ORDER NO. 1000 –
FERC REVISES FEDERAL ELECTRIC TRANSMISSION REGULATIONS
TO ENCOURAGE U.S. GRID DEVELOPMENT AND INVESTMENT

On July 21, 2011, the Federal Energy Regulatory Commission issued Order No. 1000, a long anticipated final rule addressing electric transmission planning and cost allocation. The rule is an important and positive development for the future of transmission investment in the U.S. The rule directly addresses inadequacies in existing transmission policy, including policies that discouraged nonincumbent transmission investment.

One important result of the rule should be to encourage transmission investment for expanding renewable developments, especially in regions with mandated “public policy requirements” such as renewable portfolio standards. By establishing cost allocation “principles,” rather than a one size fits all methodology, the rule provides assurance that the recovery of project costs can be evaluated using a transparent and fair method suited to a particular region or type of project.

Key features of Order No. 1000 include:

• an affirmative requirement that public utility transmission providers participate in a regional transmission planning process that (a) produces a regional transmission plan and (b) includes regional and interregional cost allocation methods;

• a requirement that transmission providers amend their open access transmission tariffs to describe procedures that provide for the consideration of transmission needs driven by public policy requirements in the local and regional transmission planning processes;

---

• elimination from Commission-approved tariffs and agreements of a federal right of first refusal (ROFR) for new transmission facilities, with specified exceptions; and

• improved coordination between neighboring transmission planning regions for new interregional transmission facilities.

Recognizing that “regional differences may warrant distinctions in cost allocation methods among transmission planning regions,” the order does not mandate a specific cost recovery method, but instead sets forth six cost allocation principles that each cost recovery method must satisfy. Among the key principles are that costs must be allocated in a way that is roughly commensurate with benefits, with no involuntary allocation of costs to non-beneficiaries.

The rule will become effective 60 days after publication of the rule in the Federal Register. Compliance with most of the rule (including the ROFR requirements) is required within 12 months of the effective date; compliance on the interregional procedures and cost allocation is due within 18 months.

Given the scope and significance of the issues addressed in the rule, there almost certainly will be requests for clarification or rehearing that will result in a series of orders refining the rule. In addition, there may be petitions for court review following FERC action on any rehearing requests. Unless otherwise stayed by the Commission or court, the rule will remain effective pending rehearing and appeal.

This summary is provided for informative purposes only and is not intended as legal advice.

For additional information about Order No. 1000, or other aspects of FERC regulation, please contact Paul B. Mohler at 571.344.5097 or pmohler@paulmohlerlaw.com.

© 2011 The Law Offices of Paul B. Mohler PLC

---

2 The exceptions are: (1) local projects where the incumbent does not seek to share the costs of the projects; (2) upgrades to existing assets; and (3) projects on existing rights of way. Id. at PP 318-19.

3 Id. at P 604.