



July 19, 2012

Chairman Jon Wellinghoff

STATEMENT

FEDERAL ENERGY REGULATORY COMMISSION

Docket Nos.: ER10-253-001, EL10-14-001, EL10-52-001, EL12-69-000, & EL12-24-000

Item Nos.: E-11, E-12, E-13 & E-14

Statement of Chairman Jon Wellinghoff on Right of First Refusal (ROFR) Orders

"Today's agenda includes several cases related to whether a regional planning process has a right of first refusal, and its impact on transmission development projects.

In E-11 and E-12, the Commission denies requests for rehearing in the complaints filed by Primary Power and Central Transmission, respectively, against PJM. In those cases, we find that PJM's Transmission Owners Agreement does not establish a ROFR as to economic projects and that non-incumbent providers can seek cost recovery under PJM's tariff for those projects.

In contrast, in E-14, *Pioneer v. NIPSCO*, and E-15, *Xcel v. American Transmission Company*, the Commission finds that MISO's Transmission Owners Agreement currently includes a ROFR, and that a proposed transmission line that connects the facilities of two transmission owners will be shared equally by those owners under MISO's TO Agreement, regardless of who initially proposed the line. Although the complainants argued that application of a ROFR in MISO's planning process would be inconsistent with the Commission's findings in Order No. 1000 that it is not just and reasonable, we note that Order No. 1000 applies prospectively, upon acceptance of the parties' compliance filings, which are due in October of this year.

Additionally, in E-13, we deny a complaint brought by Primary Power against PJM for selecting competing projects proposed by incumbent transmission providers. In that case, PJM selected the proposals to construct static var compensators in existing substations by incumbent transmission providers, due to the lower cost.

These orders highlight the very situation that Order No. 1000 is designed to remedy. In Order No. 1000, the Commission stated that it is unjust and unreasonable to grant incumbent transmission providers a federal right of first refusal with respect to certain transmission projects because doing so may result in the failure to consider more efficient or cost-effective solutions to regional needs and, in turn, result in the inclusion of higher-cost solutions in the regional plan. In Order No. 1000-A, the Commission further stated that "expanding the universe of transmission developers offering potential solutions can lead to the identification and evaluation of potential solutions to regional needs that are more efficient or cost-effective." The Commission therefore directed elimination of provisions that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.

The Commission also provided further guidance in the development of regional transmission planning processes. We note that in Order No. 1000, the Commission required each public utility transmission provider to revise its open access transmission tariff to identify the information that must be submitted by a prospective transmission developer in support of a transmission project that it proposes in the regional transmission planning process. The public utility transmission provider must also provide the date by which such information must be submitted to be considered in a given planning cycle. Each region may determine for itself what deadline is appropriate, including rolling or flexible dates to reflect the iterative nature of its transmission planning process.

The Commission also provided flexibility to regions by stating in Order No. 1000 that the public utility transmission providers may, but are not required to, use competitive solicitation to solicit project or project developers to meet



regional needs. The Commission declined to adopt suggestions to mandate a competitive bidding process. The Commission explained that while it agrees that a competitive process can provide benefits to consumers, it continues to allow public utility transmission providers within each region to determine for themselves, in consultation with stakeholders, what mechanisms are most appropriate to evaluate and select potential transmission solutions to regional needs.

Order No. 1000 further requires public utility transmission providers to implement a planning process that evaluates competing projects in a way that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation. By requiring an open and transparent transmission planning process that produces a regional transmission plan, "Order No. 1000 will provide the Commission and interested parties with a record that we believe will be able to highlight whether public utility transmission providers are engaging in undue discrimination against others."

The deadline for filing Order No. 1000 compliance filings is October 11, 2012. We will scrutinize those and related implementation to ensure that Commission-jurisdictional tariffs and agreements are just and reasonable and not unduly discriminatory."