

High-Level Summary of FERC Order No. 1920 on Transmission Planning and Cost Allocation

On May 13, the Federal Energy Regulatory Commission (FERC or Commission) released its Order No. 1920 (Final Rule) to reform its policies regarding Regional Transmission Planning and Cost Allocation.¹ The Final Rule follows from a Notice of Proposed Rulemaking (NOPR), which itself follows an Advanced Notice of Proposed Rulemaking on these reforms, which FERC issued in April 2022 and July 2021, respectively.² Representing FERC's most significant action on transmission planning and cost allocation in more than a decade, the Final Rule establishes the following reforms, which are discussed further below:

- **Long-Term Regional Transmission Planning:** The Final Rule requires transmission providers to engage in long-term planning processes over a 20-year timeframe and evaluate transmission needs-driven due to changing resources and demands. The Final Rule does not require the selection or construction of any particular project.
- **Transmission Cost Allocation and State Participation/Agreement:** FERC did not adopt the NOPR proposal to require transmission providers to obtain state agreement on a cost allocation method, but does require a six-month “engagement period” with relevant state entities to serve as a forum for negotiation on a cost allocation method. Additionally, the Final Rule requires that transmission providers file an *ex ante* “backstop” cost allocation method regardless of whether an agreement with state entities can be reached during the prescribed engagement period.
- **The Coordination of Regional Transmission Planning and Generator Interconnection Processes:** The Final Rule requires transmission providers evaluate regional transmission facilities to address interconnection-related transmission needs.
- **Dynamic Line Ratings and Advanced Power Flows Devices:** The Final Rule requires transmission providers in each transmission planning region to consider whether selecting transmission facilities that incorporate dynamic line ratings and advanced power flow control devices would be more efficient or cost-effective than selecting transmission facilities that do not incorporate these technologies.
- **Construction Work in Progress (CWIP) Incentive:** FERC does not adopt the NOPR proposal to restrict the availability of the CWIP Incentive for Long-Term Regional Transmission Facilities.
- **Federal Right of First Refusal (ROFR):** FERC does not adopt the NOPR proposal to establish a federal ROFR or any changes to Order No. 1000's nonincumbent transmission developer reforms, but did adopt a narrow ROFR for certain “right-sized” replacement facilities.
- **Transparency and Coordination:** The Final Rule requires enhanced transparency and coordination requirements within, and between, regional and local transmission planning processes so as to “right-size” replacement transmission facilities.

A copy of the order can be found [here](#). The Final Rule becomes effective 60 days from the date of publication in the *Federal Register*. Compliance filings are due within 10 months of the Effective Date of the Final Rule, except for compliance filings regarding interregional transmission coordination requirements, which are due within 12 months of the Effective Date.

¹ DISCLAIMER: THIS SUMMARY IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE ON ANY PARTICULAR QUESTION, NOR SHOULD IT BE CONSTRUED TO CREATE AN ATTORNEY-CLIENT RELATIONSHIP.

² *Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 (2024) (Final Rule); *Notice of Proposed Rulemaking*, 179 FERC ¶ 61,028 (2022) (NOPR); *Advance Notice of Proposed Rulemaking*, 176 FERC ¶ 61,024 (2021).

A. Long-Term Regional Transmission Planning

1. *The Final Rule Requires Participation in “Long-Term Regional Transmission Planning” as Part of Existing Regional Transmission Planning Processes*

The NOPR proposed to require transmission providers in each transmission planning region (*i.e.*, those in RTO/ISO and non-RTO/ISO regions) to revise their current regional transmission planning processes to engage in “Long-Term Regional Transmission Planning.”³ The NOPR defined Long-Term Regional Transmission Planning as regional transmission planning on a long-term (at least 20 years), forward-looking basis, that utilizes multiple factors to identify and plan for transmission needs driven by changes in resources and demand.⁴

The Final Rule adopts the NOPR proposal without modification.⁵ FERC found that conducting Long-Term Regional Transmission Planning using such “Long-Term Scenarios” provides an appropriate approach to ensure just and reasonable rates by accounting for the increasing uncertainty in the accuracy of assumptions over longer transmission planning horizons and mitigating the risks of under-building or over-building transmission facilities.⁶

To that end, the Final Rule requires transmission providers to ensure that their transmission plans achieve the following:

1. Identify Long-Term Transmission Needs and Long-Term Regional Transmission Facilities (LTRTF) to meet those needs through the development of Long-Term Scenarios;
2. Utilize a minimum of seven required benefits to evaluate LTRTFs over a 20-year time horizon; and
3. Evaluate whether LTRTFs are more efficient or cost-effective transmission solutions to meet Long-Term Transmission Needs and use stated criteria to select such LTRTFs for development.⁷

The Final Rule clarifies several compliance requirements. The Final Rule clarifies that, on compliance, transmission providers may describe how their existing processes already satisfy the Final Rule’s reforms.⁸ The Final Rule also clarifies that transmission providers may continue to utilize their existing Order No. 1000-compliant processes related to addressing transmission needs driven by reliability or economic considerations, or Public Policy Requirements (as defined in Order No. 1000).⁹ However, transmission providers seeking to continue to use their existing Public Policy Requirements procedures must show that such continued use does not infringe on the Final Rule’s reforms.¹⁰ Transmission providers may also propose to combine their long- and short-term planning processes, but in the event of a conflict of the requirements of Order No. 1000 and the Final Rule, the Final Rule will prevail.¹¹

The Final Rule clarifies that the adopted reforms do not mandate the development of any particular transmission facility, the adoption of a particular siting plan for LTRTFs, or to forego state-jurisdictional siting proceedings.¹² The Commission states that the adopted reforms aim only to require transmission providers to account for observable changes affecting their transmission systems, but does not attempt to encourage investments in any particular type of resource or transmission facility.¹³ Finally, the Commission argues that the adopted reforms are consistent with the Commission’s obligations under Section 217(b)(4) of the Federal Power Act (FPA), which requires the Commission to “facilitate the

³ Final Rule, 187 FERC ¶ 61,068 at PP 140-44.

⁴ *Id.* P 224.

⁵ *Id.*

⁶ *Id.* P 303.

⁷ *Id.* P 225.

⁸ *Id.* P 240.

⁹ Final Rule, 187 FERC ¶ 61,068 at PP 241-42.

¹⁰ *Id.* P 243.

¹¹ *Id.* P 244.

¹² *Id.* PP 257-58.

¹³ *Id.* PP 260-61.

planning of a reliable grid,” by seeking to “ensure that adequate transmission capacity is built to allow load-serving entities to meet their services obligations.”¹⁴

2. The Final Rule Mandates the Development of Long-Term Planning Scenarios and Requirements

a. The Final Rule Requires a 20-Year Planning Horizon, To Be Revised Every Five Years

The NOPR proposed the use of a 20-year planning horizon for the development of Long-Term Scenarios, with a reassessment and revision of those scenarios at least once every three years.¹⁵ The Commission explained that the planning horizon should extend far enough into the future that transmission providers can identify transmission needs that could be met with more efficient or cost-effective facilities. According to FERC, these scenarios should be revisited and revised every three years to reflect updated data inputs.

The Final Rule adopts the requirement that transmission providers develop Long-Term Scenarios as part of Long-Term Regional Transmission Planning using no less than a 20-year transmission planning horizon.¹⁶ While the NOPR proposed to require transmission providers to reassess and revise the Long-Term Scenarios used in Long-Term Regional Transmission Planning at least once every three years, the Final Rule modifies the proposal to require transmission provider to reassess and revise the scenarios at least once every five years, finding that the benefit of updating scenarios every three years may not outweigh the additional burdens.¹⁷ However, FERC also required transmission providers to complete the steps of the Long-Term Regional Transmission Planning cycle and determine whether to select long-term transmission facilities no later than three years from the date when the cycle began.¹⁸

b. The Final Rule Requires the Incorporation of Seven Factors in Long-Term Scenarios

The NOPR proposed to require that transmission providers incorporate certain categories of factors into their Long-Term Scenarios that may affect transmission needs. The Final Rule adopts the NOPR proposal, with modifications, and establishes the following categories of factors:

1. Federal, state, and local laws and regulations that affect the future resource mix and demand;
2. Federal, state, and local laws and regulations on decarbonization and electrification;
3. State-approved utility integrated resource plans and expected supply obligations for load-serving entities;
4. Trends in technology and fuel costs;
5. Resource retirements;
6. Generator interconnection requests and withdrawals; and
7. Utility and corporate commitments and federal, state, and local goals affecting resource mix and demand.

The Final Rule also requires, among other things, transmission providers to incorporate tribal laws and regulations into scenarios one and two and to clarify other scenarios.¹⁹ Under the Final Rule, transmission providers may seek to incorporate additional categories of factors in the development of Long-Term Scenarios, provided that each scenario remains plausible.²⁰

c. Stakeholders Must be Permitted to Propose Factors and Provide Input on how to Account for Other Factors

¹⁴ *Id.* P 283.

¹⁵ NOPR, 179 FERC ¶ 61,028 at PP 92-93.

¹⁶ Final Rule, 187 FERC ¶ 61,068 at P 344.

¹⁷ *Id.* PP 377, 379.

¹⁸ Final Rule, 187 FERC ¶ 61,068 at P 379.

¹⁹ *Id.* PP 409, 432 (Category 1), 440 (Category 2), 447 (Category 3), 456 (Category 4), 463 (Category 5), 472 (Category 6), 481 (Category 7).

²⁰ *Id.* P 493.

In the Final Rule, FERC adopts the NOPR's proposal to require transmission providers to revise the regional transmission planning processes in their tariffs to outline an open and transparent process that provides stakeholders, including federally-recognized Tribes and states, with a meaningful opportunity to propose potential factors and to provide timely input on how to account for specific factors in the development of Long-Term Scenarios.²¹ Transmission providers also have to publish on their Open Access Same-Time Information System or other public website information regarding, among other things, the list of factors in each of the seven categories that they will account for and a description of those factors and how they will be accounted for.²²

d. The Final Rule Requires at Least Three Distinct Long-Term Scenarios that Incorporate the Categories of Factors

In the NOPR, FERC proposed that transmission providers be required to develop a "plausible and diverse" set of at least four Long-Term Scenarios and provide public disclosure of the information and inputs used to create each.²³ At least one of these scenarios must account for uncertain operational outcomes that determine the benefits of or need for transmission facilities during high-impact, low-frequency events, such as extreme weather events or cyberattacks.

In the Final Rule, FERC requires transmission providers to develop at least three distinct Long-Term Scenarios (that incorporate the seven categories of factors discussed above) as part of Long-Term Transmission Planning, and to provide public disclosure of the information and inputs used to create each.²⁴ FERC found that requiring three, rather than four, different scenarios strikes the appropriate balance between establishing a sufficient number of scenarios and the associated burden of developing and using different scenarios.²⁵ FERC also encouraged transmission providers to "respect states' concerns" in the planning process and encouraged states to participate actively in the development of Long-Term Scenarios.²⁶

e. The Final Rule Requires That at Least Three Long-Term Scenarios be Plausible and Diverse

Like the NOPR proposal, the Final Rule requires each transmission provider in each transmission planning region to develop at least three plausible and diverse Long-Term Scenarios.²⁷ These scenarios must be plausible, meaning they must be reasonably probable individually and collectively, represent probable future outcomes, and be diverse, allowing distinct transmission facilities or benefits to be identified in each scenario.²⁸ The Commission explained that the requirement is designed to avoid overly conservative, speculative, or similar scenarios, thereby promoting the efficient identification and selection of LTRTFs.²⁹

The Final Rule requires that each individual scenario must also be plausible to prevent assumptions that do not capture possible future outcomes.³⁰ The Commission clarified that "diverse" means the scenarios must represent a reasonable range of probable future outcomes.³¹

f. The Final Rule Requires the Development of Sensitives for High-Impact, Low-Frequency Events

The Final Rule modifies the NOPR proposal to require transmission providers in each transmission planning region to develop at least one sensitivity for each Long-Term Scenario to account for uncertain operational outcomes that determine the benefits of and/or need for transmission facilities during multiple

²¹ *Id.* P 528.

²² *Id.*

²³ NOPR, 179 FERC ¶ 61,028 at PP 121-25.

²⁴ Final Rule, 187 FERC ¶ 61,068 at PP 559-60.

²⁵ *Id.* P 559.

²⁶ *Id.* P 561.

²⁷ *Id.* P 575.

²⁸ *Id.*.

²⁹ *Id.*

³⁰ *Id.* P 576.

³¹ *Id.*

concurrent and sustained generation and/or transmission outages due to an extreme weather event across a wide area.³² Specifically, the Final Rule requires that transmission providers develop a sensitivity for each of the Long-Term Scenarios after developing at least three Long-Term Scenarios.³³ The Commission provided that this will give transmission providers the flexibility to conduct this sensitivity before or after identifying potential regional transmission solutions to the Long-Term Transmission Needs identified using those Long-Term Scenarios.³⁴

g. Specificity of Data Inputs / At Least “Best Available Data” To Be Used

The NOPR proposed to require that transmission providers use “best available data inputs” when developing Long-Term Scenarios,³⁵ which the Commission defines as data that are timely, developed using diverse and expert perspectives, adopted via a process that uses the transparency planning principle, and that reflect the list of factors discussed above that are likely to affect transmission planning.

With modifications, the Final Rule adopts the NOPR proposal to require transmission providers in each transmission planning region to use “best available data inputs” when developing Long-Term Scenarios.³⁶ The Commission clarifies that the term “best available” implies that best practices will be used to develop each data input rather than a single “best” value for each data input.³⁷ The NOPR proposed to define “best available data inputs” as timely data inputs developed using best practices and diverse and expert perspectives and adopted via a process that satisfies the transmission planning principles of Order Nos. 890 and 1000.³⁸ Further, the Commission adopts the NOPR proposal to require that the best available data inputs reflect the list of factors that transmission providers account for in their Long-Term Scenarios and for transmission providers to update all data inputs each time they reassess and revise their Long-Term Scenarios, as necessary.³⁹

h. FERC Declines to Adopt the Use of Geographic Zones

The NOPR proposed to require that transmission providers consider whether to identify geographic zones with the potential for significant new generation, including an assessment of generation developers’ commercial interest in developing generation within each zone. FERC proposed to require that transmission providers incorporate designated zones and any identified commercial interest in each into their Long-Term Scenarios.

In the Final Rule, FERC declines to adopt the NOPR proposal to require each transmission provider to consider establishing geographic zones within the transmission planning region that could potentially develop large amounts of new generation.⁴⁰ Specifically, the Commission agreed with commenters that the proposed three-step process’s prescriptive nature could unintentionally impede existing efforts to incorporate geographic zones into regional transmission planning.⁴¹ However, even though the Commission did not adopt the NOPR proposal, the Final Rule encourages transmission providers to consider geographic zones that can potentially develop large amounts of new generation as part of their regional transmission planning process and transmission providers may propose to identify geographic zones as part of Long-Term Regional Transmission Planning on compliance with the Final Rule.⁴²

3. The Final Rule Requires the Evaluation of Seven Benefits of Regional Transmission Facilities

³² *Id.* P 593.

³³ *Id.* P 594.

³⁴ *Id.* P 594.

³⁵ NOPR, 179 FERC ¶ 61,028 at PP 130-31.

³⁶ Final Rule, 187 FERC ¶ 61,068 at P 633.

³⁷ *Id.* P 633.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* P 665.

⁴¹ *Id.*

⁴² *Id.* P 666.

In the Final Rule, the Commission adopts the NOPR proposal to require transmission providers, as part of Long-Term Regional Transmission Planning, to measure certain benefits.⁴³ However, rather than requiring transmission providers to measure and use all 12 benefits enumerated in the NOPR, the Commission only requires transmission providers to measure and use the following seven specific benefits:

1. Avoided or deferred reliability transmission facilities and aging infrastructure replacement;
2. Either reduced loss of load probability or reduced planning reserve margin;
3. Production cost savings;
4. Reduced transmission energy losses;
5. Reduced congestion due to transmission outages;
6. Mitigation of extreme weather events and unexpected system conditions; and
7. Capacity cost benefits from reduced peak energy losses.⁴⁴

The Commission clarifies, however, that on compliance, transmission providers may propose to use and measure additional benefits beyond the seven required.⁴⁵ Additionally, the Commission adopts the NOPR proposal, with modification, to require transmission providers in each transmission planning region to include in their Open Access Transmission Tariffs (OATTs) a general description of how they will measure each of the required seven benefits described above.⁴⁶

In the Final Rule, FERC adopts the NOPR proposal, with modification, to require transmission providers to calculate the benefits of LTRTFs over a timeline that covers, at a minimum, 20 years starting from the estimated in-service date of the transmission facilities.⁴⁷ FERC also required that the minimum 20-year benefit horizon be used both for the evaluation and selection of LTRTFs.⁴⁸ However, the Commission did not adopt the NOPR proposal to require a minimum 20-year horizon to calculate benefits for purposes of cost allocation.⁴⁹

4. The Final Rule Requires the Evaluation — but not Selection — of Long-Term Regional Transmission Facilities

The Final Rule adopts the NOPR’s proposal that transmission providers include an evaluation process in their OATT that includes selection criteria and will be used to evaluate LTRTFs for potential selection to address Long-Term Transmission Needs.⁵⁰ It also adopts the NOPR’s proposal that the transmission developer of a LTRTF that is selected will be eligible to use the applicable cost-allocation method for the LTRTF.⁵¹ The Final Rule clarifies that transmission providers will not be required to select any particular LTRTF,⁵² but to meet the requirements of the Final Rule, transmission providers must:

1. Identify LTRTFs that address Long-Term Transmission Needs;
2. Measure the benefits of the identified LTRTFs consistent with the Final Rule; and
3. Designate a point in the evaluation process at which transmission providers will determine whether or not to select identified LTRTFs for purposes of cost allocation.⁵³

Consistent with the NOPR, the Final Rule provides transmission providers the flexibility to propose the selection criteria that they, in consultation with state entities and other stakeholders, believe will ensure more efficient and/or cost-effective regional transmission facilities.⁵⁴

⁴³ Final Rule, 187 FERC ¶ 61,068 at P 720.

⁴⁴ *Id.*

⁴⁵ *Id.* P 729.

⁴⁶ *Id.* P 837.

⁴⁷ *Id.* P 859.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* P 911.

⁵¹ Final Rule, 187 FERC ¶ 61,068 at P 912.

⁵² *Id.* P 916.

⁵³ *Id.*

⁵⁴ *Id.* P 924.

Consistent with the NOPR, the Final Rule requires transmission providers to propose evaluation processes and selection criteria that are not unduly discriminatory and that will culminate in a determination that is “sufficiently detailed” for stakeholders to understand why a certain LTRTF was selected or not.⁵⁵ The Final Rule modifies the NOPR by requiring that this determination include the measured benefits of each alternative LTRTF (or portfolio of LTRTFs) considered in the Long-Term Regional Transmission Planning Process.⁵⁶ The Final Rule also requires that transmission providers’ proposed evaluation processes aim to ensure the selection of more cost-effective or cost-efficient LTRTFs.⁵⁷ To this end, the Final Rule includes provisions that require transmission providers to:

1. Make clear in their OATTs the point in the Long-Term Regional Transmission Planning Process at which they will accept LTRTF proposals from parties, including nonincumbent transmission developers;
2. Estimate the costs and benefits of the LTRTFs proposed for selection;
3. Designate a point in the evaluation process to determine whether to select the identified LTRTFs, which must be no more than three years following the initiation of the Long-Term Regional Transmission Planning Cycle; and
4. Ensure that the LTRTF determinations are sufficiently detailed for stakeholders to understand why particular LTRTFs were selected or not.⁵⁸

The Final Rule adopts the NOPR’s proposal to require that transmission providers consult with and seek, but not necessarily obtain, support from relevant state entities regarding the evaluation process and requires a demonstration of “good faith efforts” to do so.⁵⁹ Additionally, and in response to comments on the NOPR, the Final Rule requires that transmission providers include in their OATTs a process to provide relevant state entities and interconnection customers with the opportunity to voluntarily fund a portion of, or the full cost of a LTRTF that otherwise would not meet the transmission providers’ selection criteria.⁶⁰

The Final Rule adopts, with modifications, the NOPR’s proposal to require that transmission providers include in their OATTs provisions that require them, under certain circumstances, to reevaluate LTRTFs that were previously selected, subject to certain limitations.⁶¹ It also requires transmission providers to revise their OATTs to reevaluate any selected LTRTFs in three situations:

1. Where delays in the development of a previously selected LTRTF would jeopardize a transmission provider’s ability to meet its reliability needs or reliability-related service obligations;⁶²
2. Where the actual or projected costs of a previously selected LTRTF significantly exceed cost estimates used in the selection of a LTRTF;⁶³ or
3. Where there have been significant changes in federal, federally-recognized Tribal, state, or local laws or regulations that cause reasonable concern that a previously selected LTRTF may no longer meet the transmission providers’ selection criteria.⁶⁴

The Final Rule requires transmission providers to include specific criteria in their OATTs that they will use to determine when one of these three situations occurs, but the Final Rule states that it provides transmission providers with flexibility to propose these criteria, subject to the requirement that the criteria must seek to maximize benefits that account for costs over time without over-building transmission facilities.⁶⁵

⁵⁵ *Id.* P 954.

⁵⁶ *Id.*

⁵⁷ *Id.* P 955.

⁵⁸ *Id.*

⁵⁹ *Id.* PP 994, 996.

⁶⁰ *Id.* PP 1012-13.

⁶¹ Final Rule, 187 FERC ¶ 61,068 at PP 1049-50.

⁶² *Id.* P 1049.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* P 1050.

Notably, the Commission did not propose in the NOPR — and the Final Rule does not require — that transmission providers select any particular Long-Term Regional Transmission Facility, even if a particular transmission facility meets the transmission provider’s selection criteria in their OATT. Rather, as FERC explained, the Final Rule’s focus is on improving regional transmission planning and evaluation processes, “not on requiring that these processes achieve any particular substantive outcome.”⁶⁶

5. The Final Rule Requires Transmission Providers to Explain how Long-Term Regional Transmission Planning Will Interact with Existing Regional Transmission Planning Processes

The Final Rule adopts the proposal set forth in the NOPR to require that transmission providers explain on compliance how the initial timing sequence for Long-Term Regional Transmission Planning interacts with existing regional transmission planning.⁶⁷ The Final Rule also requires transmission providers to also explain:

1. The potential interactions between the transmission planning cycle for Long-Term Regional Planning and existing Order 1000 regional transmission planning processes;⁶⁸ and
2. The potential displacement of regional transmission facilities from the existing regional transmission planning process.⁶⁹

With respect to compliance obligations, the Final Rule requires transmission providers to propose on compliance a date, to be no later than one year from the date that compliance filings are due, on which they will commence the first Long-Term Regional Transmission Planning Cycle. Transmission providers in a transmission planning region may propose to start the first Long-Term Regional Transmission Planning cycle later than this one-year requirement “only to the extent needed to align transmission planning cycles.”⁷⁰

B. The Final Rule Requires Coordination of Regional Transmission Planning and Generator Interconnection Processes

In the Final Rule, the Commission explains its view that interconnection-related network upgrades are repeatedly identified during the generator interconnection process, but those upgrades continue to go unresolved because the substantial costs of such upgrades result in the underlying interconnection request being withdrawn.⁷¹ The Final Rule adopts, with modifications, the NOPR’s proposed requirement that transmission providers evaluate regional transmission facilities to address certain identified interconnection-related transmission needs.⁷²

1. The Final Rule Requires Evaluation of Certain Interconnection-Related Transmission Needs

In the NOPR, the Commission proposed to require transmission providers in each transmission planning region to consider regional transmission facilities that address interconnection-related transmission needs through the “Long-Term Regional Transmission Planning” process proposed in the NOPR.⁷³ The Final Rule adopts the NOPR proposal with the modification that transmission providers in each transmission planning region evaluate regional transmission facilities that address certain interconnection-related transmission needs in their existing Order No. 1000 regional transmission planning and cost allocation processes instead of in Long-Term Regional Transmission Planning.⁷⁴ The Commission explained that evaluation of interconnection-related transmission needs in the existing Order No. 1000 processes is

⁶⁶ *Id.* P 1026.

⁶⁷ *Id.* P 1071.

⁶⁸ *Id.*

⁶⁹ Final Rule, 187 FERC ¶ 61,068 at P 1071.

⁷⁰ *Id.* P 1072.

⁷¹ *Id.* P 1110.

⁷² *Id.*

⁷³ *Id.* P 1122.

⁷⁴ *Id.* P 1126.

more appropriate because such evaluation occurs at shorter intervals and would result in quicker development of regional transmission facilities interconnection-related transmission needs.⁷⁵

2. The Final Rule Adopts Qualifying Criteria for Evaluating Interconnection-Related Transmission Needs

In the NOPR, the Commission proposed to require that transmission providers utilize certain qualifying criteria to evaluate regional transmission facilities to address interconnection-related transmission needs. In the Final Rule, the Commission adopts the NOPR proposal with modifications to criterion two, as noted below. Accordingly, transmission providers must evaluate interconnection-related network upgrades for selection in existing Order No. 10000 regional transmission planning processes if they meet the following criteria:

1. The transmission provider has identified interconnection-related network upgrades in interconnection studies in at least two interconnection queue cycles during the preceding five years (beginning at the time of the withdrawal of the first underlying interconnection request);
2. The interconnection-related network upgrade identified has a voltage of at least 200 kV and an estimated cost of at least \$30 million;
3. Those interconnection-related network upgrades have not been developed and are not currently planned to be developed because the underlying interconnection request(s) driving the upgrade has been withdrawn; and
4. The transmission provider has not identified an interconnection-related network upgrade to address the relevant interconnection-related transmission need in an executed generator interconnection agreement or an unexecuted generator interconnection agreement filed with the Commission.

The Commission modifies the NOPR’s proposal on this issue only with regard to the second criterion, which initially would have permitted selection based on 200 kV voltage or a \$30+ million estimated cost. The Commission explained that this modification prevents transmission providers from evaluating interconnection-related transmission needs associated with interconnection-related network upgrades that are either above 200 kV but lower-cost or cost more than \$30 million but are less than 200 kV, which means that they are less likely to provide more widespread benefits to transmission customers.⁷⁶

C. The Final Rule Requires the Consideration of Dynamic Line Ratings and Advanced Power Flow Technologies in Selecting Transmission Facilities

In the NOPR, the Commission proposed to require transmission providers in each transmission planning region to consider whether selecting transmission facilities that incorporate dynamic line ratings and advanced power flow control devices would be more efficient or cost-effective than selecting transmission facilities that do not incorporate these technologies.⁷⁷ The NOPR also proposed that the costs to incorporate these technologies be allocated using the applicable regional cost allocation method.⁷⁸

In the Final Rule, the Commission adopts the NOPR proposal with the modification such that the full list of specific alternative transmission technologies include:

1. Dynamic line ratings
2. Advanced power flow control devices
3. Advanced Conductors
4. Transmission switching⁷⁹

The above-noted advanced technologies must be included in transmission providers’ Long-Term Regional Transmission Planning and existing Order No. 1000 regional transmission planning processes.⁸⁰ In addition, FERC states that these enumerated technologies apply for new transmission facilities *and*

⁷⁵ *Id.*

⁷⁶ Final Rule, 187 FERC ¶ 61,068 at P 1152.

⁷⁷ *Id.* P 1164.

⁷⁸ *Id.*

⁷⁹ *Id.* P 1198.

⁸⁰ Final Rule, 187 FERC ¶ 61,068 at P 1198.

upgrades to transmission facilities. As FERC explains, incorporating these alternative transmission technologies as upgrades to existing transmission facilities allows for a more efficient and optimal use of existing transmission infrastructure and mitigates or defers the need to develop new regional transmission facilities.⁸¹

FERC clarifies that selection of any of the enumerated technologies into an existing transmission facility should be treated as an upgrade to such facility. This is notable because Order No. 1000's elimination of a federal ROFR *does not* apply to upgrades to existing transmission facilities. Accordingly, an incumbent transmission provider could be designated to install this upgrade.⁸²

With regard to advanced technologies added or deployed in a *new* facility, FERC clarified that the transmission developer (whether an incumbent or non-incumbent transmission provider) would be eligible to use the regional cost allocation method for that facility, including the cost of any alternative transmission technology incorporated into that facility.⁸³ FERC further clarified that transmission providers in a competitive transmission development process must identify with "sufficient detail" in their OATTs the point(s) in a given process where the transmission provider will consider the potential use of alternative transmission technologies, including the point at which qualified transmission developers must submit their proposal to incorporate alternative transmission technologies.⁸⁴

FERC also adopts the NOPR proposal to require transmission providers to provide an explanation "that is sufficiently detailed for stakeholders to understand why dynamic line ratings, advanced power flow control devices, advanced conductors, and/or transmission switching were or were not incorporated into selected regional transmission facilities."⁸⁵

D. The Final Rule Does Not Require State Agreement but Requires a Six-Month "Engagement Period" and an *ex ante* "Backstop" Cost Allocation Method

In the NOPR, FERC proposed to require that public utility transmission providers in each transmission planning region seek the agreement of relevant state entities within the transmission planning region regarding the cost allocation method or methods that will apply to transmission facilities selected in the regional transmission plan.⁸⁶ Specifically, to enhance the role of states in transmission planning, FERC proposed to require that public utility transmission providers revise their OATTs to include either:

1. An *ex ante* Long-Term Regional Transmission Cost Allocation Method to allocate the costs of LTRTFs, or
2. An *ex post* "state agreement process" by which one or more relevant state entities may voluntarily agree to a cost allocation method, or
3. A "combination thereof" and that the included process "comply with the existing six Order No. 1000 regional cost allocation principles."

FERC further proposed that public utility transmission providers seek state agreement as to which of the three options to use.⁸⁷

In the Final Rule, FERC notably scales back its proposed state involvement requirement. Instead of requiring public utility transmission providers to seek state agreement as to which of the three proposed cost allocation options to use, the Final Rule requires that transmission providers put one or more *ex ante* "backstop" cost allocation methods on file.⁸⁸ While FERC will not require transmission providers to adopt a state agreement process, the Final Rule permits the inclusion of a state agreement process in

⁸¹ *Id.* P 1201.

⁸² *Id.* P 1202.

⁸³ *Id.* P 1203.

⁸⁴ *Id.* P 1205.

⁸⁵ *Id.* P 1214.

⁸⁶ NOPR, 179 FERC ¶ 61,028 at P 302.

⁸⁷ *Id.* P 303.

⁸⁸ Final Rule, 187 FERC ¶ 61,068 at P 1292.

transmission providers OATTs.⁸⁹ However, a cost allocation method developed in a state agreement process cannot be the sole method filed for cost allocation.⁹⁰

Instead of requiring public utility transmission providers to seek state agreement, the Final Rule requires transmission providers to include in their OATTs a one-time, six-month “engagement period” to serve as a forum for negotiation on a cost allocation method and/or state agreement process that enables meaningful participation by relevant state entities during the engagement period.⁹¹ FERC clarified that, on compliance, transmission providers must file an *ex ante* “backstop” cost allocation method even if relevant state entities fail to reach agreement on a cost allocation method and/or state agreement process during the engagement period.⁹² FERC also declined to define what constitutes agreement among relevant state entities, how such agreement could be reached, and which entities must reach such agreement during the engagement period. Instead, FERC provided that it will leave such matters to the relevant state entities participating in the engagement period to determine.⁹³

FERC further required that transmission providers demonstrate on compliance that any *ex ante* “backstop” cost allocation methods comply with Order No. 1000 regional cost allocation principles 1-5, but not principle 6.⁹⁴ FERC explained, however, that compliance with these principles will *not* be required if the relevant state entities agree to cost allocation either during the engagement period or pursuant to a state agreement process,⁹⁵ except that if transmission providers file cost allocation methods based on state agreement, such methods must still demonstrate that they allocate costs in a manner “at least roughly commensurate with estimated benefits.”⁹⁶

Finally, FERC declined to adopt the NOPR proposal to require transmission providers to identify on compliance the benefits that they will use in their cost allocation methods, and how to calculate them, etc.⁹⁷ FERC did provide for one exception to that rule, prohibiting transmission providers from allocating costs based on project types: reliability, economic, or public policy requirements needs-driven. As FERC explained, the use of such project-type-limited cost allocation “would be inconsistent with the long-term, forward-looking, more comprehensive regional transmission planning that we require in this Final Rule.”⁹⁸

E. The Final Rule Preserves the CWIP Incentive

In the NOPR, FERC proposed to eliminate the long-established Construction Work in Progress (CWIP) incentive for regional transmission facilities selected for purposes of cost allocation through Long-Term Regional Transmission Planning. FERC had originally argued that during construction, ratepayers are directly financing construction of regional transmission facilities without receiving simultaneous benefits from the projects. FERC acknowledged at the time that eliminating CWIP may introduce increased regulatory uncertainty in long-term planning but reasoned that its proposal strikes a better balance between the risks of over and under investment in regional transmission planning.

⁸⁹ *Id.* P 1291.

⁹⁰ *Id.* P 1292.

⁹¹ *Id.* PP 1357-58.

⁹² *Id.* P 1367.

⁹³ *Id.* P 1360.

⁹⁴ The six regional transmission cost allocation principles adopted in Order No. 1000 are: (1) the costs of selected 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; (2) those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities; (3) a benefit-to-cost threshold ratio, if adopted, cannot exceed 1.25 to 1; (4) costs must be allocated solely within the transmission planning region unless another entity outside the region voluntarily assumes a portion of those costs; (5) the method for determining benefits and identifying beneficiaries must be transparent; and (6) there may be different regional cost allocation methods for different types of transmission facilities, such as those needed for reliability, congestion relief, or to achieve Public Policy Requirements.

⁹⁵ Final Rule, 187 FERC ¶ 61,068 at PP 1469-70.

⁹⁶ *Id.* P 1506 (citation omitted).

⁹⁷ *Id.*

⁹⁸ *Id.* P 1508.

In the Final Rule, FERC declines to eliminate the CWIP incentive for LTRTFs.⁹⁹ FERC explained that any action on the CWIP incentive would be more appropriately considered in a separate proceeding to allow for a comprehensive approach to transmission incentives.¹⁰⁰ Specifically, the Commission concluded that the question of whether the transmission incentives are appropriately “benefitting consumers by ensuring reliability and reducing the cost of delivered power” is better evaluated by considering the Commission’s transmission incentives comprehensively for all regional transmission facilities.¹⁰¹

F. FERC Declines to Establish a Federal Right of First Refusal (ROFR) in Commission-Jurisdictional Tariffs and Agreements

The NOPR proposed to permit the exercise of federal ROFRs for transmission facilities selected in a regional transmission plan for purposes of cost allocation, *conditioned on the incumbent transmission provider with the federal ROFR establishing joint ownership of the transmission facilities*. Specifically, the Commission originally proposed that an incumbent transmission provider may establish qualifying joint ownership structures with unaffiliated, nonincumbent transmission developers or with another unaffiliated entity, including unaffiliated public power entities; load-serving entities, such as transmission-dependent municipally-owned utilities or electric cooperatives; or another incumbent transmission provider.¹⁰²

In the Final Rule, FERC declines to adopt the NOPR proposal on a federal ROFR or any changes to Order No. 1000’s nonincumbent transmission developer reforms.¹⁰³ While acknowledging what it called “substantial” concerns with incumbent transmission providers’ investment incentives, FERC questioned whether the NOPR proposal adequately and appropriately addresses those incentives, and whether adopting the proposal is necessary or appropriate in carrying out the provisions of the FPA.¹⁰⁴ Instead, the Commission will continue to consider potential federal ROFR reforms, along with other transmission reforms, issues in the future (citing the ongoing proceeding in Docket No. AD22-8 on Transmission Planning and Cost Management).¹⁰⁵

G. The Final Rule Requires Local Transmission Planning Inputs in the Regional Transmission Planning Process

In the NOPR, FERC expressed concern that local transmission planning processes lack adequate provisions for transparency and meaningful input from stakeholders and that regional transmission planning processes may not adequately coordinate with local transmission planning processes.¹⁰⁶ In particular, FERC noted that transmission providers may be replacing aging transmission infrastructure without evaluating whether the replacement facilities could be modified to address regional transmission needs more efficiently or cost effectively.¹⁰⁷

The Final Rule adopts the findings in the NOPR concerning the need for reform of the local transmission planning process and coordination between the local and regional transmission planning processes, including the evaluation of whether replacement transmission facilities could be modified (*i.e.*, right-sized) to more efficiently or cost-effectively address transmission needs.¹⁰⁸ The Final Rule requires transmission providers to enhance the transparency of local planning processes and evaluate whether transmission facilities that need replacing can be “right-sized” more efficiently or cost-effectively.¹⁰⁹

1. The Final Rule Requires Enhanced Transparency of Local Transmission Planning Inputs in the Regional Transmission Planning Process

⁹⁹ *Id.* P 1077.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* P 1547 (citation omitted).

¹⁰² NOPR, 179 FERC ¶ 61,028 at P 365.

¹⁰³ Final Rule, 187 FERC ¶ 61,068 at P 1563.

¹⁰⁴ *Id.* P 1564.

¹⁰⁵ *Id.* P 1093.

¹⁰⁶ NOPR, 179 FERC ¶ 61,028 at P 398.

¹⁰⁷ *Id.* P 399.

¹⁰⁸ Final Rule, 187 FERC ¶ 61,068 at P 1569.

¹⁰⁹ *Id.* P 1577.

In the NOPR, FERC proposed to require transmission providers to convene collectively, and as part of the regional transmission planning process, at least three stakeholder meetings before each transmission provider's local transmission plan is incorporated into the region's planning models.¹¹⁰

The Final Rule adopts the NOPR proposal and explained the three stakeholder meetings as follows:¹¹¹

1. *Assumptions Meeting*: held prior to the submission of local transmission planning information for inclusion in the regional transmission planning process to review criteria, assumptions, and models related to each transmission provider's local planning.
2. *Needs Meeting*: held no fewer than 25 calendar days after the Assumptions Meeting to review identified reliability criteria and other transmission needs that drive the need for local transmission planning.
3. *Solutions Meeting*: held no fewer than 25 calendar days after the Needs Meeting to review potential solutions to the identified reliability criteria violations and other transmission needs.

The Final Rule adopts the NOPR proposal with certain modifications.¹¹² The Final Rule clarifies that the requirement applies only to local transmission planning that is within the scope of Order No. 890 and is therefore already subject to Order No. 890 transparency requirements.¹¹³ The Final Rule modifies the NOPR proposal to require transmission providers to publicly post the meeting materials no fewer than five calendar days prior to each of the three publicly-noticed stakeholder meetings to allow time for stakeholders to review materials in advance of each meeting. The Final Rule declines to set a bright-line rule that transmission providers must respond to every question or comment received through the stakeholder process.¹¹⁴ Finally, the Final Rule clarifies that transmission providers must continue to apply the same safeguards to protect sensitive or critical information such as confidentiality agreements and password-protected access to information.¹¹⁵

2. The Final Rule Requires the Identification of Potential Opportunities to “Right-Size” Replacement Transmission Facilities

a. The Final Rule Establishes Eligibility Criteria for “Right-Sizing”

The Final Rule adopts, with modifications, the NOPR proposal to require that as part of each Long-Term Regional Transmission Planning cycle, transmission providers evaluate whether there are any 230 kV or above transmission facilities anticipated to be replaced in-kind during the next 10 years that can be “right-sized” to address a need identified in Long-Term Regional Transmission Planning.¹¹⁶ To implement this, the Final Rule adopts the NOPR proposal to require that, sufficiently early in each Long-Term Regional Transmission Planning cycle, each transmission provider submit its in-kind replacement estimates for use in Long-Term Regional Transmission Planning.¹¹⁷ The Final Rule also adopts the NOPR's proposed definition of “right-sizing.”¹¹⁸ The Final Rule clarifies that the 10-year timeframe associated with the right-sizing reform applies to transmission facilities that a transmission provider *anticipates* replacing.¹¹⁹ The Final rule also clarifies that, given the modification to the NOPR proposal, transmission providers may propose on compliance a threshold lower than 200 kV for considering right-sizing transmission facilities.¹²⁰

b. The Final Rule Establishes a Federal ROFR for a “Right-Sized” Replacement Facility, if Selected in a Regional Transmission Plan

¹¹⁰ NOPR, 179 FERC ¶ 61,028 at P 400.

¹¹¹ Final Rule, 187 FERC ¶ 61,068 at P 1627.

¹¹² *Id.* P 1625.

¹¹³ *Id.* P 1626.

¹¹⁴ *Id.* P 1645.

¹¹⁵ *Id.* P 1647.

¹¹⁶ *Id.* P 1677.

¹¹⁷ *Id.*

¹¹⁸ *Id.* P 1678.

¹¹⁹ *Id.* P 1688.

¹²⁰ *Id.* P 1692.

The Final Rule adopts the NOPR proposal that if a right-sized replacement transmission facility is selected in the regional transmission plan, FERC would require the establishment of a federal ROFR for the transmission provider that included the in-kind facility in its replacement estimates.¹²¹ FERC also stated that this ROFR would extend to any portion of such a transmission facility located within the applicable transmission provider's retail distribution service territory.¹²²

c. The Final Rule Declines to Adopt Cost Allocation Proposal for "Right-Sized" Replacement Facilities Selected in a Regional Transmission Plan

The Final Rule declines the NOPR proposal that if a right-sized replacement facility is selected in the regional transmission plan for purposes of cost allocation, only the incremental costs of right-sizing the facility will be eligible to use the applicable Long-Term Regional Transmission Cost Allocation Method.¹²³ FERC noted that while the NOPR's proposed requirement may still be a fair and reasonable cost allocation approach for right-sized replacement facilities, FERC found it appropriate to offer flexibility to transmission providers to propose a cost allocation method for selected right-sized replacement transmission facilities.¹²⁴ However, in offering this flexibility, the Final Rule requires that on compliance, transmission providers must demonstrate that the cost allocation method is just and reasonable and not unduly discriminatory or preferential and, consistent with cost causation, and allocates costs with the estimated benefits of such facilities.¹²⁵ Additionally, if transmission providers allocate the costs of right-sized replacement transmission facilities according to the NOPR's cost allocation method, the Final Rule requires them to clarify on compliance:

1. The method they will use to identify the cost portion of a right-sized replacement facility that exceeds the costs that would have been incurred for the underlying in-kind replacement facility; and
2. The method by which they will track the portion of costs over time that are allocated based on the Long-Term Regional Transmission Cost Allocation Method (or a state agreement process if adopted), and the cost portion that would have been allocated according to the cost allocation method that would have otherwise applied to the in-kind replacement facility.¹²⁶

H. The Final Rule Requires Interregional Transmission Coordination to Accommodate the Final Rule's Long-Term Planning Reforms

In the NOPR, FERC proposed to require each transmission provider to update their current interregional transmission coordination procedures, including incorporating the proposed Long-Term Regional Transmission Planning reforms as outlined in the NOPR.¹²⁷ Further, the Commission proposed to require transmission providers in neighboring transmission planning regions to revise their interregional transmission coordination procedures (and regional transmission planning processes as needed) to allow an entity to propose an interregional transmission facility in the regional transmission planning process as a potential solution to transmission needs identified through Long-Term Regional Transmission Planning.¹²⁸

The Final Rule adopts the NOPR proposal, with modifications.¹²⁹ Specifically, the Final Rule requires transmission providers in neighboring transmission planning regions to revise their existing interregional transmission coordination procedures (and regional transmission planning processes, as needed) to provide for:

1. The sharing of information regarding their respective Long-Term Transmission Needs, as well as LTRTFs to meet those needs; and

¹²¹ Final Rule, 187 FERC ¶ 61,068 at P 1693.

¹²² *Id.* P 1693.

¹²³ *Id.* P 1716.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* P 1719.

¹²⁷ *Id.* P 1740.

¹²⁸ Final Rule, 187 FERC ¶ 61,068 at P 1742.

¹²⁹ *Id.* P 1751.

2. The identification and joint evaluation of interregional transmission facilities that may be more efficient or cost-effective transmission facilities to address Long-Term Transmission Needs.¹³⁰

Additionally, the Final Rule requires transmission providers in neighboring transmission planning regions to revise their interregional transmission coordination procedures (and regional transmission planning processes, as necessary), enabling an entity to propose an interregional transmission facility in the regional transmission planning process as a potential solution to Long-Term Transmission Needs.¹³¹ FERC found that this requirement will align current interregional requirements with the Final Rule’s new Long-Term Regional Transmission Planning process.¹³²

I. The Final Rule’s Compliance Procedures

In the Final Rule, FERC requires each transmission provider to submit a compliance filing within 10 months of the effective date of the Final Rule revising its OATT and other documents subject to the Commission’s jurisdiction and to demonstrate that it meets all of the requirements adopted in the Final Rule, except for compliance with interregional transmission coordination requirements, which FERC requires to be filed within 12 months of the effective date of the Final Rule.¹³³

Additionally, FERC held that transmission providers that are not public utilities must adopt the requirements of the Final Rule as a condition of maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888.¹³⁴ The Commission noted that the Final Rule makes no changes to the standards used to judge requested variations, as described in Order Nos. 888, 2000, 890, and 1000.¹³⁵

J. Summary of Dissenting and Concurring Opinions

Commissioner Christie issued a lengthy and forceful dissenting opinion in opposition to Order No. 1920. In general, Commissioner Christie argued that the Final Rule, first, exceeds FERC’s authority under FPA Section 206 and may violate the Supreme Court’s recently-announced “major questions” doctrine because, in Commissioner Christie’s view, the Final Rule enacts a “sweeping policy agenda never passed by Congress, denies the states the authority promised by the NOPR and fails the Commission’s consumer protection duty under the Federal Power Act.”¹³⁶ Second, Commissioner Christie argued that the Final Rule is “fundamentally different” from the NOPR and, as a result, violates constitutional due process for lack of sufficient notice and comment.¹³⁷ In essence, Commissioner Christie’s concerns largely center on, in his view, the lack of state oversight and ultimate authority to approve the costs that would be allocated to consumers through selection of a transmission project evaluated pursuant to the Final Rule. Had the Final Rule given states the authority to “protect their consumers, as promised by the NOPR,” Commissioner Christie said that he would have supported the Final Rule as “an imperfect but acceptable compromise.”¹³⁸

Chairman Phillips and Commissioner Clements issued a joint concurring opinion in support of Order No. 1920 and largely in response to Commissioner Christie’s dissenting opinion. In particular, the concurrence underscored the majority’s view of the need for the Final Rule, namely, to address “unprecedented demands on the grid from extreme weather, increasing and rapidly changing patterns of electricity use, and fundamental shifts in the resource mix.”¹³⁹ In the view of Chairman Phillips and Commissioner Clements, Commissioner Christie’s dissenting opinion misrepresented the Final Rule and that it is not necessary for the Final Rule to, in their view, give states a veto right over regional

¹³⁰ *Id.*

¹³¹ *Id.* P 1752.

¹³² *Id.*

¹³³ *Id.* P 1768.

¹³⁴ *Id.* P 1771.

¹³⁵ *Id.* P 1772.

¹³⁶ Final Rule, 187 FERC ¶ 61,068 (Comm’r, Christie, dissenting at P 1); *see also id.* (Comm’r, Christie, dissenting at PP 30-121).

¹³⁷ *Id.* PP 22-29.

¹³⁸ *Id.* at P 122 (footnote omitted).

¹³⁹ *Id.* (Chairman, Phillips, and Comm’r, Clements, jointly concurring at P 2).

transmission cost allocation decisions.¹⁴⁰ Although Chairman Phillips and Commission Clements said that they agree that “transmission development works best when states are key partners in the process,”¹⁴¹ ultimately, they argue, Commissioner Christie’s position would not result in the transmission construction that the majority views as essential to addressing current and anticipated demands on the electrical grid.

¹⁴⁰ *Id.* P 13.

¹⁴¹ *Id.* P 20.