

142 FERC ¶ 61,129
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Maine Public Service Company

Docket No. ER13-85-000

ORDER ON COMPLIANCE FILING

(Issued February 21, 2013)

1. On October 11, 2012, Maine Public Service Company (MPS) submitted revisions to Attachment R of its Open Access Transmission Tariff (OATT) to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.¹ In this order, we grant MPS waiver with respect to the regional transmission planning and cost allocation requirements of Order No. 1000 and conditionally accept MPS's proposed changes to its local transmission planning process, subject to a further compliance filing, as discussed below.

I. Background

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890² to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by Public Policy Requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

3. Order No. 1000's cost allocation reforms require that each public utility transmission provider participate in a regional transmission planning process that has: (1) a regional cost allocation method or methods for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation and (2) an interregional cost allocation method or methods for the cost of new transmission facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission coordination procedures required by Order No. 1000. Order No. 1000 also requires that each cost allocation method satisfy six cost allocation principles.

4. The Commission acknowledged in Order No. 1000 that each transmission planning region has unique characteristics, and, therefore, Order No. 1000 accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate regional differences.³ Order No. 1000 does not prescribe the exact manner in which public utility transmission providers must fulfill the regional transmission planning requirements.⁴ Similarly, because the Commission did not want to prescribe a uniform method of cost allocation for every transmission planning region, Order No. 1000 adopts the use of cost allocation principles.⁵ The Commission stated that it was acting to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms, and conditions that are just and reasonable and not unduly discriminatory or preferential, and it acknowledged that public utility

³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

⁴ *Id.* P 157.

⁵ *Id.* P 604.

transmission providers in some regions may already meet or exceed some requirements of Order No. 1000.⁶

II. Compliance Filing

5. MPS states that the Northern Maine Independent System Administrator's (NMISA) regional transmission planning process largely complies with the regional transmission planning requirements of Order No. 1000.⁷ Alternatively, should the Commission determine that the NMISA Tariff and Market Rules are not fully compliant with Order No. 1000, MPS requests waiver of the Order No. 1000 regional compliance requirements since MPS is unable to make unilateral modifications to the regional NMISA Tariff and Market Rules. MPS also proposed changes to Attachment R to its OATT to comply with the local transmission planning requirements of Order No. 1000. MPS seeks an effective date for its compliance filing of December 11, 2012.

III. Notice of Filing and Responsive Pleadings

6. Notice of MPS's filing was published in the *Federal Register*, 77 Fed. Reg. 64,502 (2012), with interventions and protests due on or before November 26, 2012.

7. American Wind Energy Association filed a timely motion to intervene. Houlton Water Company, Van Buren Light and Power District, Eastern Maine Electric Cooperative, Inc. and Maine Public Advocate (collectively, NMISA Parties), and NMISA filed timely motions to intervene and protests. On December 11, 2012, MPS filed an answer.

⁶ *Id.* P 13.

⁷ NMISA provides for the administration of the reservation, scheduling, and dispatch of the Northern Maine transmission systems, including that of MPS. Additionally, it is responsible for the administration of the Northern Maine energy, ancillary, and related services markets. There are currently seven members on the NMISA Board, representing utilities, generators, customers, and electricity providers. Transmittal Letter at 2-3.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept MPS's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

10. We find that, given MPS's unique circumstances, it is appropriate to grant waiver to MPS with respect to the regional transmission planning and cost allocation requirements adopted in Order No. 1000. We find that MPS's proposed revised Attachment R, with certain modifications, complies with the local transmission planning requirements adopted in Order No. 1000. Accordingly, we will accept MPS's compliance filing to be effective December 11, 2012, subject to a further compliance filing as discussed below. We will direct MPS to file the compliance filing within 90 days of the date of issuance of this order.

1. Order No. 1000 Compliance and Request for Waiver

11. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that complies with the identified transmission planning principles of Order No. 890 and that, in consultation with stakeholders, results in the development of a regional transmission plan.⁸ The regional transmission plan will identify transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related⁹ needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.¹⁰

⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

⁹ Public Policy Requirements are defined and described below.

¹⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 11, 148.

a. **MPS Filing**

12. MPS seeks to comply with Order No. 1000's requirement to participate in a regional transmission planning process that complies with the local transmission planning principles of Order No. 890 through its participation in the NMISA regional transmission planning process, which MPS states represents a coordinated, open, and transparent planning process.¹¹ In support, MPS explains that under Market Rule 9, NMISA will develop a base case each year for planned development in the Northern Maine transmission system. If NMISA identifies a need to alleviate an existing or emerging transmission constraint and determines that no adequate proposal exists to address the identified need, then it will develop technically feasible options in consultation with market participants and will issue a request for proposals to implement one or more of these options. MPS notes that any eligible bidder may submit a proposal, and NMISA shall examine each proposal to determine whether it is technically feasible and will alleviate the transmission constraint. NMISA will then identify a preferred proposal, will implement a preferred plan, and will report to the NMISA Board of Directors on development of the plan.

13. Additionally, MPS states that other aspects of NMISA's Tariff and Market Rules meet the Commission requirements as outlined in Order No. 1000. First, MPS states that NMISA's Tariff and Market Rules do not contain a right of first refusal and, therefore, satisfy the requirement that any federal rights of first refusal be removed from Commission-approved tariffs and agreements.¹² Second, MPS asserts that NMISA Market Rules section 9.4.2 provides that any eligible bidder, including a merchant transmission developer, may submit a proposal.¹³ Third, MPS states that because the NMISA Market Rules require NMISA to file any request for proposals, including its terms and conditions, with the Commission for approval at least 60 days prior to its issuance, the Commission and all potential participants will be on notice as to what NMISA expects from an eligible bidder.¹⁴ Finally, regarding regional cost allocation, MPS states that section 4.13 of the NMISA Tariff provides that NMISA shall monitor

¹¹ MPS states that NMISA's regional planning process is a coordinated, open, and transparent planning process. *See* Transmittal Letter at 13. The Commission notes, however, that NMISA did not make, and the Commission did not rule on, an Order No. 890 compliance filing from NMISA.

¹² Transmittal Letter at 12.

¹³ *Id.* at 14.

¹⁴ *Id.*

transactions between loads and resources on both the MPS and Eastern Maine Electric Cooperative, Inc. (EMEC) transmission system for the purpose of determining the transmission service access fee. MPS also notes that section 9.5.4 of the NMISA Market Rules commits NMISA to assist or support a bidder in obtaining regulatory approvals required for the construction of new or modified transmission facilities with respect to the recovery by the bidder of the costs of such construction from ratepayers.¹⁵

b. Waiver Request

14. As discussed above, MPS states that the NMISA regional transmission planning process satisfies the regional transmission planning requirements of Order No. 1000. However, MPS adds that, if the Commission does not find NMISA's regional transmission planning process to be fully compliant with Order No. 1000, MPS seeks a waiver for those requirements with respect to regional transmission planning and cost allocation.¹⁶

15. In support of its request for a waiver, MPS states that it is in a unique situation because it is not directly interconnected to the United States transmission grid, has a small load of 125 MW, and has mostly transmission facilities of 69 kV or below. MPS further states that it is difficult to find a planning partner subject to the Order No. 1000 requirements because it is the only Commission-jurisdictional transmission provider in northern Maine.¹⁷ MPS further notes that while it must comply with Order No. 1000, it also must comply with the terms of the NMISA Tariff. This includes a provision stating that “[a]ny [Transmission System Operator] operating in the Northern Maine Market subject to Commission jurisdiction as a public utility shall seek to conform its Transmission Tariff to this [NM]ISA Tariff through an appropriate filing with the Commission subject to Commission acceptance of such filing.”¹⁸ MPS asserts that any action to create a separate regional transmission planning process would be in conflict with the NMISA Tariff, which would potentially create issues among other NMISA participants or state authorities. MPS also states that, because NMISA is not a

¹⁵ *Id.* at 15.

¹⁶ *Id.* at 17.

¹⁷ *Id.* at 18.

¹⁸ *Id.* (citing NMISA Tariff § 5.4).

transmission provider, NMISA has indicated that it does not believe it is necessary to change its tariff or Market Rules to comply with Order No. 1000.¹⁹

16. MPS notes that the Commission has previously granted waivers of Order No. 890 transmission planning requirements where the transmission provider met certain factors, namely: (1) the transmission provider served only one customer; (2) no other existing or potential transmission customers were directly interconnected to the transmission provider's transmission system; (3) the transmission system was primarily radial in nature; (4) the Balancing Authority Area at issue would comply with Order No. 890 requirements; and (5) the expense and timing to develop the detailed planning procedures were likely to be significant.²⁰

17. MPS argues that it meets the above criteria in that: (1) MPS only serves three wholesale customers, all of whom are represented on the NMISA Board; (2) MPS's system is primarily made up of 69 kV or below facilities; (3) NMISA has in place a coordinated, open, and transparent regional planning process; and (4) the expense and timing to develop detailed planning procedures, in light of the small size of MPS and other entities in northern Maine, is likely to be significant.²¹

c. Responsive Pleadings

18. With respect to whether the NMISA Tariff and Market Rules satisfy the requirements of Order No. 1000, the NMISA Parties state that, since the NMISA Tariff and Market Rules do not address cost allocation for transmission facilities selected in a regional transmission plan, MPS's claim that it meets the regional requirements of Order No. 1000 has no basis.²²

d. Commission Determination

19. Order No. 1000 requires that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan and that complies with certain transmission planning principles of Order No. 890 identified in Order No. 1000.²³ The process used to produce the regional transmission

¹⁹ *Id.* at 19.

²⁰ *Id.* at 18 (citing *NewCorp Res. Coop. Inc.*, 123 FERC ¶ 61,120, at P 14 (2008)).

²¹ *Id.* at 19.

²² NMISA Parties Protest at 5-6.

²³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 146, 151.

plan must satisfy the following Order No. 890 transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning.²⁴ These transmission planning principles, which were adopted with respect to local transmission planning processes pursuant to Order No. 890, must now be applied to the regional transmission planning processes established in Order No. 1000. We will not assess MPS's compliance with each of these principles, but instead, will grant the requested waiver, as further discussed below.

20. We find that MPS is uniquely situated. MPS provides transmission and distribution service to approximately 36,000 retail customers and three wholesale customers. The total load in MPS's service territory is approximately 125 MW. The MPS transmission system is comprised of approximately 393 miles of transmission facilities operating at up to 138 kV, the majority of which operate at 69 kV and below. MPS is not directly interconnected with any portion of the United States' transmission grid and is not interconnected with any other public utility, including ISO New England, Inc. (ISO New England); nor is it a member of ISO New England or the New England Power Pool. Rather, MPS's only access to the United States' transmission grid is indirect, through the Canadian province of New Brunswick by way of a 345 kV transmission line owned by NB Power²⁵ and WPS Canada Generation Inc.²⁶ MPS and EMEC²⁷ are the only owners of transmission facilities within the area administered by NMISA, and serve only customers in the United States.

21. Accordingly, we find that MPS's unique geographic and electrical situation makes it impossible for it to join a transmission planning region that would be consistent with Order No. 1000's regional scope requirement. Order No. 1000 states that the scope

²⁴ *Id.* P 151. These transmission planning principles are explained more fully in Order No. 890.

²⁵ NB Power is a statutory body created by legislature of the Province of New Brunswick, Canada, and is not subject to the Commission's jurisdiction. The 345 kV transmission line interconnects NB Power and Maine Electric Power Company, which is a transmission-owning member of ISO New England.

²⁶ WPS Canada Generation Inc. is a subsidiary of WPS Power Development Inc., Integrys Energy Services, and Integrys Energy Group, a Fortune 1000 company headquartered in Chicago, Illinois.

²⁷ EMEC is a rural electric cooperative not subject to the Commission's jurisdiction. Only a small portion of EMEC's load is directly interconnected with MPS.

of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues facing individual regions.²⁸ Because MPS is not interconnected with any other public utility transmission provider, it must rely on neighboring non-public utility transmission providers to voluntarily comply with Order No. 1000's requirements if it is to belong to a transmission planning region that is "governed by the integrated nature of the regional power grid."²⁹ The non-public utility transmission provider to which MPS is interconnected does not propose to comply with the requirements of Order No. 1000; thus, MPS cannot participate in a transmission planning region that meets Order No. 1000's regional scope requirement. Therefore, we will grant waiver of Order No. 1000's regional requirements to MPS. However, this does not preclude MPS from complying with those Order No. 1000 requirements that do not depend on being a part of a transmission planning region, e.g., the requirement to consider transmission needs driven by Public Policy Requirements in its local planning process, as further discussed below.

2. Consideration of Transmission Needs Driven by Public Policy Requirements

22. Order No. 1000 requires public utility transmission providers to amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.³⁰ The Commission clarified in Order No. 1000-A that Order No. 1000 requires that transmission needs driven by Public Policy Requirements be considered just as transmission needs driven by reliability or economic concerns are also considered.³¹ Public Policy Requirements are requirements established by local, state, or federal laws or regulations (i.e., enacted statutes passed by the legislature and signed by the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).³² As explained further below, Order No. 1000 specifies that the

²⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160 (citing Order No. 890, FERC Stats & Regs. ¶ 31,241 at P 527).

²⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527.

³⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

³¹ Order No. 1000-A, 139 FERC ¶ 61,132 at PP 204, 206, 208-211, 317-319.

consideration of transmission needs driven by Public Policy Requirements means: (1) the identification of transmission needs driven by Public Policy Requirements and (2) the evaluation of potential solutions to meet those identified needs.³³

23. To comply with the requirement to identify transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with their stakeholders, must establish procedures in their OATTs to identify at the local and regional level those transmission needs driven by Public Policy Requirements for which potential transmission solutions will be evaluated.³⁴ The process for identifying transmission needs driven by Public Policy Requirements must allow stakeholders, including, but not limited to, those responsible for complying with the Public Policy Requirements at issue and the developers of potential transmission facilities that are needed to comply with one or more Public Policy Requirements, an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements.³⁵ Public utility transmission providers must explain in their compliance filings how the procedures adopted give all stakeholders a meaningful opportunity to submit what the stakeholders believe are transmission needs driven by Public Policy Requirements.³⁶

24. In addition, public utility transmission providers, in consultation with stakeholders, must establish a just and reasonable and not unduly discriminatory process through which public utility transmission providers will identify, out of this larger set of needs, those needs for which transmission solutions will be evaluated.³⁷ Public utility transmission providers must explain in their compliance filings how their open and transparent transmission planning process determines whether to move forward regarding

³² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2. Order No. 1000-A clarified that Public Policy Requirements included local laws and regulations passed by a local governmental entity, such as a municipal or county government. Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

³³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

³⁴ *Id.* PP 206, 207.

³⁵ *Id.* PP 207, 208.

³⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

³⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

transmission needs driven by Public Policy Requirements.³⁸ In addition, each public utility transmission provider must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that have been identified for evaluation for potential solutions in the local and regional transmission planning processes and (2) how other transmission needs driven by Public Policy Requirements introduced by stakeholders were considered during the identification stage and why they were not selected for further evaluation.³⁹

25. To comply with the requirement to evaluate potential solutions to meet the identified transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with stakeholders, must also establish procedures in their OATTs to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements.⁴⁰ These procedures must include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by Public Policy Requirements.⁴¹ Stakeholders must be provided an opportunity to provide input during the evaluation of potential solutions to identified needs.⁴² In addition, the Commission and stakeholders must be able to review the record that is created by the process to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential.⁴³ The Commission will review the proposed evaluation procedures to ensure they comply with the objective of meeting the identified transmission needs more efficiently or cost-effectively.⁴⁴

26. Public utility transmission providers must amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by Public

³⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

³⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

⁴⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

⁴¹ *Id.*; *see also id.* P 211 n.191 (“This requirement is consistent with the existing requirements of Order Nos. 890 and 890-A which permit sponsors of transmission and non-transmission solutions to propose alternatives to identified needs.”).

⁴² *Id.* P 220.

⁴³ Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

⁴⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

Policy Requirements in the local and regional transmission planning processes.⁴⁵ There are no restrictions on the type or number of Public Policy Requirements to be considered as long as any such requirements arise from local, state, or federal laws or regulations that drive transmission needs and as long as the requirements of the procedures required in Order No. 1000 are met.⁴⁶ In addition, Order No. 1000 does not preclude any public utility transmission provider from considering in its transmission planning process transmission needs driven by additional public policy objectives not specifically required by local, state or federal laws or regulations. However, Order No. 1000 creates no obligation for any public utility transmission provider or its transmission planning processes to consider transmission needs driven by a public policy objective that is not specifically required by local, state or federal laws or regulations.⁴⁷ In addition, public utility transmission providers are not required to consider Public Policy Requirements themselves as part of the transmission planning process.⁴⁸

a. MPS Filing

27. MPS asserts that the NMISA Market Rules satisfy the requirement to consider needs driven by public policy requirements at the regional level because they do not prohibit NMISA from considering any information it considers appropriate, including public policy requirements.⁴⁹ MPS further notes that the state of Maine adheres to and meets the state's Renewable Portfolio Standard, demonstrating that public policy requirements are considered and satisfied within the region.⁵⁰

28. In addition, with respect to consideration of transmission needs driven by public policy requirements at the local level, MPS states that it has made certain revisions to its local transmission planning process to include a process by which it will consider state and federal public policy requirements. Specifically, MPS explains that the term "public policy requirements" includes public policy requirements established by enacted state or federal law or regulation.⁵¹ MPS explains that its process shall include surveying state

⁴⁵ *Id.* P 203.

⁴⁶ *Id.* P 214; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

⁴⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216.

⁴⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 204.

⁴⁹ Transmittal Letter at 13.

⁵⁰ *Id.* at 15.

⁵¹ *Id.* at 17.

and federal public policy requirements that may be applicable, discussing such requirements with the Planning Advisory Group,⁵² and considering such needs as part of a final plan. MPS notes that consideration of public policy requirements will be on a nondiscriminatory basis.⁵³

29. Finally, MPS proposes a cost allocation method for public policy projects that presumes the party that requests the project will be the beneficiary and will pay all costs of the project. However, MPS's proposal also provides that, if production cost benefits related to the project exceed the cost of the project, project costs shall be allocated to all transmission customers on a load ratio share basis. MPS notes that this proposal is similar to its Commission-approved cost allocation method for economic projects.⁵⁴

b. Responsive Pleadings

30. NMISA requests that the Commission require MPS to further revise its Attachment R to modify the local planning process to comply with Order No. 1000. The NMISA Parties fully support NMISA's filed protest.

31. NMISA states that Attachment R does not clearly state how a particular project will be categorized as "local" or "regional" for purposes of transmission planning and cost allocation. NMISA states that MPS implies in its transmittal letter that only a project selected by NMISA under Market Rule 9, following the issuance of a request for proposals to alleviate an existing or emerging transmission constraint, will be considered "regional" for purposes of transmission planning and cost allocation. NMISA argues that if this is MPS's intent, then Attachment R should explicitly provide for this distinction.

32. Regarding MPS's proposed cost allocation method for public policy projects, NMISA argues that it is deficient in numerous respects.⁵⁵ First, NMISA and the NMISA

⁵² The Planning Advisory Group provides input and feedback to MPS during the development of the local plan. The Planning Advisory Group is open to all transmission owners in NMISA, MPS customers, interconnected generators, other suppliers, neighboring transmission providers and control areas, and state utility regulatory agencies. Transmittal Letter at 16 (citing MPS OATT, FERC Electric Tariff, Second Revised Vol. No. 4, Attachment R, § 2 (1.0.0)).

⁵³ Transmittal Letter at 17.

⁵⁴ *Id.* (citing *Me. Pub. Svc. Co.*, 127 FERC ¶ 61,165, at P 13 (2009)).

⁵⁵ NMISA states that, while section 1.2 of revised Attachment R implies that the local cost allocation method proposed by MPS is necessary to comply with the regional

Parties argue that the proposal does not allocate costs in a manner that is roughly commensurate with estimated benefits. NMISA asserts that under the proposal, MPS would allocate the costs of a public policy project solely to transmission customers if the project's production cost benefits exceed its costs. NMISA and the NMISA parties argue that this provision would ignore other potential beneficiaries, including the party that requested the project and generators.⁵⁶ NMISA is thus concerned that this provision would unreasonably favor generators at the expense of transmission customers. NMISA finds the proposal particularly egregious because MPS is affiliated with generation interests in northern Maine.⁵⁷

33. Second, NMISA and the NMISA Parties assert that MPS's proposed Attachment R provisions do not specify how costs or benefits are to be measured. NMISA and the NMISA Parties argue that Order No. 1000 requires the method of determining these benefits to be open and transparent. Without significant changes to Attachment R that would address these concerns, NMISA contends that unjust and unreasonable results are likely to occur.⁵⁸ The NMISA Parties also are concerned that proposed Attachment R provides no means for stakeholders to know who is benefiting from and who is paying for system upgrades before a decision is made. Moreover, the NMISA Parties argue that Attachment R does not provide a mechanism that would allow stakeholders to provide input to or review any determination of benefits or beneficiaries.⁵⁹

34. NMISA further states that the premise of Order No. 1000 is that public policy projects are intended to meet public policy requirements, and that the benefits of a public policy project could be measured in several different, non-production cost-related ways. According to NMISA, MPS's proposed Attachment R provisions do not account for a public policy project's purpose of facilitating compliance with public policy requirements when determining cost responsibility for the project, but instead simply spread costs

provisions of the NMISA Tariff, MPS's proposed cost allocation method is not dictated by the NMISA Tariff. NMISA Protest at 8-9.

⁵⁶ NMISA Protest at 4 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 680).

⁵⁷ *Id.* at 5 n.12. (citing, e.g., *Emera Inc.*, 140 FERC ¶ 62,022 (2012) (authorizing the parent company of MPS, Emera, to increase its ownership interest in Algonquin Power & Utilities Corp.); *Emera Inc.*, Notification of Consummation of Transaction, Docket No. EC12-103-000 (Aug. 10, 2012)).

⁵⁸ *Id.* at 5-6.

⁵⁹ NMISA Parties Protest at 7-8.

equally among transmission customers if the project's production cost benefits exceed its costs. NMISA contends that Order No. 1000 provides that if a project serves more than one function, then the cost allocation method must "take the benefits of these functions of the transmission facility into account in allocating costs roughly commensurate with benefits."⁶⁰

35. The NMISA Parties argue that MPS's cost allocation methods for reliability and economic projects also are inconsistent with Order No. 1000's cost allocation principles. Specifically, the NMISA Parties contend that contrary to Order No. 1000's requirements, MPS's cost allocation methods for reliability and economic projects impose costs on entities that have not been shown to benefit at all or in proportion to the costs they are allocated.⁶¹

36. The NMISA Parties argue that MPS's proposal requires transmission customers to subsidize the costs of public policy planning studies, unjustifiably. The NMISA Parties state that MPS should be required to allocate costs for transmission studies to the party that requires or requests a public policy project unless others are shown to benefit from the study, in which case the costs should be allocated in proportion to benefits received.⁶²

37. Finally, NMISA argues that Attachment R should explicitly provide that it does not affect generator interconnection cost recovery under Order No. 2003.⁶³ According to NMISA, Order No. 1000 clearly states that generator interconnection costs are to be recovered pursuant to Order No. 2003.⁶⁴ NMISA asserts, however, that MPS's Attachment R does not include an explicit exclusion for generator interconnection costs,

⁶⁰ NMISA Protest at 6-7 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 690).

⁶¹ NMISA Parties Protest at 10-11.

⁶² *Id.* at 8-9.

⁶³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 1,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

⁶⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 760, *order on reh'g.*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

which NMISA contends is particularly important given MPS's affiliation with in-region generators. NMISA argues that in complying with Order No. 1000, MPS should not be able to circumvent the cost allocation requirements of Order No. 2003, benefiting affiliated generators at the detriment of other market participants.⁶⁵

38. In its answer, MPS states that while its filing describes the existing conditions under NMISA's Tariff and Market Rules that it contends comply with Order No. 1000's regional planning requirements, the tariff changes contained in MPS's filing only address local planning issues. MPS further states that its proposed cost allocation for public policy projects follows the previously approved cost allocation for economic projects. MPS asserts that protestors are confusing the broader regional requirements with the only change Order No. 1000 made to local transmission planning.

c. Commission Determination

39. For the reasons discussed above, we grant MPS waiver with respect to Order No. 1000's requirement to amend its tariff to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the *regional* transmission planning process.

40. As for the *local* transmission planning process, we find that the MPS's filing does not fully comply with the provisions of Order No. 1000 addressing transmission needs driven by Public Policy Requirements. First, Order No. 1000 requires that the definition of Public Policy Requirements include federal or state laws or regulations, which are enacted statutes and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level.⁶⁶ Order No. 1000-A further clarifies that this includes local laws and regulations passed by a local governmental entity, such as a municipal or county government.⁶⁷ While MPS indicates in its Transmittal Letter that it intends to use the term Public Policy Requirements as stated in Order No. 1000, MPS does not include a definition of Public Policy Requirements in Attachment R of its tariff. Moreover, in proposed section 4.7 of Attachment R, MPS simply refers to "state and federal Public Policy Requirements" when discussing what it is required to consider in its local plan. Therefore, we direct MPS to file, within 90 days of the date of issuance of this order, a further compliance filing that revises the proposed tariff language to include a definition of Public Policy Requirements that is consistent with Order No. 1000.

⁶⁵ NMISA Protest at 7-8.

⁶⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2.

⁶⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

41. Second, Order No. 1000 requires each public utility transmission provider to explain in its compliance filing how the open and transparent transmission planning process determines whether to move forward regarding transmission needs driven by Public Policy Requirements.⁶⁸ In addition, each public utility transmission provider must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that have been identified for evaluation for potential solutions in the local and regional transmission planning processes and (2) how other transmission needs driven by Public Policy Requirements introduced by stakeholders were considered during the identification stage and why they were not selected for further evaluation.⁶⁹ While MPS describes an open and transparent process by which transmission needs driven by Public Policy Requirements will be identified as part of the local transmission planning process, the process for selecting transmission needs driven by Public Policy Requirements in its local transmission planning process for further evaluation and posting this explanation on the MPS website is not discussed in this compliance filing. Accordingly, we direct MPS to file, within 90 days of the date of issuance of this order, a further compliance filing that revises the proposed tariff language to describe the process by which MPS will select transmission needs driven by Public Policy Requirements for further evaluation and post to its website an explanation of its selection, as well as an explanation of why other suggested transmission needs will not be evaluated.

42. In addition, it is unclear from MPS's filing whether MPS has met Order No. 1000's requirement that it establish procedures in its tariff to evaluate at the local level potential solutions to identified transmission needs driven by Public Policy Requirements,⁷⁰ or how stakeholders will be provided an opportunity to provide input during the evaluation of potential solutions to identified needs.⁷¹ Therefore, we direct MPS to file, within 90 days of the date of issuance of this order, a further compliance filing that (1) describes how it complies with Order No. 1000's requirement that it establish procedures in its tariff to evaluate at the local level potential solutions to identified transmission needs driven by Public Policy Requirements and (2) includes any additional tariff revisions necessary to demonstrate its compliance.

⁶⁸ *Id.* P 335.

⁶⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

⁷⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

⁷¹ *Id.* P 220.

43. Regarding MPS's proposal for assigning the cost of local public policy projects, we note that Order No. 1000 required public utility transmission providers to amend their tariffs to add procedures for the consideration of transmission needs driven by Public Policy Requirements in their local planning processes, but was silent on the issue of how public utility transmission providers should assign the costs of local public policy projects. We find that adding provisions to address how the costs of new local public policy projects would be assigned is integral to MPS's compliance filing and therefore appropriate to address in an Order No. 1000 compliance order. We note that without such provisions, were MPS to identify a needed local public policy project, MPS may be unable to assign the costs of such a local project because its existing tariff provides for the assignment of the costs of only reliability projects, economic projects, and new transmission facilities identified through requests for service.

44. In MPS's Order No. 890 compliance proceeding, MPS proposed to assign costs directly to the party that requires or requests an economic project unless the production cost benefits of the local project exceed its costs, in which case costs are allocated to all transmission customers on a load-ratio share basis.⁷² The Commission found that this proposal complied with the requirement of Order No. 890 that the cost allocation method be clearly defined to provide participants seeking to support new local transmission investment some degree of certainty regarding cost allocation to pursue that investment.⁷³ Here, MPS similarly proposes to assign all of the costs of a new local public policy project to the party requesting the project, or, if production cost benefits exceed costs, to all transmission customers on a load ratio share basis. We find MPS's proposal for assigning the costs of local public policy projects to be just and reasonable.⁷⁴ First, we accept MPS's proposal to recover costs from the party requesting the project in the first instance, noting that MPS is proposing a method for recovering from its own customers the costs associated with a local public policy project, i.e., a project located on the integrated MPS transmission system, and not a project selected in the regional plan for purposes of cost allocation. Second, we find that, when the production cost benefits of a local public policy project exceed its costs, it is reasonable for MPS to recover the costs

⁷² MPS, OATT, FERC Electric Tariff, Second Revised Vol. No. 4, Attachment R, § 9.1.2 (Economic Projects) (1.0.0).

⁷³ *See Me. Pub. Serv. Co.*, 123 FERC ¶ 61,162, at P 21(2008) (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 251 (2007)); *see also Me. Pub. Serv. Co.*, 127 FERC ¶ 61,165, at PP 12-13 (2009) (finding MPS's cost allocation method complied with the Order No. 890 cost allocation principle).

⁷⁴ We will, however, direct MPS to correctly label the provisions related to cost allocation for public policy projects when it submits its subsequent compliance filing.

of that project from its transmission customers on a load ratio share basis. With respect to the NMISA Parties' argument that the reliability and economic cost allocation methods currently included in MPS's Attachment R do not comply with the Order No. 1000 regional cost allocation principles, we note that Order No. 1000 did not require changes to the tariff provisions pursuant to which each public utility transmission provider assigns the costs of *local* reliability and *local* economic projects.

45. In response to both NMISA and NMISA Parties' additional concerns regarding new generator interconnections, the relationship between local and regional planning, and study costs, we find that these concerns are unfounded and are therefore dismissed. As MPS states in its answer, new generator interconnections are governed by Attachment P of the MPS OATT, and Attachment P was unchanged in MPS's Order No. 1000 compliance filing.⁷⁵ With respect to NMISA's concerns regarding the relationship between local and regional planning, we find that MPS's proposed revisions to Attachment R are intended to satisfy the local transmission planning requirements of Order No. 1000, not the regional requirements. We agree with MPS that its proposed local planning and local cost allocation provisions do not conflict with the regional processes under the NMISA Tariff.⁷⁶

46. Finally, we dismiss the NMISA Parties' concerns regarding MPS's proposal to allocate the costs of certain public policy planning studies on a load-ratio share basis in certain instances. MPS has simply revised its existing Order No. 890-compliant economic planning study request process⁷⁷ in the MPS tariff to add "public policy" to the type of planning studies stakeholders can request.⁷⁸ This is consistent with the Commission's findings in Order No. 1000 that the economic planning studies principle should be sufficiently broad to identify solutions that could relieve transmission

⁷⁵ MPS Answer at 8.

⁷⁶ *Id.* at 10.

⁷⁷ Order No. 890's economic planning studies transmission planning principle requires that stakeholders be given the right to request a defined number of high priority studies annually through the transmission planning process, which are intended to identify solutions that could relieve transmission congestion or integrate new resources and loads, including facilities to integrate new resources or loads on an aggregated or regional basis. *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 71 n.62 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 547-548).

⁷⁸ MPS, OATT, FERC Electric Tariff, Second Revised Vol. No. 4, Attachment R, § 8.4.2 (High Priority Economic or Public Policy Planning) (1.0.0).

congestion or integrate new resources and loads, including facilities to integrate new resources and loads on an aggregated or regional basis.⁷⁹ We disagree that MPS's proposal improperly requires transmission customers to subsidize the costs of public policy planning studies. In Order No. 890, the Commission stated that the cost of a defined number of high priority studies to address congestion and/or the integration of new resources or loads would be recovered as part of the overall *pro forma* OATT cost of service.⁸⁰ The Commission explained that this cost recovery mechanism is comparable and nondiscriminatory because the transmission provider already has the ability to include in its *pro forma* OATT rates the cost of service associated with studies performed on behalf of native load customers.⁸¹ Therefore, we find appropriate MPS's proposal to recover the costs of high priority local public policy planning studies from transmission customers on a load ratio share basis through its OATT because it is identical to MPS's treatment of the costs of high priority economic planning studies required by Order No. 890.⁸²

The Commission orders:

(A) MPS is granted a waiver of the regional requirements of Order No. 1000 and MPS's compliance filing is hereby conditionally accepted with respect to the local requirements, effective December 11, 2012, subject to additional clarification as discussed in the body of this order.

⁷⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 83 n.73 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523); *see also id.* PP 71, 83.

⁸⁰ Order No. 890, FERC Stats & Regs. ¶ 31,241 at P 547.

⁸¹ *Id.* P 547 n.324.

⁸² MPS, OATT, FERC Electric Tariff, Second Revised Vol. No. 4, Attachment R, § 8.4.5.1 (High Priority Economic or Public Policy Planning Study Costs) (1.0.0).

(B) MPS is hereby directed to make an additional compliance filing within 90 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.