



May 15, 2014

Commissioner John R. Norris

FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT

Docket Nos.: ER13-187-002, ER13-198-001, ER13-107-003, ER13-85-001

Item Nos.: E-1, E-2 and E-3

Statement of Commissioner John R. Norris on MISO / PJM / South Carolina Order No. 1000 Compliance Orders

"Today the Commission issues three orders that change the calls in Order No. 1000 to now allow non-incumbents to essentially be excluded from the regional transmission planning processes in MISO, PJM, and South Carolina due to state law considerations. In Order No. 1000-A, the Commission stated:

"[I]t would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain, state approvals necessary ... to be eligible to propose a transmission facility.¹

"This is in effect what today's orders enable the three planning regions to do. By excluding proposals from non-incumbents when the proposals are being evaluated based on a consideration of state law, we are effectively excluding non-incumbents from participating in the transmission planning process. This is a fundamental change in direction that I cannot support. I simply cannot reconcile the language in the final rule with the approach taken in today's orders.

"While there are many examples of innovative incumbent transmission developers, others may lack innovation and may be more interested in preserving the status quo to insulate themselves from competition. Today's orders protect incumbents rather than promote competition. This concerns me because no single entity, whether incumbent or non-incumbent, has a lock on ideas for better transmission and non-transmission alternatives. Clearly, incumbents already are well-positioned through their knowledge of the system, including issues related to reliability and congestion. Today's orders give incumbents a further advantage over non-incumbents by limiting non-incumbents' participation in the planning process. Moreover, if incumbents are unable to come up with a better solution for transmission needs, I am concerned that the reason could be a lack of innovation or a conflict of interest. Through today's orders, we are allowing consumers to bear the burden of these potential shortcomings.

"Numerous parties point to language from the final rule that nothing in Order No. 1000 "is intended to preempt or otherwise conflict with state authority over siting, permitting, and construction of transmission facilities."² In my view, allowing non-incumbents to participate in the regional transmission planning process without consideration of potential state law restrictions does not infringe upon the state's authority over siting, permitting and construction of transmission facilities. Rather, this language acknowledges state jurisdiction over siting, permitting, and construction of transmission facilities. Using this language to exclude non-incumbents denies states and other stakeholders the opportunity to have all essential information regarding the more cost-effective and efficient transmission solutions."

¹ Order 1000-A, 139 FERC ¶ 61,132 at P 441.

² Id. P 186.