as TEPPC or the WestConnect transmission planning region are studied through the regional transmission planning process;<sup>669</sup> and (5) explain that priority regional economic planning studies will be performed by the WestConnect transmission planning region under the Order No. 1000 regional transmission planning process.<sup>670</sup> Public Service Company of Colorado also details a number of non-substantive changes that are intended to clarify its Attachment R-PSCo, transmission planning process for entities with less history and familiarity with its processes, on the assumption that those entities will have heightened interest after Order No. 1000 and would benefit from additional clarity. Finally, Public Service Company of Colorado states that it has identified a handful of errata corrections and changes that conform its procedures to provisions adopted by the other Filing Parties, such as renaming headings.<sup>671</sup>

**ii. Tucson Electric and UNS Electric**

392. Tucson Electric and UNS Electric state that they have removed from their Attachment Ks any revisions to their local transmission planning processes that do not relate to Order No. 1000. They believe that the remaining revisions are justified by Order No. 1000 and fall into four categories: (1) revisions to align terminology of regional and local transmission planning processes and to ensure consistency with the OATT provisions of other members of the WestConnect transmission planning region;

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<sup>665</sup> Public Service Company of Colorado OATT, Attachment R-PSCo, § I.

<sup>666</sup> *Id.* §§ II.C.1, II.C.8.

<sup>667</sup> *Id.* § II.D.6.c.

<sup>668</sup> *Id.* § II.C.2.c.

<sup>669</sup> Public Service Company of Colorado OATT, Attachment R-PSCo, § II.D.1.

<sup>670</sup> *Id.* § II.D.6.b.

<sup>671</sup> Public Service Company of Colorado Transmittal Letter at 31-32.



(2) revisions to clarify differences in processes that apply to local transmission planning rather than regional transmission planning; (3) revisions removing provisions that relate solely to the sub-regional transmission planning processes that have been integrated into the regional transmission planning process; and (4) revisions to incorporate corrected OATT references necessitated by the aforementioned revisions.<sup>672</sup>

**iii. Public Service Company of New Mexico and Arizona Public Service Company**

393. Public Service Company of New Mexico and Arizona Public Service Company state that they made several changes in their respective local transmission planning sections of their OATTs to conform to the directives of Order No. 1000 or to be consistent with the revised regional transmission planning procedures. First, they propose to insert the word “local” to differentiate the local transmission planning process from the regional transmission planning process. Second, they propose to replace the term “demand response” with “Non-Transmission Alternatives” to be consistent with Order No. 1000’s terminology and directives. Third, they correct the link in their respective Attachment Ks to the WECC non-disclosure agreement needed to access confidential or proprietary data. Finally, Arizona Public Service Company clarifies that it uses a Southwest Area Transmission planning group distribution list to notify stakeholders of upcoming local transmission planning meetings, rather than its own distribution list.<sup>673</sup>

**iv. El Paso Electric**

394. El Paso Electric provides an explanation of the changes made to its local transmission planning procedures. First, it proposes to revise the description of “alternatives” to “non-transmission alternatives” to comply with the terminology used in Order No. 1000. Second, where the historical WestConnect entity is first mentioned, El Paso Electric proposes to revise its Attachment K to clarify that regional transmission planning will be conducted by a new Planning Management Committee to be formed in the WestConnect region. Third, El Paso Electric proposes to remove references to WestConnect in the context of the historical sub-regional transmission planning role that it played, in light of the new role WestConnect is to play in regional transmission planning. Information removed by El Paso Electric includes meeting schedules for sub-regional groups, as the historical WestConnect entity will no longer hold those planning meetings. Fourth, El Paso Electric proposes to add new provisions governing the

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<sup>672</sup> Tucson Electric Transmittal Letter at 29; UNS Electric Transmittal Letter at 29.

<sup>673</sup> Public Service Company of New Mexico Transmittal Letter at 29; Arizona Public Service Company Transmittal Letter at 29-30.

consideration of transmission needs driven by public policy requirements in the local transmission planning process. Fifth, El Paso Electric proposes to revise the timing of publication of its local transmission plan from “biennially” to “no less frequently than on a biennial calendar year basis,” which addresses the concern that El Paso Electric’s local transmission plan might not be completed when the new Planning Management Committee needs the local transmission plan to develop the regional transmission planning base case. Finally, El Paso Electric updates the email address for stakeholder communications regarding transmission planning so that the point of contact is the same for the local and regional transmission planning processes.<sup>674</sup>

v. **Black Hills Power and Black Hills Colorado**

395. Black Hills Power and Black Hills Colorado state that they have removed the changes to their local transmission planning processes that are unrelated to compliance with Order No. 1000. The remaining changes, they argue, are intended to ensure consistency with the regional transmission planning sections or otherwise reflect their participation in the WestConnect region. For instance, they replace “shall” with “will” in numerous places and removed the word “the” before “NERC” and “FERC” to promote consistency with the language used in the regional transmission planning procedures. In addition, they propose to revise the formatting and organization of their local transmission planning sections to be consistent with the regional transmission planning sections, and propose to remove references to sub-regional transmission planning and, for Black Hills Power, the Northern Tier Transmission Group to reflect their enrollment in WestConnect.<sup>675</sup>

vi. **NV Energy**

396. NV Energy repeats the Commission’s holding in the First Compliance Order that the basis for certain revisions to the pre-Order No. 1000 transmission planning processes had not been addressed by Filing Parties, including NV Energy. NV Energy also acknowledges the requirement that Filing Parties must explain those revisions in their next compliance filing.<sup>676</sup> However, NV Energy did not address the Commission’s concerns.

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<sup>674</sup> El Paso Electric Transmittal Letter, Appendix A.

<sup>675</sup> Black Hills Power Transmittal Letter at 32; Black Hills Colorado Transmittal Letter at 32.

<sup>676</sup> NV Energy Transmittal Letter at 27 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 353).

**vii. Cheyenne LF&P**

397. Cheyenne LF&P explains that it has removed changes to its local transmission planning process that are unrelated to compliance with Order No. 1000. Cheyenne LF&P states that in its first compliance filing, it proposed to revise its local transmission planning process such that it would conform to the Attachment Ks of its affiliates, Black Hills Power and Black Hills Colorado, and other transmission providers participating in the WestConnect region. Cheyenne LF&P states that, given that these changes are not directly required by Order No. 1000, it has removed this language and reinstated the previously-accepted language governing its local transmission planning process. Cheyenne LF&P also indicates that it will make a subsequent filing to reinstate the language removed in compliance with the First Compliance Order, and states its view that it would be appropriate to consider that filing together with the revisions proposed in response to the First Compliance Order.<sup>677</sup>

**c. Commission Determination**

398. We accept the revisions to their respective local transmission planning processes submitted by Public Service Company of Colorado, Tucson Electric, UNS Electric, Public Service Company of New Mexico, Arizona Public Service Company, El Paso Electric, Black Hills Colorado, and Black Hills Power. However, with respect to the changes proposed by NV Energy, we find that NV Energy has failed to provide any explanation of the changes to its local transmission planning process that it proposes to retain, other than those changes required to comply with Order No. 1000's directives regarding transmission needs driven by public policy requirements in the local transmission planning process. Accordingly, we reiterate our directive in the First Compliance Order, and direct NV Energy to submit a compliance filing, within 60 days of the date of issuance of this order, that identifies and justifies those changes that it believes are properly within the scope of Order No. 1000's compliance requirements.<sup>678</sup>

**The Commission orders:**

(A) The requests for rehearing and clarification are hereby denied in part and granted in part, as discussed in the body of this order.

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<sup>677</sup> Cheyenne LF&P Transmittal Letter at 31. Cheyenne LF&P's revisions were accepted in Docket No. ER13-2427-000. *Cheyenne Light, Fuel and Power*, Docket No. ER13-2427-000 (Nov. 4, 2013) (delegated letter order).

<sup>678</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 353.

(B) Filing Parties' respective compliance filings are hereby accepted, effective January 1, 2015, subject to further compliance filings, as discussed in the body of this order.

(C) Filing Parties are hereby directed to submit, within 60 days of the date of issuance of this order, further compliance filings, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.