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FERC ORDER 1000/1000-A COMPLIANCE FILINGS

While many of you are well aware of, and already involved in, stakeholder processes leading up to compliance filings to be made in response to Order 1000, FERC's transmission planning and cost allocation rulemaking, we write to highlight the importance of these processes, which should soon be reaching their final stages. By October 11, 2012, all public utility transmission providers ("TP") will have to revise their Open Access Transmission Tariffs ("OATT") to include regional transmission planning processes and cost allocation methodologies in compliance with FERC Order 1000, as recently reaffirmed in Order 1000-A. (Compliance filings to address inter-regional planning requirements are due April 11, 2013). The Order 1000 stakeholder process and associated TP compliance filing are likely to have a significant impact on future transmission planning in your region, as well as allocation of the costs of projects selected as part of the regional planning process for regional cost allocation.

Order 1000 established general requirements for regional transmission planning and cost allocation, such as the principle that costs allocated be reasonably proportionate to benefits. However, FERC has afforded TPs, in consultation with stakeholders, substantial flexibility in developing the specifics of the regional planning process and cost allocation methodology. As the Rule stands today, FERC contemplates that unless regional TPs voluntarily elect to provide for FERC filing of specific applications of the regional cost allocation, such specific applications will *not* be filed for FERC scrutiny, and thus will not be subject to protest. Even though selection of projects, identification of beneficiaries, and application of the regional cost allocation are likely to leave substantial room for judgment (and FERC does not require balanced decision-making in making those judgments), FERC now intends to allow for challenges to the specific application of the regional cost allocation only by Section 206 complaint. (The Transmission Access Policy Study Group ("TAPS") has sought further rehearing on this point.) Thus, FERC considers the stakeholder process and compliance filing proceeding "speak now or hold your peace" time, with the results difficult to challenge or change in the future.

Participation now in the ongoing stakeholder processes provides an important opportunity for input into the TP compliance filings, and will better position you to protest or comment when those TP filings are made. Issues to be considered will include:

- ◆ The process for selecting projects for regional cost allocation, the cost allocation methodology, and the identification of benefits and beneficiaries (which is central to application of any Order 1000-compliant cost allocation methodology), as well as the associated procedures and filing requirements, if any.
- ◆ Potentially cost recovery which, although not required, may be addressed in the TP compliance filing and which, along with access issues, may be very challenging in non-RTO regions.
- ◆ Which needs driven by public policies will be considered in the regional planning process (including whether the region will consider FPA Section 217(b)(4)'s mandate to plan and expand the grid to meet the reasonable needs of load serving entities and enable them to secure long-term rights). Also, the process for permitting stakeholders to provide input and for determining which proposed public-policy-driven transmission needs will be identified for evaluation.
- ◆ Issues related to elimination and retention of federal rights of first refusal to construct new transmission facilities.
- ◆ Issues pertinent to joint ownership of transmission, such as qualification criteria to sponsor projects for regional cost allocation, and treatment of multi-owner zones for purposes of the federal rights of first refusal.

The stakeholder processes may factor into FERC's determination of whether a TP's compliance filing is just, reasonable, and non-discriminatory because TPs must document in their compliance filings the steps they have taken to reach consensus on cost allocation method(s). FERC will also use the compliance filing record to determine the cost allocation methodology if TPs in a region don't agree.

While time is short, it may not be too late to participate in your region's stakeholder process, both to have an opportunity to shape the compliance filings submitted by your region's TPs in October 2012 (and April 2013), and to enhance the force of your arguments in the compliance filing proceedings before FERC. The stakes are potentially very large and the resulting transmission planning and cost allocation methodologies could have long-lasting effects.

For more information, please contact the firm attorneys with whom you interact.

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