

131 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

[Docket No. RM10-23-000]

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

(Issued June 17, 2010)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend the transmission planning and cost allocation requirements established in Order No. 890 to ensure that Commission-jurisdictional services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. With respect to transmission planning, the proposed rule would (1) provide that local and regional transmission planning processes account for transmission needs driven by public policy requirements established by state or federal laws or regulations; (2) improve coordination between neighboring transmission planning regions with respect to interregional facilities; and (3) remove from Commission-approved tariffs or agreements a right of first refusal created by those documents that provides an incumbent transmission provider with an undue advantage over a nonincumbent transmission developer. Neither incumbent nor nonincumbent transmission facility developers should, as a result of a Commission-approved tariff or agreement, receive different treatment in a regional transmission

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planning process. Further, both should share similar benefits and obligations commensurate with that participation, including the right, consistent with state or local laws or regulations, to construct and own a facility that it sponsors in a regional transmission planning process and that is selected for inclusion in the regional transmission plan. With respect to cost allocation, the proposed rule would establish a closer link between transmission planning processes and cost allocation and would require cost allocation methods for intraregional and interregional transmission facilities to satisfy newly established cost allocation principles.

DATES: Comments are due [insert date that is 60 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- Agency Web Site: <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- Mail/Hand Delivery: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning and Cost Allocation by
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NOTICE OF PROPOSED RULEMAKING

(Issued June 17, 2010)

I. Introduction

1. In this Notice of Proposed Rulemaking (Proposed Rule), the Federal Energy Regulatory Commission (Commission) is proposing to reform its electric transmission planning and cost allocation requirements for public utility transmission providers. The proposed reforms are intended to correct deficiencies in transmission planning and cost allocation processes so that the transmission grid can better support wholesale power markets and thereby ensure that Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential.

2. This Proposed Rule builds on Order No. 890,¹ in which the Commission reformed the *pro forma* open access transmission tariff (OATT). Among other changes, Order

¹ *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 (2009), *order on*

(continued)

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No. 890 required each public utility transmission provider to have a coordinated, open, and transparent regional transmission planning process. Order No. 890 also established nine transmission planning principles, one of which addressed cost allocation for new projects.

3. The Commission acknowledges that significant work has been done in recent years to enhance regional transmission planning processes. The reforms proposed herein seek to build on this progress by improving the effectiveness of regional transmission planning and the efficiency of resulting transmission development. In formulating this proposal, the Commission has sought to balance competing interests and identify a package of reforms that, if implemented, would support the development of transmission facilities identified by the region as necessary to satisfy reliability standards, reduce congestion, and enable compliance with public policy requirements established by state or federal laws or regulations. The Commission recognizes that opinions may differ as to whether the proposal as formulated will best achieve the Commission's goals. The Commission therefore seeks comment on the reforms proposed herein and encourages commenters to identify enhancements to the reforms that could better support the efficient and effective development of transmission facilities.

4. With respect to transmission planning, the reforms proposed in this Proposed Rule would provide that: (1) local and regional transmission planning processes account for

clarification, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

transmission needs driven by public policy requirements established by state or federal laws or regulations; (2) coordination between neighboring transmission planning regions is improved with respect to facilities that are proposed to be located in both regions, as well as interregional facilities that could address transmission needs more efficiently than separate intraregional facilities; and (3) a right of first refusal that is created by a document subject to the Commission's jurisdiction and that provides an incumbent utility with an undue advantage over nonincumbent transmission project developers is removed from that document. Neither incumbent nor nonincumbent transmission facility developers should, as a result of a Commission-approved OATT or agreement, receive different treatment in a regional transmission planning process. Further, both should share similar benefits and obligations commensurate with that participation, including the right, consistent with state or local laws or regulations, to construct and own a facility that it sponsors in a regional transmission planning process and that is selected for inclusion in the regional transmission plan. The Commission preliminarily finds that these proposed reforms are needed to protect against unjust and unreasonable rates, terms and conditions and undue discrimination in the provision of Commission-jurisdictional services.

5. With respect to transmission cost allocation, the Commission is proposing to require public utility transmission providers to establish a closer link between cost allocation and regional transmission planning processes in which the beneficiaries of new transmission facilities are identified, as well as to establish principles that cost allocation methods must satisfy. The Commission sees these proposals as steps that would increase

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the likelihood that facilities included in regional transmission plans are actually constructed. For example, establishing a closer link between transmission planning and cost allocation processes would diminish the likelihood that a transmission facility would be included in a regional transmission plan, only to later encounter cost allocation disputes that inhibit construction of that facility.

II. Background

A. Order Nos. 888 and 890

6. In Order No. 888,² issued in 1996, the Commission found that it was in the economic interest of transmission providers to deny transmission service or to offer transmission service on a basis that is inferior to that which they provide to themselves.³ Concluding that unduly discriminatory and anticompetitive practices existed in the electric industry and that, absent Commission action, such practices would increase as competitive pressures in the industry grew, the Commission in Order No. 888 and the accompanying *pro forma* OATT implemented open access to transmission facilities owned, operated, or controlled by a public utility.

² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,682.

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119. We seek comment on any issue of interest or concern related to the requirements proposed in this section of the Proposed Rule, including the proposed required elements of an interregional transmission planning agreement and any other elements that should be part of an interregional transmission planning agreement. In particular, we seek comment on how such an agreement would be implemented in non-RTO or ISO regions and on the impact that an interregional transmission planning agreement would likely have on the development of interregional transmission facilities.

120. We recognize that development of interregional transmission planning agreements would take time and would necessarily depend on progress at the regional level. Accordingly, the Commission proposes to require the interregional transmission planning agreements to be submitted to the Commission no later than one year after the effective date of the final rule issued in this proceeding.

V. Proposed Reforms: Cost Allocation

A. Introduction

1. Order No. 890's Transmission Planning Principle on Cost Allocation for New Transmission Facilities

121. In Order No. 890, the Commission found that there is a close relationship between transmission planning, which identifies needed transmission facilities, and the allocation of costs of the transmission facilities in the plan. The Commission stated that knowing how the costs of new transmission facilities would be allocated is critical to the development of new infrastructure, because transmission providers and customers cannot

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be expected to support the construction of new transmission unless they understand who will pay the associated costs.¹²²

122. In light of this close relationship, the Commission included a principle entitled “Cost Allocation for New Projects” among the Order No. 890 transmission planning principles. The Commission stated that the Order No. 890 Cost Allocation principle was intended to apply to projects that did not fit under existing cost allocation methods. As examples of such projects, the Commission cited regional projects involving several transmission owners and economic projects that are identified pursuant to the Order No. 890 economic planning studies principle for transmission planning, rather than through individual requests for transmission service.¹²³

123. The Commission did not impose a particular cost allocation method in Order No. 890, but instead permitted public utility transmission providers, customers, and other stakeholders to determine a method that would be appropriate given the needs of the region. While allowing this flexibility among regions, the Commission also stated that providing some overall guidance on the issue was appropriate. The Commission stated that when considering a dispute over cost allocation, it would exercise its judgment by weighing several factors. First, the Commission stated that it would consider whether a cost allocation proposal fairly assigns costs among participants, including those who cause the costs to be incurred and those that otherwise benefit from them. Second, the

¹²² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557.

¹²³ *Id.* P 558.

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Commission stated that it would consider whether a cost allocation proposal provides adequate incentives to construct new transmission. Third, the Commission stated that it would consider whether the proposal is generally supported by state authorities and participants across the region.¹²⁴

124. The Commission also stated that these factors are particularly important as applied to economic projects that are identified pursuant to the Order No. 890 economic planning studies principle for transmission planning, such as upgrades to reduce congestion or enable groups of customers to access new generation. The Commission stated that, as a general matter, the beneficiaries of any such project should agree to support its costs. The Commission recognized, however, that there are free rider problems associated with new transmission investment, such that customers who do not agree to support a particular project may nonetheless receive substantial benefit from it. The Commission also stated that a range of solutions to free rider problems is available, noting that different regions have attempted to address those problems in a variety of ways.¹²⁵

125. To comply with the cost allocation principle, the Commission directed each public utility transmission provider to clearly define the details of its cost allocation method as part of a new attachment to its OATT. The Commission stated that each proposal should identify the types of new projects that are not covered under previously existing cost

¹²⁴ *Id.* P 559.

¹²⁵ *Id.* P 561 (“[D]ifferent regions have attempted to address such issues in a variety of ways, such as by assigning transmission rights only to those who financially support a project or spreading a portion of the cost of certain high-voltage projects more broadly than the immediate beneficiary/supporters of the project.”).

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allocation methods and, therefore, would be affected by the Order No. 890 cost allocation principle.¹²⁶ The Commission also stated that it is important that each region address these cost allocation issues up front, at least in principle, rather than having them relitigated each time a project is proposed.¹²⁷ The Commission explained that up-front identification of how the cost of a facility will be allocated will allow transmission providers, customers, and potential investors to make the decision whether or not to build that facility on an informed basis.¹²⁸

126. After several rounds of compliance filings, the Commission approved various public utility transmission providers' proposals pursuant to the cost allocation principle. The Commission found that the proposals adequately identified both the types of new projects that were not covered under previously existing cost allocation methods and new methods for allocating the cost of those projects.

127. Particularly in transmission planning regions outside of the RTO and ISO footprints, many of the cost allocation methods that the Commission accepted in the Order No. 890 compliance proceedings rely exclusively on a "participant funding" approach to cost allocation. Under a participant funding approach to cost allocation, the

¹²⁶ *Id.* P 558.

¹²⁷ *Id.* P 561.

¹²⁸ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251. The Commission also stated that neither adoption of a cost allocation method nor identification of an upgrade (whether driven by reliability or economics) in a transmission plan triggers an obligation to build. *Id.*

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costs of a new transmission facility are allocated only to entities that volunteer to bear those costs.

128. For example, El Paso Electric proposed in its Order No. 890 compliance filing to use a cost allocation method in which such entities would share the costs proportionally based on each participant's desired use of the facility to be constructed.¹²⁹ Other members of WestConnect, such as Public Service Company of Colorado, filed and now use similar participant funding cost allocation methods.¹³⁰ South Carolina Electric & Gas included in its Order No. 890 compliance filing the Southeast Inter-Regional Participation Process (SIRPP) provisions stating that costs for economics-driven upgrades will be born entirely by the transmission owner that builds the facilities.¹³¹ Similarly, Entergy filed and had approved a method where the costs for projects developed under its Regional Planning Process and its interregional transmission planning process would be born by the party that constructs the facilities.¹³² ColumbiaGrid and the Northern Tier Transmission Group both utilize a study committee process whereby alternative cost allocation methods can be proposed for projects within their respective regions.¹³³ However, both ColumbiaGrid and Northern Tier

¹²⁹ *El Paso Electric Company*, 124 FERC ¶ 61,051, at P 44 (2008).

¹³⁰ *Xcel Energy Services, Inc. - Public Service Company of Colorado*, 124 FERC ¶ 61,052 (2008).

¹³¹ *South Carolina Electric & Gas Company*, 127 FERC ¶ 61,275, at P 50 (2009).

¹³² *Entergy Services, Inc.*, 127 FERC ¶ 61,272 (2009).

¹³³ *See Avista Corporation*, 128 FERC ¶ 61,065 (2009) and *Idaho Power Company*, 128 FERC ¶ 61,064 (2009).

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Transmission Group use a process where, if no agreement on cost allocation among the study team participants or the project proponents is obtained, the entities requesting the project will bear the costs.

2. October 2009 Notice and Subsequent Comments

129. As discussed above, in the October 2009 Notice, the Commission posed a number of questions with respect to allocating the cost of transmission facilities. Those questions drew wide-ranging responses as to whether further Commission action on cost allocation is needed at this time and, if so, what that action should be.

130. Among the commenters, there is general agreement that the Commission should not supersede existing, ongoing processes in various parts of the country that are attempting to address regional and interregional cost allocation issues.

131. Nonetheless, commenters supporting further Commission action on cost allocation at this time generally assert that the Commission should provide more detailed guidelines or principles for allocating the costs of new transmission facilities.¹³⁴ Many commenters argue that a clear path to cost recovery is necessary for a new transmission project to move beyond the evaluation stage and to be included in any regional transmission planning process and ultimately to proceed to construction.¹³⁵ Such commenters indicate that risks associated with cost recovery—together with the risks associated with

¹³⁴ *E.g.*, APPA, National Rural Electric Coops, Transmission Access Policy Study Group, Transmission Dependent Utility Systems, and California ISO.

¹³⁵ *E.g.*, American Transmission, AWEA, E.ON Climate & Renewables North America, Energy Future Coalition, and NextEra.

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permitting and siting—are among the most significant obstacles to the construction of a new transmission facility, especially if customers that are allocated costs do not perceive that they will benefit from the proposed facility.¹³⁶ Old Dominion emphasizes that many of the obstacles inhibiting transmission development are interrelated, but that greater certainty on cost allocation would likely ease access to capital for proposed facilities.¹³⁷

132. Several commenters specifically address cost allocation as an impediment to the development of generation to satisfy renewable portfolio standards implemented by the states.¹³⁸ AWEA, for example, states that cost allocation policies are the biggest impediment to construction of new transmission facilities, regardless of location, and that costs should be assigned to all entities that benefit from a new facility. AWEA further comments that a participant funding cost allocation method does not achieve that goal.¹³⁹ These commenters also state that uncertainty over cost allocation imposes significant costs on customers attempting to export energy from renewable resources and inhibit planning for the integration of the most economic generation resources into the transmission grid. Maine PUC and Public Advocate state that the existing ISO-NE cost

¹³⁶ *E.g.*, AWEA, Transmission Dependent Utility Systems, Xcel, Transmission Access Policy Study Group, and National Rural Electric Coops.

¹³⁷ Old Dominion at 26.

¹³⁸ *E.g.*, AWEA at 9-10, American Transmission and Exelon.

¹³⁹ AWEA at 4. *See also* Transmission Access Policy Study Group at 25-27.

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allocation methods are not optimal when considering large amounts of wind integration.¹⁴⁰

133. Similarly, the majority of commenters that address cost allocation for large, interregional transmission facilities agree that the Commission should provide more guidance on cost allocation.¹⁴¹ Some commenters complain that as a general matter, the Commission has addressed cost allocation methods only for facilities within the footprint of a single transmission provider or a single RTO or ISO, and not for interregional projects. For example, AEP states that it has experienced delays in developing transmission facilities that cross RTO boundaries as a result of uncertainty over cost allocation, as well as difficulties with how the facilities are to be planned.

134. Some of these commenters assert that the expansion of regional power markets and the increasing adoption by state governments of renewable energy requirements have led to a growing need for new transmission facilities that cross several utility and/or RTO or ISO regions. These commenters generally support, or state that they do not oppose, the Commission establishing a process to help stakeholders address cost allocation matters over larger geographic areas. For example, California ISO and the California Commission comment that, although cost allocation within the California ISO works well, they support the Commission creating a process to consider cost allocation over a larger region in the West.

¹⁴⁰ Maine PUC and Public Advocate at 7-8.

¹⁴¹ *E.g.*, AEP, ITC Holdings, and Exelon.

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135. In addition, the comments in response to the October 2009 Notice reflect a general consensus that those who share in the benefits of transmission projects should also share in their costs. However, there is no consensus on what types of benefits should be considered or how such benefits should be calculated. Certain commenters, for example, support recognition of a broad spectrum of benefits that may stem from transmission development, such as environmental impacts, land conservation and energy security.¹⁴² Other commenters urge the Commission to avoid a uniform approach to determining the benefits of transmission projects.¹⁴³

136. Several commenters suggest that if the Commission decides to establish a default cost allocation method for new transmission facilities, such a method should be employed and enforced only when stakeholders are unable to agree upon their own regional cost allocation method or methods.¹⁴⁴ For example, American Transmission, National Grid, Northern Tier Transmission Group, and NEPOOL Participants state that the Commission could create a generic cost allocation method as a backstop, which would apply when parties or regions could not come to their own agreement. Other commenters express the

¹⁴² *E.g.*, AEP, AWEA, Baltimore Gas and Electric, Energy Future Coalition, Green Energy Express, ITC Holdings, MidAmerican, National Audubon Society, NextEra, and Public Interest Organizations & Renewable Energy Groups.

¹⁴³ *E.g.*, ColumbiaGrid, ConEd, Delaware Municipal and Southwestern Electric, and Northeast Utilities.

¹⁴⁴ *E.g.*, American Transmission, National Grid, Northern Tier Transmission Group, and NEPOOL Participants.

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view that the Commission should create one or more rebuttable presumptions about who benefits from various types of facilities in order to make cost allocation easier.¹⁴⁵

137. Finally, many commenters state that no further generic Commission action on cost allocation is needed at this time because the processes in their own regions already address, or are now working to address, cost allocation. For example, in the Southeast, some commenters state that their processes for cost allocation are working well and argue that the Commission should continue to allow regional flexibility on cost allocation processes.¹⁴⁶ Similarly, in the West, some commenters state that cost allocation in their region is not a problem.¹⁴⁷

B. Legal Authority and Need for Reform

138. Based on the comments received in response to the October 2009 Notice, the Commission believes that further reform with respect to transmission cost allocation methods may be necessary in order to ensure that the rates, terms and conditions of transmission service in interstate commerce are just and reasonable and not unduly discriminatory or preferential.

1. The Cost Causation Principle

139. Under sections 205 and 206 of the FPA, the Commission is responsible for ensuring that the rates, terms, and conditions for transmission of electricity in interstate

¹⁴⁵ *E.g.*, ITC Holdings, MidAmerican, PJM, Solar Energy Industries, and WIRES.

¹⁴⁶ *E.g.*, Entergy, Southern Companies, and Florida Transmission Providers.

¹⁴⁷ *E.g.*, ColumbiaGrid, Northern Tier Transmission Group, Transmission Agency of Northern California, Salt River Project and WestConnect Planning Parties.

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commerce are just, reasonable, and not unduly discriminatory or preferential.¹⁴⁸ With respect to this responsibility, the Commission and the courts have found that the costs of jurisdictional transmission facilities must be allocated in a manner that satisfies the “cost causation” principle.

140. The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has defined the cost causation principle as follows: “[I]t has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.”¹⁴⁹ The U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) recently quoted and elaborated on that definition, stating, “All approved rates must reflect to some degree the costs actually caused by the customer who must pay them. Not surprisingly, we evaluate compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party. To the extent that a utility benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed.”¹⁵⁰

¹⁴⁸ 16 U.S.C. 824d, 824e.

¹⁴⁹ *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (*K N Energy*).

¹⁵⁰ *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) (*Illinois Commerce Commission*) (citing *K N Energy*, 968 F.2d at 1300; *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 708 (D.C. Cir. 2000); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1320-21 (D.C. Cir. 2004); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (*Midwest ISO Transmission Owners*); *Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009); *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 4-5 (D.C. Cir. 2002) (*Sithe*); 16 U.S.C. 824d).

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The Commission has frequently made similar statements with respect to the cost causation principle. For example, as noted above, the Commission stated in Order No. 890 that one factor it weighs when considering a dispute over cost allocation is whether a cost allocation proposal fairly assigns costs among participants, including those who cause the costs to be incurred and those that otherwise benefit from them.¹⁵¹

141. In applying the cost causation principle, the Commission has generally allocated costs to beneficiaries that have entered a voluntary arrangement with the public utility that is seeking to recover those costs. One example of a voluntary cost recovery arrangement with a public utility is voluntary membership in an RTO or ISO that makes an entity subject to the cost allocation provisions of the RTO's or ISO's tariff.¹⁵² The Commission also has permitted joint-ownership agreements where the owners share the costs of the new transmission facilities.

142. The cost causation principle, however, is not limited to voluntary arrangements. Indeed, if the Commission were limited to allocating costs only to beneficiaries that voluntarily accept those costs, then the Commission could not fulfill its responsibilities under the FPA. If the Commission could not address free rider problems associated with new transmission investment, then it could not ensure that transmission rates are just and reasonable and not unduly discriminatory. The cost causation principle provides that costs should be allocated to those who cause them to be incurred and those that otherwise

¹⁵¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.

¹⁵² The Commission notes that RTO or ISO membership does not eliminate the need to satisfy the other aspects of the cost causation principle that are discussed above.

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benefit from them, as the Commission also recognized in Order No. 890. In other words, the Commission may determine that an entity's status as a beneficiary of a transmission facility identified through an appropriate process is relevant for purposes of applying the cost causation principle, even if that beneficiary has not entered a voluntary arrangement with (e.g., as a customer of) the public utility that is seeking to recover the costs of that facility.

143. The Commission has expressed a willingness to make such a determination. For example, when presented with concerns about parallel path flow,¹⁵³ the Commission has offered repeatedly that if a public utility can demonstrate that a transaction is a burden on its system, then that utility can propose a transmission service rate for Commission consideration that would account for the unauthorized use of its system.¹⁵⁴ The Commission has cautioned against the hasty submittal of such unilateral filings, describing its general policy as expecting owners and controllers of transmission facilities

¹⁵³ The Commission has described the phenomenon of parallel path flow as follows: "In general, utilities transact with one another based on a contract path concept. For pricing purposes, parties assume that power flows are confined to a specified sequence of interconnected utilities that are located on a designated contract path. However, in reality power flows are rarely confined to a designated contract path. Rather, power flows over multiple parallel paths that may be owned by several utilities that are not on the contract path. The actual power flow is controlled by the laws of physics which cause power being transmitted from one utility to another to travel along multiple parallel paths and divide itself along the lines of least resistance. This parallel path flow is sometimes called 'loop flow.'" *Indiana Michigan Power Co. and Ohio Power Co.*, 64 FERC ¶ 61,184, at 62,545 (1993).

¹⁵⁴ See, e.g., *Amer. Elec. Power Svc. Corp.*, 49 FERC ¶ 61,377, at 62,381 (1989).

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to attempt to resolve parallel path flow issues on a consensual, regional basis.¹⁵⁵

Nonetheless, if approved by the Commission, such a proposal to address parallel path flow would allow a public utility to recover costs from a beneficiary of its system in the absence of a voluntary arrangement between the utility and that beneficiary.

144. The Commission also affirmatively required costs of transmission facilities to be allocated to beneficiaries in the absence of a voluntary arrangement in a series of orders involving the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM). Specifically, the Commission directed Midwest ISO and PJM to develop cost allocation methods for new facilities in one of their footprints that benefit entities in the other's footprint.¹⁵⁶ Echoing precedent applying the cost causation principle, the Commission later conditionally accepted a proposal that Midwest ISO and PJM submitted in compliance with that directive on the grounds that it "more accurately identifies the beneficiaries and allocates the associated costs" than did the cost allocation methods that were previously in place.¹⁵⁷

¹⁵⁵ *Id.* See also *Southern California Edison Co.*, 70 FERC ¶ 61,087, at 61,241-42 (1995).

¹⁵⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168, at P 60 (2004) (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,251, at P 56-57 (2004)). The Commission noted that Midwest ISO and PJM had committed in a Joint Operating Agreement to develop such a method for allocating the costs of certain facilities through their joint regional planning committee. *Id.* The Commission did not base the above-noted directive on the existence of the Joint Operating Agreement, which Midwest ISO and PJM developed in order to comply with a previous Commission directive. See *Alliance Cos.*, 100 FERC ¶ 61,137, at P 48, 53 (2002).

¹⁵⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,194, at P 10 (2005). See also *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084

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145. These examples show that the Commission has asserted its authority to allocate the costs of jurisdictional facilities to beneficiaries whether or not those beneficiaries have entered into a voluntary agreement with the public utility that is seeking to recover those costs.

146. In addition, courts have affirmed that the cost causation principle allows the Commission to allocate at least some types of costs to beneficiaries that are not customers of the public utility that is seeking to recover the costs in question. For example, the D.C. Circuit addressed this issue in a case that involved a proposal for Midwest ISO to recover administrative costs through a charge that would apply to transmission loads subject to the Midwest ISO's tariff rates: i.e., new wholesale loads and unbundled retail loads, but not bundled retail loads and loads served pursuant to grandfathered contracts.¹⁵⁸

Describing the core issue as whether the Commission's orders comported with the cost causation principle, the D.C. Circuit found that the Commission reasonably allocated the administrative costs more broadly than Midwest ISO proposed.¹⁵⁹ After stating that the subject costs were the administrative costs of having an ISO, the D.C. Circuit found that

(2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,102 (2009).

¹⁵⁸ *Midwest ISO Transmission Owners*, 373 F.3d 1361. The D.C. Circuit stated that the subject costs "are primarily MISO's startup expenses – particularly those pertaining to the MISO Security Center – and certain expenses pertaining to the creation and administration of MISO's open access tariff." *Id.* at 1369.

¹⁵⁹ *Id.* at 1370.

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the Commission correctly determined that bundled and grandfathered loads should share the cost of having an ISO because they drew benefits from Midwest ISO.¹⁶⁰

147. Thus, in applying the cost causation principle, the Commission may allocate costs of a transmission facility to a beneficiary identified through an appropriate process, such as a Commission-approved transmission planning process, even if that beneficiary has not entered a voluntary arrangement with the public utility that is seeking to recover the costs of that facility. After satisfying this standard with respect to beneficiary identification, the cost causation principle also requires the Commission to ensure that the costs allocated to a beneficiary under a cost allocation method are at least roughly commensurate with the benefits that are expected to accrue to that entity.¹⁶¹ On this point, the D.C. Circuit has explained that “the cost causation principle does not require exacting precision in a ratemaking agency’s allocation decisions.”¹⁶²

2. Need for Reform

148. The Commission’s responsibility under FPA sections 205 and 206 to ensure that transmission rates are just and reasonable and not unduly discriminatory or preferential is not new, nor is the Commission’s recognition of the cost causation principle. However,

¹⁶⁰ *Id.* at 1370-71.

¹⁶¹ *Illinois Commerce Commission*, 576 F.3d at 476-77 (“We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.”). *See also Midwest ISO Transmission Owners*, 373 F.3d 1361 at 1369 (“we have never required a ratemaking agency to allocate costs with exacting precision.”); *Sithe*, 285 F.3d 1 at 5.

¹⁶² *Midwest ISO Transmission Owners*, 373 F.3d 1361 at 1371 (citing *Sithe*, 285 F.3d 1 at 5).

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the circumstances in which the Commission must fulfill its statutory responsibilities change with developments in the electric industry, such as changes with respect to the demands placed on the transmission grid.

149. The Commission has previously recognized changes in circumstances that warranted changes in the manner by which public utilities recover transmission costs. In the early 1990s, the Commission identified “dramatic changes which the electric industry has faced, and will face in the near term,” such as “increased reliance on market forces to meet power supply needs; new market entrants such as exempt wholesale generators; a significant number of utility mergers and combinations; more highly integrated operation of various power pools; and substantial bulk power trading among electric systems,” as well as the initial filing of open access transmission tariffs.¹⁶³ To account for those developments and the industry’s changing needs, the Commission issued a policy statement that increased flexibility with respect to transmission pricing.¹⁶⁴

150. Many of those changes have not only continued but also accelerated in recent years. For example, as commenters stated in response to the October 2009 Notice, the further expansion of regional power markets has led to a growing need for new transmission facilities that cross several utility, RTO, ISO or other regions. The

¹⁶³ See Notice of Technical Conference and Request for Comments in Inquiry Concerning the Commission’s Pricing Policy for Transmission Services Provided by Public Utilities under the Federal Power Act, 58 FR 36400, at 36401 (1993).

¹⁶⁴ Policy Statement in Inquiry Concerning the Commission’s Pricing Policy for Transmission Services Provided by Public Utilities under the Federal Power Act, FERC Stats. & Regs., Regulations Preambles January 1991 – June 1996 ¶ 31,005 (1994).

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industry's continuing transition from relatively localized trading to larger regional power markets also results, among other effects, in broader diffusion of the benefits associated with transmission upgrades and new transmission facilities.

151. Similarly, the increasing adoption of state resource policies, such as renewable portfolio standard measures, has contributed to rapid growth of location-constrained renewable energy resources that are frequently remote from load centers, as well as a growing need for new transmission facilities that cross several utility and/or RTO or ISO regions. Transmission facilities that are needed to comply with state renewable portfolio standard measures illustrate the increasing potential for benefits associated with meeting public policy-driven transmission needs.

152. More generally, as stated above, challenges associated with allocating the cost of transmission appear to have become more acute as the need for transmission infrastructure has grown. As noted above, constructing new transmission facilities requires a significant amount of capital. Therefore, a threshold consideration for any company considering investing in transmission is whether it will have a reasonable opportunity to recover its costs. However, there are few rate structures in place today that provide both for analysis of the beneficiaries of a transmission facility that is proposed to be located within a transmission planning region that is outside of an RTO or ISO, or in more than one transmission planning region, and for corresponding allocation and recovery of the facility's costs. The lack of such rate structures creates significant risk for transmission developers that they will have no identified group of customers from which to recover the cost of their investment. In addition, cost allocation within RTO or

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ISO regions, particularly those that encompass several states, is often contentious and prone to litigation because it is difficult to reach an allocation of costs that is perceived as fair. Some comments filed in response to the October 2009 Notice present these types of concerns and state the resultant uncertainty regarding cost allocation remains an impediment to development of needed transmission facilities.

153. The risk of the free rider problems associated with new transmission investment that the Commission described in Order No. 890 is also particularly high for projects that affect multiple utilities' transmission systems and therefore may have multiple beneficiaries. With respect to such projects, any individual beneficiary has an incentive to defer investment in the hopes that other beneficiaries will value the project enough to fund its development. On one hand, a cost allocation method that relies exclusively on a participant funding approach, without respect to other beneficiaries of a transmission facility, increases this incentive and, in turn, the likelihood that needed transmission facilities will not be constructed in a timely manner. On the other hand, if costs are allocated to entities that will receive no benefit from a transmission facility, then those entities are more likely to oppose inclusion of the facility in a regional transmission plan or to otherwise impose obstacles that delay or prevent the facility's construction.

154. In light of these challenges and recent developments affecting the industry, the Commission is concerned that existing cost allocation methods may not appropriately account for benefits associated with new transmission facilities and, thus, may result in rates that are not just and reasonable or are unduly discriminatory or preferential.

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C. Proposed Reforms

155. The Commission proposes to amend its regulations to address the concerns discussed above.

156. First, we propose to more closely align transmission planning and cost allocation processes. A transmission planning process includes a facility in a transmission plan in order to achieve a specific purpose or purposes, such as to avoid an impending violation of a Reliability Standard, reduce congestion and thereby increase access to lower-cost resources, or enable compliance with public policy requirements established by state or federal laws or regulations. Because such purposes involve the identification of expected beneficiaries—either explicitly or implicitly—establishing a closer link between transmission planning and cost allocation will address in part the Commission’s concern that existing cost allocation methods may not appropriately account for benefits associated with new transmission facilities.

157. The Commission has previously suggested that transmission planning at least on a regional basis is closely related to cost allocation. As noted above, this premise underlies the Commission’s establishment in Order No. 890 of a transmission planning principle on cost allocation for new transmission facilities. In addition, the Commission has explained that it may be appropriate to have different cost allocation methods for facilities that are planned for different purposes or pursuant to different transmission planning processes. For example, the Commission distinguished between existing facilities in Midwest ISO and PJM for which it found that license plate rates are appropriate, and new facilities in

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those regions for which it approved broader cost allocation methods.¹⁶⁵ The Commission found it significant that Midwest ISO and PJM plan the construction of new facilities based on each RTO's independent transmission planning process, which helps to ensure that new projects are necessary to meet the reliability and economic needs of each RTO's system as a whole. The Commission also noted that Midwest ISO and PJM plan certain new facilities pursuant to a joint RTO planning process under a Joint Operating Agreement. By contrast, the Commission stated that decisions to build existing facilities within Midwest ISO and PJM were not made as part of any regional planning process.¹⁶⁶

158. The Commission recognizes that identifying which types of benefits are relevant for cost allocation purposes, which entities are receiving those benefits, and the relative benefits that accrue to various beneficiaries can be difficult and controversial. The Commission believes that a transparent transmission planning process is the appropriate forum to address these issues. In addition, addressing these issues through the transmission planning process would increase the likelihood that facilities included in transmission plans are actually constructed, rather than being included in a transmission plan only to later encounter cost allocation disputes that prevent their construction.

159. Accordingly, the Commission proposes to require that every public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities that are included in the transmission plan produced by the

¹⁶⁵ *Amer. Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083, at P 13-24 (2008).

¹⁶⁶ *Id.* P 96.

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transmission planning process in which it participates. If the public utility transmission provider is an RTO or ISO, then the method or methods would be required to be set forth in the RTO or ISO tariff. In other transmission planning regions, each public utility transmission provider located within the region would be required to set forth in its tariff the method or methods for cost allocation used in its transmission planning region.

160. An RTO or ISO or the public utility transmission providers in a transmission planning region may have a single cost allocation method for all new transmission facilities or different methods for different types of facilities. For example, cost allocation methods may distinguish among facilities that are driven by needs associated with maintaining reliability, relieving congestion, and achieving public policy requirements established by state or federal laws or regulations, all of which would be required to be considered in the regional transmission planning process as explained elsewhere in this Proposed Rule. The Commission recognizes that several transmission planning regions that have different cost allocation methods by type of project currently have transmission planning procedures and cost allocation methods that refer only to the first two categories of transmission projects. The Proposed Rule would permit a public utility transmission provider or transmission planning region to distinguish or not distinguish among these three types of transmission facilities, as long as each of the three is considered in the transmission planning process and there is a means for allocating the costs of each type of facility to beneficiaries.

161. Second, we propose to require that each public utility transmission provider within a transmission planning region develop a method for allocating the costs of a new

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interregional transmission facility between the two neighboring transmission planning regions in which the facility is located or among the beneficiaries in the two neighboring transmission planning regions.

162. Third, to ensure that the cost allocation method or methods are just and reasonable and not unduly discriminatory or preferential, we propose to assess each cost allocation method based upon the cost allocation principles set out in the following sections, one set of principles for intraregional facilities and another for interregional facilities. To reiterate, we propose that the cost allocation method or methods be applied to new transmission facilities included in the transmission plan produced by the transmission planning process in which the public utility transmission provider participates.

163. Finally, we note that under our proposals, public utility transmission providers will have the first opportunity to develop cost allocation methods for intraregional and interregional transmission facilities in consultation with customers and other stakeholders. In the event that no agreement can be reached, the Commission would use the record in the relevant compliance filing proceeding as a basis to develop a cost allocation method or methods that meets the Commission's proposed requirements.

1. Intraregional Cost Allocation

164. An intraregional transmission facility is defined as a transmission facility located entirely within the geographic boundaries of one transmission planning region. As proposed here, each RTO or ISO on behalf of its transmission owning members, or the individual public utility transmission providers in a non-RTO or ISO transmission planning region, would be required to demonstrate through a compliance filing that it has

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a cost allocation method or methods that address cost recovery for each new transmission facility included in its regional transmission plan and that satisfy the following principles:

- (1) The cost 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.¹⁶⁷ In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting public policy requirements established by state or federal laws or regulations that may drive transmission needs.¹⁶⁸
- (2) Those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated the costs of those facilities.
- (3) If a benefit to cost threshold is used to determine which facilities have sufficient net benefits to be included in a regional transmission plan for the

¹⁶⁷ *Illinois Commerce Commission*, 576 F.3d at 476-77 (“We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.”). *See also Midwest ISO Transmission Owners*, 373 F.3d 1361 at 1369 (“we have never required a ratemaking agency to allocate costs with exacting precision.”); *Sithe*, 285 F.3d 1 at 5.

¹⁶⁸ As discussed above, the Commission proposes to require each public utility transmission provider to amend its OATT such that its local and regional transmission planning processes explicitly provide for consideration of public policy requirements established by state or federal laws or regulations that may drive transmission needs.

purpose of cost allocation, it must not be so high that facilities with significant positive net benefits are excluded from cost allocation. A transmission planning region or public utility transmission provider may want to choose such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, 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 greater ratio.

- (4) The allocation method for the cost of an intraregional facility 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.¹⁶⁹ However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if there is an agreement for the original region 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 entities in the original region.

¹⁶⁹ In addition, the Commission preliminarily finds that this principle does not affect the cross-border cost allocation methods developed by PJM and the Midwest ISO in response to Commission directives related to their intertwined configuration. *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,194, at P 10 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,102 (2009).

- (5) 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.
- (6) A transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional plan, such as transmission facilities needed for reliability, congestion relief, or to achieve public policy requirements established by state or federal laws or regulations. Each cost allocation method must be set out clearly and explained in detail in the compliance filing for this rule.

165. In proposing these principles, the Commission does not intend to prescribe a uniform approach to cost allocation for new intraregional transmission facilities. To the contrary, we recognize that regional differences may warrant distinctions in cost allocation methods among transmission planning regions. Therefore, this Proposed Rule would allow the public utility transmission providers in each transmission planning region to develop a transmission cost allocation method that best suits the needs of that transmission planning region.

166. However, the Commission proposes that, if the public utility transmission providers in a transmission planning region, in consultation with customers and other stakeholders, cannot agree on a cost allocation method for new intraregional transmission facilities that satisfies these principles, the Commission would use the record in the relevant compliance filing proceeding as a basis for applying these principles to develop

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a cost allocation method that meets the Commission's requirements. Consistent with the Commission's intention not to prescribe a uniform approach, this cost allocation method would not necessarily be the same for every transmission planning region where the public utility transmission providers are unable to agree on a cost allocation method that satisfies the principles.

167. The Commission recognizes that several approaches to cost allocation may satisfy the proposed principles. For example, a postage stamp cost allocation method may be appropriate where all customers within a specified transmission planning region are found to benefit from the use or availability of a facility or class or group of facilities (e.g., all transmission facilities at 345 kV or higher), especially if the distribution of benefits associated with a class or group of facilities is likely to vary considerably over the long depreciation life of the facilities amid changing power flows, fuel prices, population patterns, and local economic developments. Similarly, other methods that propose cost allocation to a narrower class of beneficiaries may be appropriate, provided that the method reflects an evaluation of beneficiaries and is adequately defined and supported by the transmission planning region.

168. In addition, the principles proposed in this rulemaking do not foreclose the opportunity for a transmission developer or individual customer to voluntarily assume the costs of a new transmission facility. In other words, the proposed principles would not prohibit voluntary participant funding. However, if a transmission developer believes that others in the transmission planning region may benefit from a new transmission facility and want to seek broader cost allocation, then that developer must be permitted to

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propose its project in the regional transmission planning process that will evaluate the project's beneficiaries. If the facility is included in the regional transmission plan, the costs of that facility must be eligible for allocation pursuant to the Commission-approved method for allocating the cost of a new transmission facility in that plan.¹⁷⁰ As stated above, a cost allocation method that relies exclusively on a participant funding approach, without respect to other beneficiaries of a transmission facility, exacerbates the free rider problem that the Commission described in Order No. 890. Such a cost allocation method would not satisfy the proposed principles.

169. With regard to a new transmission facility that is located entirely within one transmission owner's service territory, a transmission owner may not unilaterally invoke the regional cost allocation method to require the allocation of the costs of a new transmission facility to other entities in its transmission planning region. However, if the regional transmission planning process determines that a new facility located solely within a transmission owner's service territory would provide benefits to others in the region, allocating the facility's costs according to that region's intraregional cost allocation method would be permitted.

2. Interregional Cost Allocation

170. An interregional transmission facility is one that is located within two or more transmission planning regions. In the past, most transmission upgrades were planned and

¹⁷⁰ However, certain transmission developers may seek to participate in the regional transmission planning process only for coordination purposes (e.g., to perform a reliability check for a participant-funded or merchant transmission project), in which case the transmission plan would not include a cost allocation for such projects.

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constructed to meet the needs of customers within a given transmission planning region. However, new transmission facilities located within multiple transmission planning regions are now being considered by transmission providers in various parts of the nation. For example, as discussed above, development of renewable energy resources is increasing rapidly, in part in response to state renewable portfolio standard requirements. However, many of these resources are located far from load centers. New transmission facilities located within multiple transmission planning regions may be necessary to deliver the output of these renewable energy resources.

171. There are few rate structures in place today that provide for the allocation and recovery of costs of interregional transmission facilities. We are concerned that the absence of clear cost allocation rules for interregional transmission facilities could impede the development of such facilities, because of uncertainty regarding recovery of associated costs. In addition, the combined size of the multiple transmission planning regions in which an interregional facility would be located may increase the potential for both free ridership and the allocation of costs to those that receive no benefit from a facility.

172. Therefore, we propose to require that the public utility transmission providers located in each pair of neighboring transmission planning regions develop a mutually agreeable method for allocating between the two transmission planning regions the costs of a new transmission facility that is located within both regions and that is eligible for interregional cost recovery pursuant to the region's interregional transmission planning agreement developed in accordance with the requirement proposed above. In an RTO or

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ISO region, we propose that the method must be filed to become a part of the relevant tariffs. In other transmission planning regions, we propose that the cost allocation method be filed as part of the OATT of each public utility transmission provider in the region.

173. A group of three or more transmission planning regions within an interconnection—or all of the transmission planning regions within an interconnection—may agree on and file a common method for allocating the costs of a new interregional transmission facility. However, the Commission does not propose to require such agreements among more than two neighboring transmission planning regions.

174. Each cost allocation method filed in accordance with this proposal would be required to comply with the following principles:

- (1) The costs of a new interregional facility must be allocated to each transmission planning region in which that facility is located in a manner that is at least roughly commensurate with the estimated benefits of that facility in each of the transmission planning regions. In determining the beneficiaries of interregional transmission facilities, transmission planning regions may consider benefits including, but not limited to, those associated with maintaining reliability and sharing reserves, production cost savings and congestion relief, and meeting public policy requirements established by state or federal laws or regulations that may drive transmission needs.¹⁷¹

¹⁷¹ As discussed above, the Commission proposes to require each public utility
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- (2) A transmission planning region that receives no benefit from an interregional transmission facility that is located in that region, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of that facility.¹⁷²
- (3) If a benefit-cost threshold ratio is used to determine whether an interregional transmission facility has sufficient net benefits to qualify for interregional cost allocation, this ratio must not be so large as to exclude a facility with significant positive net benefits from cost allocation. The public utility transmission providers located in the neighboring transmission planning regions may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold, may not include a ratio of benefits to costs that exceeds 1.25 unless the pair of regions justifies and the Commission approves a higher ratio.
- (4) Costs allocated for an interregional facility must be assigned only to transmission planning regions in which the facility is located. Costs cannot be assigned involuntarily under this rule to a transmission planning region in which that facility is not located. However, the interregional planning process

transmission provider to amend its OATT such that its local and regional transmission planning processes explicitly provide for consideration of public policy requirements established by state or federal laws or regulations that may drive transmission needs.

¹⁷² For example, a DC line that runs from a first transmission planning region, through a second transmission planning region, and into a third transmission planning region, with no tap in the second region, may not provide any benefits to the second region.

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must identify consequences for other transmission planning regions, such as upgrades that may be required in a third transmission planning region and, if there is an agreement among the transmission providers in the regions in which the facility is located to bear costs associated with such upgrades, then the interregional cost allocation method must include provisions for allocating the costs of the upgrades within the transmission planning regions in which the facility is located.

- (5) The cost allocation method and data requirements for determining benefits and identifying beneficiaries for an interregional facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.
- (6) The public utility transmission providers located in neighboring transmission planning regions may choose to use a different cost allocation method for different types of interregional facilities, such as transmission facilities needed for reliability, congestion relief, or to achieve public policy requirements established by state or federal laws or regulations. Each cost allocation method must be set out and explained in detail in the compliance filing for this rule.

175. As with intraregional cost allocation, we are not proposing to require a uniform method of cost allocation for interregional transmission facilities. There may be legitimate reasons for the public utility transmission providers located in neighboring transmission planning regions to adopt different cost allocation methods. The

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Commission recognizes that several approaches to cost allocation may satisfy the proposed principles.¹⁷³

176. Therefore, we propose to allow methods for allocating the costs of new interregional facilities to differ among pairs of transmission planning regions, as long as each method satisfies the proposed interregional cost allocation principles listed above. Moreover, the method used for allocating interregional transmission facility costs between any two transmission planning regions may be different from the method used by the public utility transmission providers located in either of those transmission planning regions to allocate the costs of new intraregional facilities. In addition, the cost allocation method used by the public utility transmission providers located in a transmission planning region to allocate the costs of new intraregional facilities could be different from the cost allocation method by which the public utility transmission providers in the same transmission planning region further allocate costs to be borne by that transmission planning region pursuant to an agreed-upon method for allocating the costs of interregional facilities.

177. Similar to our proposal for intraregional transmission facilities, we propose that if the public utility transmission providers in coordination with their customers and other stakeholders in a pair of neighboring transmission planning regions cannot agree on a

¹⁷³ For the reasons discussed above with respect to cost allocation for intraregional transmission facilities, a cost allocation method that relies exclusively on a participant funding approach, without respect to other beneficiaries of a transmission facility, would not satisfy the proposed principles for interregional cost allocation.

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cost allocation method for new interregional transmission facilities that satisfies these principles, then the Commission would use the record in the relevant compliance filing proceedings as a basis for applying the principles to develop an interregional cost allocation method that meets the Commission's requirements. Such a cost allocation method would not necessarily be the same for every pair of neighboring transmission planning regions that is unable to agree on a cost allocation method that satisfies the principles.

178. We seek comment on any issue of interest or concern related to the requirements proposed in this section of the Proposed Rule. In particular, we seek comment on the appropriateness and application of the proposed cost allocation principles with respect to new intraregional and interregional transmission facilities. If commenters believe that additional principles should apply to cost allocation for either intraregional or interregional transmission facilities, the Commission asks commenters to submit and explain the need for those principles.

VI. Compliance Filings

179. The Commission proposes that each public utility transmission provider must comply with the requirements of this Proposed Rule. With the exception of the proposed requirements with respect to interregional transmission planning agreements and an interregional cost allocation method or methods, the Commission proposes to require each public utility transmission provider to submit a compliance filing within six months of the effective date of the final rule in this proceeding revising its OATT or other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it