191 FERC ¶ 61,026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

[Docket No. RM21-17-003; Order No. 1920-B]

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation

(Issued April 11, 2025)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing and clarification

SUMMARY: In this order, the Federal Energy Regulatory Commission addresses arguments raised on rehearing, grants clarification, in part, and denies clarification, in part, of Order No. 1920-A, which addressed arguments raised on rehearing of, set aside, in part, and clarified Order No. 1920. Order No. 1920 required transmission providers, *inter alia*, to conduct Long-Term Regional Transmission Planning to ensure the identification, evaluation, and selection, as well as the allocation of the costs, of more efficient or cost-effective regional transmission solutions to address Long-Term Transmission Needs.

DATES: The effective date of the document published on December 6, 2024 (89 FR 97,174), is confirmed: January 6, 2025.

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Before Commissioners: Mark C. Christie, Chairman;
Willie L. Phillips, David Rosner,
and Judy W. Chang.

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation — Docket No. RM21-17-003

ORDER NO. 1920-B

ORDER ON REHEARING AND CLARIFICATION

(Issued April 11, 2025)

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I. Introduction

1. In Order No. 1920,[1] the Federal Energy Regulatory Commission (Commission) revised the *pro forma* Open Access Transmission Tariff (OATT) to adopt reforms to its existing electric transmission planning and cost allocation requirements pursuant to section 206 of the Federal Power Act (FPA).[2] The Commission found that existing regional transmission planning and cost allocation processes are unjust, unreasonable, and unduly discriminatory or preferential because, *inter alia*, the Commission's existing transmission planning and cost allocation requirements do not require transmission providers[3] to: (1) perform a sufficiently long-term assessment of transmission needs that

[1] *Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation*, Order No. 1920, 89 FR 49280 (June 11, 2024), 187 FERC ¶ 61,068, *order on reh'g & clarification*, Order No. 1920-A, 89 FR 97174 (Dec. 6, 2024), 189 FERC ¶ 61,126 (2024).

[2] 16 U.S.C. 824e.

[3] FPA Section 201(e), 16 U.S.C. 824(e), defines "public utility" to mean "any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter." As stated in the Order No. 888 *pro forma* OATT, "transmission provider" is a "public utility (or its Designated Agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff." *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048

identifies Long-Term Transmission Needs;[4] (2) adequately account on a forward-looking basis for known determinants of Long-Term Transmission Needs; and (3) consider the broader set of benefits of regional transmission facilities planned to meet those Long-Term Transmission Needs.[5] Building on Order Nos. 890[6] and 1000,[7] Order No. 1920 addresses these deficiencies by establishing requirements to ensure that

(cross-referenced at 78 FERC ¶ 61,220), *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 Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N. Y. v. FERC*, 535 U.S. 1 (2002); *pro forma* OATT section I.1 (Definitions). The term "transmission provider" includes a public utility transmission owner when the transmission owner is separate from the transmission provider, as is the case in regional transmission organizations (RTO) and independent system operators (ISO).

[4] For purposes of Order No. 1920, Long-Term Transmission Needs are transmission needs identified through Long-Term Regional Transmission Planning by, among other things and as discussed in Order Nos. 1920 and 1920-A, running scenarios and considering the enumerated categories of factors. Order No. 1920, 187 FERC ¶ 61,068 at P 299; Order No. 1920-A, 189 FERC ¶ 61,126 at P 20 n.16.

[5] Order No. 1920, 187 FERC ¶ 61,068 at P 1.

[6] *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), 118 FERC ¶ 61,119 (2007), *order on reh'g,* Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007) (cross-referenced at 118 FERC ¶ 61,119), *order on reh'g and clarification*, Order No. 890-B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

[7] *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011), Order No. 1000-A, 77 FR 32184 (May 31, 2012), 139 FERC ¶ 61,132 (2012), *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (*South Carolina*).

Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential, including, *inter alia*, a requirement that transmission providers in each transmission planning region participate in a regional transmission planning process that includes Long-Term Regional Transmission Planning,[8] which will ensure the identification, evaluation, and selection of more efficient or cost-effective regional transmission facilities to address Long-Term Transmission Needs, as well as the just and reasonable allocation of the costs of those facilities.[9]

2. In Order No. 1920-A, the Commission largely sustained the reforms adopted in Order No. 1920 while refining and improving those reforms to address concerns raised in response to Order No. 1920 and to ensure that states have a robust role in Long-Term Regional Transmission Planning and in the cost allocation processes established in the final rule. Specifically, and as relevant here, the Commission set aside, in part, and clarified, in part, Order No. 1920 to provide that: (1) transmission providers may not plan for the needs of a non-jurisdictional transmission provider if that non-jurisdictional transmission provider has not enrolled in the transmission planning region and thereby

[8] For purposes of Order No. 1920, Long-Term Regional Transmission Planning means regional transmission planning on a sufficiently long-term, forward-looking, and comprehensive basis to identify Long-Term Transmission Needs, identify transmission facilities that meet such needs, measure the benefits of those transmission facilities, and evaluate those transmission facilities for potential selection in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective regional transmission facilities to meet Long-Term Transmission Needs. Order No. 1920, 187 FERC ¶ 61,068 at PP 38, 250-252; Order No. 1920-A, 189 FERC ¶ 61,126 at P 21 n.17.

[9] Order No. 1920, 187 FERC ¶ 61,068 at PP 1-2.

has not agreed to any cost allocation method applicable to selected Long-Term Regional Transmission Facilities;[10] (2) when Relevant State Entities[11] agree on a Long-Term Regional Transmission Cost Allocation Method(s)[12] and/or State Agreement Process[13] resulting from the Engagement Period,[14] transmission providers must include that

[10] Order No. 1920-A, 189 FERC ¶ 61,126 at P 323. For purposes of Order No. 1920, a Long-Term Regional Transmission Facility is a regional transmission facility, as defined in Order No. 1000, that is identified as part of Long-Term Regional Transmission Planning to address Long-Term Transmission Needs. Order No. 1920, 187 FERC ¶ 61,068 at PP 41, 250; Order No. 1920-A, 189 FERC ¶ 61,126 at P 21 n.18.

[11] For purposes of Order No. 1920, a Relevant State Entity is any state entity responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state. Order No. 1920, 187 FERC ¶ 61,068 at PP 44, 1355; Order No. 1920-A, 189 FERC ¶ 61,126 at P 23 & n.23.

[12] For purposes of Order No. 1920, a Long-Term Regional Transmission Cost Allocation Method is an *ex ante* regional cost allocation method for one or more Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) that are selected in the regional transmission plan for purposes of cost allocation. Order No. 1920, 187 FERC ¶ 61,068 at P 1291; Order No. 1920-A, 189 FERC ¶ 61,126 at P 612 n.1539.

[13] For purposes of Order No. 1920, a State Agreement Process is a process by which one or more Relevant State Entities may voluntarily agree to a cost allocation method for Long-Term Regional Transmission Facilities (or a portfolio of such Facilities) before or no later than six months after they are selected in the regional transmission plan for purposes of cost allocation. Order No. 1920, 187 FERC ¶ 61,068 at P 45; Order No. 1920-A, 189 FERC ¶ 61,126 at P 24 n.28.

[14] For purposes of Order No. 1920, an Engagement Period is a six-month time period during which transmission providers must: (1) provide notice of the starting and end dates for the six-month time period; (2) post contact information that Relevant State Entities may use to communicate with transmission providers about any agreement among Relevant State Entities on a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process, as well as a deadline for communicating such agreement; and (3) provide a forum for negotiation of a Long-Term Regional

method(s) and/or process in the transmittal or as an attachment to their Order No. 1920 regional transmission planning and cost allocation compliance filings, along with any information that Relevant State Entities provide to transmission providers regarding the state negotiations during the Engagement Period, even if transmission providers propose a different Long-Term Regional Transmission Cost Allocation Method or do not propose to adopt a State Agreement Process;[15] (3) the Commission will consider the entire record—including the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and the transmission provider's proposal—when setting the replacement rate in Order No. 1920 regional transmission planning and cost allocation compliance proceedings;[16] and (4) transmission providers must consult with Relevant State Entities prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process or, if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission providers to amend that method or process.[17] As further relevant here, the Commission disagreed with certain arguments raised on rehearing of Order No. 1920 and continued to: (1) find that the Commission

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Transmission Cost Allocation Method(s) and/or a State Agreement Process that enables robust participation by Relevant State Entities. Order No. 1920, 187 FERC ¶ 61,068 at PP 5, 1354; Order No. 1920-A, 189 FERC ¶ 61,126 at P 24.

[15] Order No. 1920-A, 189 FERC ¶ 61,126 at P 651.

[16] *Id.* P 659.

[17] *Id.* P 691.

made adequate findings and marshalled sufficient evidence under the first prong of FPA section 206 to establish that existing Commission-jurisdictional regional transmission planning and cost allocation processes are unjust and unreasonable;[18] and (2) define Relevant State Entities as any state entity responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state.[19]

3. Seven petitioners have sought further rehearing and clarification of the Commission's determinations in Order No. 1920-A,[20] and the Commission received two additional filings.[21] Pursuant to *Allegheny Defense Project v. FERC*,[22] the rehearing

[18] *See id.* PP 72-86.

[19] *See id.* P 685.

[20] Appendix A includes a list of petitioners submitting requests for rehearing and/or clarification of Order No. 1920-A.

[21] On February 5, 2025, NRECA sent a letter to Chairman Mark Christie addressing Order No. 1920-A. On February 12, 2025, Developers Advocating Transmission Advancements submitted a late-filed pleading and white paper in response to the 2021 Advanced Notice of Proposed Rulemaking. To the extent that they intend to seek rehearing, these pleadings are untimely and we therefore reject them. 16 U.S.C. 825*l*(a); 18 CFR 385.713(b) (2024). They also do not include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph, as required by Rule 713(c)(2) of the Commission's Rules of Practice and Procedure. 18 CFR 385.713(c)(2). Below, we address NRECA's rehearing request, which raised similar issues to those NRECA raised in its letter. *See infra* Definition of Relevant State Entities section.

[22] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by FPA section 313(a),[23] we are modifying the discussion in Order No. 1920-A and continue to reach the same result in this proceeding, as discussed below.[24] That is, in this order, we do not change the outcome of Order No. 1920-A.[25] This order also does not amend the Commission's regulations or the provisions of Attachment K to the *pro forma* OATT.

4. We also grant, in part, and deny, in part, the requests for clarification. Specifically, we clarify one aspect of the Commission's discussion in Order No. 1920-A to explain that, consistent with Order No. 1000, transmission providers are not required to plan for the Long-Term Transmission Needs of unenrolled non-jurisdictional transmission providers, but voluntary arrangements for regional transmission planning and cost allocation that comply with the FPA and the Commission's cost causation precedent are not prohibited.[26] In addition, we sustain the requirement in Order

[23] 16 U.S.C. 825*l*(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

[24] *Allegheny Def. Project*, 964 F.3d at 16-17.

[25] *See Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

[26] *See* Order No. 1920-A, 189 FERC ¶ 61,068 at P 323; *infra* Planning for the Long-Term Transmission Needs of Unenrolled Non-Jurisdictional Transmission Providers section.

No. 1920-A that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process resulting from the Engagement Period, and associated information provided to transmission providers regarding the state negotiations during the Engagement Period, in transmission providers' transmittal or as an attachment to their Order No. 1920 regional transmission planning and cost allocation compliance filings.[27] We further sustain the requirement that transmission providers consult with Relevant State Entities: (1) prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process; or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission provider to amend that method or process.[28] We are not persuaded, however, by NRECA's request to expand the definition of Relevant State Entity to include any entity that establishes or regulates electric rates under state law.[29] Finally, we reject as procedurally barred Indicated PJM TOs' and SPP TOs' arguments that the Commission's findings under the first prong of FPA section 206 were insufficient to support its exercise of authority in Order No. 1920.[30]

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[27] Order No. 1920-A, 189 FERC ¶ 61,126 at PP 651, 655; *infra* Requirements Concerning Relevant State Entities' Agreed-upon Cost Allocation Methods section.

[28] Order No. 1920-A, 189 FERC ¶ 61,126 at P 691; *infra* Consultation with Relevant State Entities After the Engagement Period section.

[29] Order No. 1920-A, 189 FERC ¶ 61,126 at P 701; *infra* Definition of Relevant State Entities section.

[30] Order No. 1920-A, 189 FERC ¶ 61,126 at PP 72-86; *infra* Other Cost Allocation Issues section.

5. We continue to find that these reforms, as refined and improved in Order No. 1920-A, ensure that transmission providers will conduct sufficiently long-term, forward looking, and comprehensive transmission planning and cost allocation processes to meet the demands of the modern transmission grid, while facilitating meaningful participation by the states, consistent with the jurisdictional boundaries delineated in the FPA.

II. Long-Term Regional Transmission Planning

A. Planning for the Long-Term Transmission Needs of Unenrolled Non-Jurisdictional Transmission Providers

1. Order Nos. 1920 and 1920-A

6. In Order No. 1920, the Commission required transmission providers in each transmission planning region to participate in a regional transmission planning process that includes Long-Term Regional Transmission Planning, meaning regional transmission planning on a sufficiently long-term, forward-looking, and comprehensive basis to identify Long-Term Transmission Needs, identify transmission facilities that meet such needs, measure the benefits of those transmission facilities, and evaluate those transmission facilities for potential selection in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective transmission facilities to meet Long-Term Transmission Needs.[31] To identify Long-Term Transmission Needs and to identify and evaluate transmission facilities that meet such needs, transmission

[31] Order No. 1920, 187 FERC ¶ 61,068 at P 224; *see also* Order No. 1920-A, 189 FERC ¶ 61,126 at P 138.

providers must develop a set of at least three plausible and diverse Long-Term Scenarios,[32] each of which must: (1) incorporate seven specific categories of factors that represent known determinants of Long-Term Transmission Needs; and (2) account for factors within each such category that the transmission provider determines are likely to affect Long-Term Transmission Needs.[33] Factor Category Three comprises state-approved integrated resource plans and expected supply obligations for load-serving entities.[34]

7. In Order No. 1920-A, the Commission clarified that, for purposes of complying with the requirements of Order No. 1920, transmission providers must plan for the needs of non-jurisdictional entities that are among the transmission providers' transmission customers as they would plan for the needs of any other transmission customer. For example, each Long-Term Scenario must account for and be consistent with factors within Factor Category Three once transmission providers in a transmission planning region have determined that such factors are likely to affect Long-Term Transmission Needs. This includes any non-jurisdictional transmission customer's resource planning

[32] Order No. 1920 defines Long-Term Scenarios as scenarios that incorporate various assumptions using best available data inputs about the future electric power system over a sufficiently long-term, forward-looking transmission planning horizon to identify Long-Term Transmission Needs and enable the identification and evaluation of transmission facilities to meet such transmission needs. Order No. 1920, 187 FERC ¶ 61,068 at PP 40, 302.

[33] *Id*. PP 298, 409, 415.

[34] *Id*. P 447; *see also* Order No. 1920-A, 189 FERC ¶ 61,126 at PP 139, 263, 279.

and procurement processes that have been approved by that entity's respective governing authority.[35]

8. The Commission further clarified in Order No. 1920-A that "transmission providers may *not* plan for the needs of a non-jurisdictional utility transmission provider if that non-jurisdictional transmission provider has not enrolled in the transmission planning region and thereby has not agreed to any cost allocation method applicable to selected Long-Term Regional Transmission Facilities."[36] The Commission stated that, if transmission providers were to plan for and consider non-jurisdictional transmission providers' Long-Term Transmission Needs without a way to ensure the non-jurisdictional transmission provider contributes to the costs of the resulting Long-Term Regional Transmission Facilities, the resulting cost allocation could violate the cost causation principle and result in free-ridership.[37]

2. Rehearing Requests

9. NRECA and WestConnect CTOs request rehearing and/or clarification of the statement in Order No. 1920-A that "transmission providers may *not* plan for the needs of

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[35] Order No. 1920-A, 189 FERC ¶ 61,126 at P 323 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 507, 510). The Commission issued this clarification in response to a request to clarify that the resource planning and procurement processes of non-jurisdictional transmission providers that have been approved by their respective governing authorities should be included in Factor Category Three. *Id.* P 315 (citing SERTP Sponsors June 12, 2024 Rehearing Request at 5).

[36] *Id.* P 323 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 276).

[37] *Id.* (citing *El Paso Elec. Co. v. FERC*, 76 F.4th 352, 363-66 (5th Cir. 2023) (*El Paso*)).

a non-jurisdictional utility transmission provider if that non-jurisdictional transmission provider has not enrolled in the transmission planning region and thereby has not agreed to any cost allocation method applicable to selected Long-Term Regional Transmission Facilities."[38] In particular, NRECA and WestConnect CTOs assert that this statement could be read to prohibit transmission providers from voluntarily agreeing to plan for the needs of unenrolled non-jurisdictional transmission providers.[39]

10. NRECA asks the Commission to clarify that Order No. 1920-A does not change the Commission's existing regulations and policy, and thus transmission providers in a transmission planning region continue to have the discretion to plan for the needs of a non-jurisdictional transmission provider that has not enrolled in the regional transmission planning process.[40] NRECA asserts that its requested interpretation of Order No. 1920-A is supported by the Commission's own citation to the language in Order No. 1000-A, stating that the regional transmission planning process is not required to plan for the

[38] NRECA Rehearing Request at 3 (quoting Order No. 1920-A, 189 FERC ¶ 61,126 at P 323); WestConnect CTOs Rehearing Request at 1 (same).

[39] NRECA Rehearing Request at 3, 17; WestConnect CTOs Rehearing Request at 1-5 (asserting that Order No. 1920-A, misinterpreting *El Paso*, establishes a prohibition on voluntary planning with unenrolled non-jurisdictional transmission providers).

[40] NRECA Rehearing Request at 3; *see also id.* at 16 ("NRECA requests that the Commission clarify that 'may *not* plan' means 'is not *required* to plan' rather than 'is not *permitted* to plan.'" (emphasis in original)).

transmission needs of a non-jurisdictional, unenrolled transmission provider.[41] NRECA states that the Commission has interpreted Order No. 1000-A as neither prohibiting nor compelling regional transmission planning processes from planning for the transmission needs of unenrolled non-jurisdictional transmission providers, i.e., non-jurisdictional transmission providers that have not agreed to accept any applicable cost allocation method for selected regional transmission facilities.[42]

11. NRECA also argues that its requested interpretation of Order No. 1920-A is consistent with the next sentence of Order No. 1920-A, which states that, "[i]f the transmission provider were to plan for and consider non-jurisdictional transmission providers' Long-Term Transmission Needs without a way to ensure the non-jurisdictional transmission provider contributes to the costs of the resulting Long-Term Regional Transmission Facilities, the resulting cost allocation could violate the cost causation principle and result in free-ridership."[43] NRECA asserts that this rationale supports Order No. 1000-A's statement that the public utility transmission providers in a transmission planning region are not compelled to plan for the transmission needs of an unenrolled non-jurisdictional transmission provider that has not agreed to accept any

[41] *Id.* at 16 (citing Order No. 1920-A, 189 FERC ¶ 61,126 at P 323 n.914 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 276)).

[42] *Id.* at 16, 17 (citing *Pub. Serv. Co. of Colo.*, 148 FERC ¶ 61,213 (2014), *order on reh'g*, 151 FERC ¶ 61,128 (2015), *vacated & remanded*, *El Paso Elec. Co. v. FERC*, 832 F.3d 495 (5th Cir. 2016)).

[43] *Id.* at 16 (citing Order No. 1920-A, 189 FERC ¶ 61,126 at P 323).

applicable cost allocation method for selected regional transmission facilities, but does not justify prohibiting voluntary planning for such needs if transmission providers in a transmission planning region can ensure that they will not be required to subsidize transmission projects that benefit the unenrolled non-jurisdictional transmission providers.[44]

12. NRECA and WestConnect CTOs each argue that the court in *El Paso* did not hold that the FPA requires the Commission to prohibit transmission providers in a transmission planning region from voluntarily planning for unenrolled non-jurisdictional transmission providers' needs.[45] NRECA states that the *El Paso* court had no reason for such a holding in reviewing an Order No. 1000 regional compliance filing but simply quoted with approval the Commission's "'clear' statement" in Order No. 1000-A.[46] Thus, NRECA contends, Order No. 1000-A and *El Paso* allow transmission providers in a transmission planning region to agree to plan for the transmission needs of unenrolled non-jurisdictional transmission providers if they have assurance that the enrolled

[44] *Id.* at 16-17.

[45] *Id.* at 17 (citing *El Paso*, 76 F.4th at 363); WestConnect CTOs Rehearing Request at 4 (asserting that *El Paso* holds only that public utilities may not be required to plan for the transmission needs of unenrolled non-jurisdictional utilities that do not accept the allocation of costs related to regional transmission projects from which they benefit (citing *El Paso*, 76 F.4th at 362-63)).

[46] NRECA Rehearing Request at 17 (quoting *El Paso*, 76 F.4th at 363).

transmission providers will not be required to subsidize transmission projects that benefit the unenrolled non-jurisdictional transmission providers.[47]

13. WestConnect CTOs assert that the issue on which the transmission providers prevailed in *El Paso* was their objection to being forced to subsidize transmission projects from which unenrolled non-jurisdictional transmission providers who did not commit to the allocation of costs might nonetheless benefit. WestConnect CTOs assert that members of WestConnect believed that the risk of subsidization could be sufficiently minimized to allow their long history of beneficial coordinated transmission planning to continue without enrollment of the WestConnect unenrolled non-jurisdictional transmission providers.[48] WestConnect CTOs argue that, contrary to the Commission's statement in Order No. 1920-A, it is untrue that transmission providers cannot ensure that an unenrolled non-jurisdictional transmission provider contributes to the cost of a regional transmission project from which it benefits without enrolling in the transmission planning region.[49] WestConnect CTOs assert that prohibiting joint regional transmission planning is based on a false binary choice—that non-jurisdictional transmission providers are not required to enroll in a transmission planning region and can only participate if

[47] *Id.*

[48] WestConnect CTOs Rehearing Request at 6 (citing *Ariz. Pub. Serv. Co.*, 181 FERC ¶ 61,223, at P 14 (2022)).

[49] *Id.* at 5 (citing Order No. 1920-A, 189 FERC ¶ 61,126 at P 323).

they enroll.[50] WestConnect CTOs represent that the WestConnect transmission planning region's transmission providers remain open to considering a modified coordinating transmission owner framework that provides them reasonable assurance that they will not have to subsidize their non-jurisdictional counterparts without requiring their enrollment.[51]

14. WestConnect CTOs further state that banning the possibility of voluntary arrangements for joint regional transmission planning with unenrolled non-jurisdictional transmission providers violates FPA section 202(a), under which the Commission is "affirmatively not only 'empowered,' but '*directed* to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy.'"[52]

15. WestConnect CTOs and NRECA argue that a ban on regional transmission planning by public utilities and unenrolled non-jurisdictional transmission providers would be an unacknowledged, unexplained, and hence arbitrary departure from Order No. 1000 precedent.[53] WestConnect CTOs argue that the Commission's

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[50] *Id.* at 6; *see also id.* at 9 n.17 (citing *Pub. Serv. Co. of Colo.*, WestConnect CTOs Request for Clarification, Docket No. ER13-75-014, et al., at n.2 (filed Nov. 18, 2024)).

[51] *Id.* at 5 (citing *Pub. Serv. Co. of Colo.*, WestConnect CTOs Request for Clarification, Docket No. ER13-75-014, et al. (filed Nov. 18, 2024)).

[52] *Id.* (quoting 16 U.S.C. 824a(a) (emphasis added)).

[53] *Id.* at 2-3, 6; NRECA Rehearing Request at 4-5, 18 (citing 5 U.S.C. § 706(2)(A) (other citations omitted)).

misinterpretation of *El Paso* is counterproductive to the Commission's professed goal of Order Nos. 1000 and 1920—to encourage and enhance regional transmission planning.[54]

16. WestConnect CTOs state that the Commission has noted that it "accepted the WestConnect public utility transmission providers' proposed participation framework [(i.e., the coordinating transmission owner framework)] under which non-public utility transmission providers could participate in WestConnect as either enrolled transmission owners or coordinating transmission owners."[55] WestConnect CTOs also state that the Commission expressly held that Order No. 1000 "does not preclude the enrolled public utility transmission providers in a transmission planning region from conducting transmission planning for unenrolled non-public utility transmission providers if the enrolled public utility transmission providers elect to do so."[56] WestConnect CTOs argue

[54] WestConnect CTOs Rehearing Request at 6; *see also id.* at 6-7 (asserting that, in Order No. 1000 compliance proceedings, WestConnect transmission providers explained that non-jurisdictional transmission providers' enrollment was not a prerequisite to their participation in regional transmission planning and would run contrary to the goals of Order No. 1000) ("It was precisely because of the presence of a large number of both public utility and non-jurisdictional utility transmission owners in the WestConnect region that the [j]urisdictional [u]tilities strove to create a compliance structure that would be superior to one in which non-jurisdictional utilities unwilling to subject themselves to Order No. 1000 cost allocation would be excluded from the region's planning process entirely." (quoting *Pub. Serv. Co. of Colo.*, Motion for Leave to Answer and Answer of the WestConnect Jurisdictional Utilities, Docket No. ER13-75-003 et al., at 13-14 (filed Nov. 8, 2013))).

[55] *Id.* at 7 (quoting *Pub. Serv. Co. of Colo.*, 189 FERC ¶ 61,028, at P 6 (2024) (WestConnect Remand Order), *order on reh'g*, 190 FERC ¶ 61,128 (2025) (Remand Rehearing Order)).

[56] *Id.* at 7-8 (quoting *Pub. Serv. Co. of Colo.*, 148 FERC ¶ 61,213 at P 55).

that this holding underpinned the development of WestConnect's existing coordinating transmission owner framework and was not challenged or addressed in *El Paso*. On the contrary, WestConnect CTOs argue, *El Paso* does not alter—and could not have altered—Order No. 1000's holdings, which were affirmed by the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit).[57]

17. WestConnect CTOs argue that the Commission's prohibition on transmission providers planning for the needs of unenrolled non-jurisdictional transmission providers fails to acknowledge, explain, or consider WestConnect CTOs' substantial reliance interest in the Commission's prior approval of the coordinating transmission owner framework.[58]

18. WestConnect CTOs further note that, in Order No. 1000, the Commission required that the scope of a transmission planning region "be governed by the integrated nature of the regional power grid."[59] WestConnect CTOs allege that the Commission stated that without the participation of non-jurisdictional transmission providers interspersed throughout the WestConnect transmission planning region that make up half of its membership, WestConnect would be like "swiss cheese."[60] WestConnect CTOs state

[57] *Id.* at 8 (citing *South Carolina*, 762 F.3d 41).

[58] *Id.* (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020)).

[59] *Id.* (citing WestConnect Remand Order, 189 FERC ¶ 61,028 at P 23 & n.49).

[60] *Id.* at 8-9 (citing *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206, at P 349 (2013), *order on reh'g*, 148 FERC ¶ 61,213, *order on reh'g*, 151 FERC ¶ 61,128, *vacated &*

that one of the reasons coordinating transmission owners supported WestConnect's coordinating transmission owner framework was the institutional difficulties non-jurisdictional transmission providers face in agreeing to enrollment rather than case-by-case acceptance of cost allocation for regional transmission projects.[61] WestConnect CTOs argue that Order No. 1920-A does not acknowledge or explain how transmission providers barred from joint regional transmission planning with unenrolled non-jurisdictional transmission providers can meet Order No. 1000's integration requirement in a transmission planning region like WestConnect.[62]

19. WestConnect CTOs state that while the Commission found in its order on remand from *El Paso* that WestConnect remains an integrated transmission planning region even without participation of coordinating transmission owners, the Commission does not incorporate or reference that finding in Order No. 1920-A.[63] Nevertheless, WestConnect CTOs object to the Commission's determination in its order on remand from *El Paso* regarding the continued integration of the WestConnect transmission planning region.[64]

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remanded, *El Paso Elec. Co. v. FERC*, 832 F.3d 495). The order that WestConnect CTOs cite does not contain this statement.

[61] *Id.* at 9.

[62] *Id.*

[63] *Id.* at 9 n.17 (citing WestConnect Remand Order, 189 FERC ¶ 61,028 at P 23).

[64] *Id.* (quoting *Pub. Serv. Co. of Colo.*, WestConnect CTOs Request for Clarification, Docket No. ER13-75-013, et al. (filed Nov. 18, 2024) (internal quotations omitted)).

20. WestConnect CTOs assert that the ban on use of a coordinating transmission owner framework would all but ensure the failure of regional transmission planning in WestConnect, contrary to the objectives of Order Nos. 1000 and 1920. WestConnect CTOs contend that the Commission's failure to acknowledge its departure from existing policy or explain how a mandatory enrollment requirement would be consistent with Order No. 1000's integration requirement was arbitrary.[65]

3. Commission Determination

21. We agree with rehearing petitioners that Order No. 1920-A does not modify the requirements of Order No. 1000 with respect to planning for the needs of unenrolled non-jurisdictional transmission providers.[66] Although Order No. 1000 does not require a coordinating transmission owner framework, Order No. 1000 and *El Paso* do not explicitly foreclose the possibility that a voluntary arrangement for regional transmission planning *and* cost allocation that includes unenrolled non-jurisdictional transmission providers could comply with the FPA's mandate for just and reasonable rates and the Commission's cost causation precedent.[67] Accordingly, we clarify the Commission's statement in Order No. 1920-A that transmission providers may *not* plan for the needs of a non-jurisdictional transmission provider if that non-jurisdictional transmission provider

[65] *Id.* at 9 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. at 515).

[66] *See* NRECA Rehearing Request at 3, 17; WestConnect CTOs Rehearing Request at 8.

[67] *See* Remand Rehearing Order, 190 FERC ¶ 61,128 at P 28.

has not enrolled in the transmission planning region and thereby has not agreed to any cost allocation method applicable to selected Long-Term Regional Transmission Facilities.[68] Specifically, we agree with NRECA that transmission providers are not *required* to plan for the Long-Term Transmission Needs of unenrolled non-jurisdictional transmission providers.[69] In *El Paso*, the U.S. Court of Appeals for the Fifth Circuit held that the Commission's orders accepting WestConnect's coordinating transmission owner framework were incompatible with the FPA and with the application of the cost causation principle in Order No. 1000 because they permitted non-public utility transmission providers to cause transmission costs to be incurred through the WestConnect regional transmission planning process without bearing cost responsibility.[70] The Commission will evaluate any voluntary arrangement for regional transmission planning and cost allocation that includes unenrolled non-jurisdictional transmission providers if and when it comes before the Commission, and that is unaffected by Order No. 1920-A. We

[68] Order No. 1920-A, 189 FERC ¶ 61,068 at P 323. We find moot WestConnect CTOs' arguments that the relevant language in Order No. 1920-A violates the Commission's obligations under FPA section 202(a) and the objectives of Order No. 1000 as well as NRECA's argument that this language conflicts with other statements in Order No. 1920-A. *See* WestConnect CTOs Rehearing Request at 4-5, 9; NRECA Rehearing Request at 16-17. Our clarification of Order No. 1920-A in relevant part resolves these claims.

[69] *See* Order No. 1000-A, 139 FERC ¶ 61,132 at P 276 ("[T]he regional transmission planning process is not required to plan for the transmission needs of such a non-public utility transmission provider that has not made the choice to join a transmission planning region."); *see also El Paso*, 76 F.4th at 362-63 (quoting the same).

[70] *El Paso*, 76 F.4th at 365-66; *id*. at 363 (discussing cost causation concerns).

emphasize that any transmission provider proposing to include unenrolled non-jurisdictional transmission providers in regional transmission planning and cost allocation, including Long-Term Regional Transmission Planning, must demonstrate that its proposed arrangement will not result in free ridership in violation of the cost causation principle and otherwise complies with the requirements of Order No. 1000, Order No. 1920, *El Paso*, and the FPA.[71]

22. To the extent that WestConnect CTOs request that the Commission address in this order the appropriate geographic scope of the WestConnect transmission planning region or any other transmission planning region,[72] we decline to address such a request here because it is outside the scope of this proceeding.[73] We further note that the Commission responded to these concerns in the Remand Rehearing Order and continued to find that the WestConnect transmission planning region complies with Order No. 1000's

[71] *Id*. at 361-62; WestConnect Remand Order, 189 FERC ¶ 61,028 at PP 15-17.

[72] *See* WestConnect CTOs Rehearing Request at 9 n.17.

[73] The Commission has declined to evaluate the appropriate geographic scope of any particular transmission planning region in our transmission planning rules. *See* Order No. 1000, 136 FERC ¶ 61,051 at P 160; Order No. 890, 118 FERC ¶ 61,119 at P 527. Instead, it is Commission practice to evaluate the proper scope of transmission planning regions in individual compliance or FPA section 205 proceedings. *See, e.g.*, *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 31 (2013); *Louisville Gas & Elec. Co.*, 144 FERC ¶ 61,054, at PP 28, 30 (2013), *order on reh'g*, *Duke Energy Carolinas, LLC*, 147 FERC ¶ 61,241, at PP 46, 48 (2014); *Me. Pub. Serv. Co.*, 142 FERC ¶ 61,129, at P 21 (2013); *S. Co. Servs., Inc.*, 124 FERC ¶ 61,265, at P 71 (2008). *See also PacifiCorp*, 170 FERC ¶ 61,298, at P 29 (2020) (evaluating scope of transmission planning region proposed pursuant to FPA section 205).

requirement that the scope of a transmission planning region should be governed by the integrated nature of the regional power grid.[74]

III. Regional Transmission Cost Allocation

A. Requirements Concerning Relevant State Entities' Agreed-upon Cost Allocation Methods

1. Order Nos. 1920 and 1920-A

a. Inclusion in Transmission Providers' Compliance Filings of Relevant State Entities' Agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process

23. In Order No. 1920, the Commission: (1) required transmission providers in each transmission planning region to revise their OATTs to include one or more Long-Term Regional Transmission Cost Allocation Method(s) for Long-Term Regional Transmission Facilities that are selected; and (2) permitted transmission providers to additionally revise their OATTs to include a State Agreement Process, if Relevant State Entities indicate that they have agreed to such a process.[75]

24. The Commission also established in Order No. 1920 a six-month Engagement Period, during which transmission providers must, among other things, provide a forum for the negotiation of a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process that enables meaningful participation by Relevant State Entities, and the Commission required transmission providers to explain on compliance

[74] *See* Remand Rehearing Order, 190 FERC ¶ 61,128 at PP 30-32.

[75] Order No. 1920, 187 FERC ¶ 61,068 at P 1291.

how they complied with the six-month Engagement Period requirements.[76] The Commission found that, if the Relevant State Entities participating in an Engagement Period agree on a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and provide that Method(s) and/or State Agreement Process to the transmission providers no later than the deadline for communicating agreement,[77] the transmission providers may file the agreed-to Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process on compliance. The Commission noted, however, that the ultimate decision as to whether to file a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process to which Relevant State Entities have agreed will continue to lie with the transmission providers.[78] The Commission did not impose any obligation on transmission providers to file a cost allocation method for Long-Term Regional Transmission Facilities with which they disagree, even if such a method were proposed to the transmission providers pursuant to a Commission-approved State Agreement Process, unless the transmission providers have

[76] *Id.* PP 1354, 1357.

[77] Order No. 1920 requires that transmission providers in each transmission planning region provide notice, such as on their OASIS or other public website, of the deadline for Relevant State Entities to communicate their agreement on a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process, and this deadline must be no earlier than the end date of the Engagement Period. *Id.* P 1356.

[78] *Id.* PP 1359, 1363.

clearly indicated their assent to do so as part of a Commission-approved State Agreement Process in their OATT.[79]

25. In Order No. 1920-A, the Commission set aside Order No. 1920, in part, and required that, when Relevant State Entities notify transmission providers by the deadline for communicating agreement that they agree on a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process resulting from the Engagement Period, the transmission providers must include that method or process in the transmittal or as an attachment to their compliance filing, even if the transmission providers propose a different Long-Term Regional Transmission Cost Allocation Method or do not propose to adopt a State Agreement Process.[80] The Commission further directed transmission providers to include in the transmittal or as an attachment to their compliance filings any information that Relevant State Entities provide to them regarding the state negotiations during the Engagement Period.[81] As part of this requirement, the

[79] *Id.* P 1429.

[80] Order No. 1920-A, 189 FERC ¶ 61,126 at P 651. The Commission clarified that, under this approach, the transmission providers decide what to submit as their actual Order No. 1920 compliance proposal, including relevant tariff language and supporting evidence or arguments, whether they decide to propose the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process or a different Long-Term Regional Transmission Cost Allocation Method. The requirement to include Relevant State Entities' Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process as an addition to the compliance filing does not constitute a "proposal" from the transmission provider. *Id.* P 654 n.1651.

[81] *Id.* P 651.

Commission clarified that transmission providers must include any and all supporting evidence and/or justification related to Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process that Relevant State Entities request that transmission providers include in their compliance filing.[82]

26. The Commission found that the additional requirements adopted in Order No. 1920-A will allow the Commission to better evaluate whether transmission providers have complied with Order No. 1920's requirement to provide a forum for negotiation that enables meaningful participation by Relevant State Entities during the Engagement Period.[83] The Commission recognized that it is critical to the success of the Long-Term Regional Transmission Planning reforms that states have an opportunity to have a significant role in the establishment of just and reasonable Long-Term Regional Transmission Cost Allocation Methods and State Agreement Processes.[84] The Commission found that Order No. 1920, as modified in Order No. 1920-A, strikes a reasonable balance between, on the one hand, recognizing the rights and responsibilities of the Commission and transmission providers over regional transmission planning and,

[82] *Id.* P 655. However, the Commission declined to require transmission providers to independently characterize this information. For example, the Commission did not require transmission providers to separately characterize Relevant State Entities' agreement or independently justify Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process. *Id.*

[83] *Id.* P 657 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1357).

[84] *Id.* P 649 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1415).

on the other, the states' critical interests in the resulting Long-Term Regional Transmission Facilities and how the costs associated with those facilities will be allocated.[85]

27. Furthermore, noting that it was directing these facilitation and informational requirements on compliance pursuant to the Commission's authority under FPA section 206, the Commission found that these reforms do not implicate or infringe upon transmission providers' filing rights under FPA section 205.[86] The Commission reiterated its determination in Order No. 1920 that existing regional transmission planning and cost allocation requirements are unjust, unreasonable, and unduly discriminatory or preferential under FPA section 206,[87] and that the Commission therefore has both the authority and responsibility to "determine the just and reasonable . . . practice . . . to be thereafter observed and in force," consistent with the Commission's findings in Order No. 1920.[88] The Commission explained that, pursuant to its authority under FPA section 206, the Commission required transmission providers to submit on compliance an *ex ante* cost allocation method. The Commission further explained that this compliance filing, submitted pursuant to FPA section 206, is not an

[85] *Id.* P 660.

[86] *Id.* P 657.

[87] *See id*. at P 652 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 113-114).

[88] *Id.* (quoting 16 U.S.C. 824e(a)).

FPA section 205 filing[89] and is thus distinct from any FPA section 205 filing that a transmission provider might file in the future following compliance to propose a change to its cost allocation method(s) for Long-Term Regional Transmission Facilities.[90]

b. Commission Consideration of Relevant State Entities' Agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Processes

28. In Order No. 1920-A, the Commission noted that, when acting under FPA section 206, the Commission's statutory burden is to "establish *a* just and reasonable and not unduly discriminatory replacement rate that is supported by substantial evidence."[91] The Commission further noted that the statute does not necessarily require the Commission to adopt the transmission provider's proposal on compliance, even if that proposal complies with the final rule's requirements. Rather, the Commission need only select a replacement rate that complies with the final rule and that is adequately supported in the record, and then intelligibly explain the reasons for its choice.[92]

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[89] *Id.* (citing *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018), *order on reh'g*, 173 FERC ¶ 61,204, at P 8 (2020)).

[90] *Id.* (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1430).

[91] *Id.* P 658 (emphasis in original) (citing 16 U.S.C. 824e; 16 U.S.C. 825*l*(b)).

[92] *Id.* (citing *Entergy Ark., LLC v. FERC*, 40 F.4th 689, 701–02 (D.C. Cir. 2022) (*Entergy*) (noting that the Commission "is not required to choose the best solution, only a reasonable one" (first quoting *Petal Gas Storage, LLC v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007); and then quoting *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 295 (2016) (*EPSA*)))).

29. The Commission recognized that, while it generally does not consider alternate compliance proposals other than those filed by the relevant public utility,[93] there are "good reasons" for considering such alternatives with respect to cost allocation under Order No. 1920.[94] The Commission explained that states play a unique role in Long-Term Regional Transmission Planning, as their laws, regulations, and policies drive the need for Long-Term Regional Transmission Facilities, and they typically will have responsibility to consider and approve the siting, permitting, and construction of Long-Term Regional Transmission Facilities selected in a regional transmission plan. As such, states affect whether Long-Term Regional Transmission Facilities are timely, efficiently, and cost-effectively developed such that customers actually receive the benefits associated with the selection of more efficient or cost-effective transmission solutions.[95] The Commission further found that given the inherent uncertainty involved in planning to meet Long-Term Transmission Needs, state-developed cost allocation methods and State Agreement Processes take on heightened importance.[96] The Commission explained that this means that it will consider the entire record—including

[93] *Id.* P 659 (citing *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134, at P 117 n.175 (2020); *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 115 (2007); *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 49 (2005)).

[94] *Id.* (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. at 515).

[95] *Id.* (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 126, 268, 1293, 1362-1364, 1404, 1407, 1410-1411, 1415, 1477, 1515).

[96] *Id.* (citing Order No. 1920, 187 FERC ¶ 61,068 at P 227).

the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and the transmission provider's proposal—when setting the replacement rate. Specifically, the Commission found that it is not required to accept a cost allocation proposal from a transmission provider on compliance simply because it may comply with Order No. 1920 but may adopt any cost allocation method proposed by the Relevant State Entities and submitted on compliance so long as it complies with Order No. 1920.[97]

2. Challenges to Order No. 1920-A

a. Statutory Filing Rights Under the FPA

i. Rehearing Requests

30. Several of the rehearing requests argue that Order No. 1920-A unlawfully impinges on transmission providers' FPA section 205 filing rights by requiring transmission providers to include, in their transmittal or as an attachment to their compliance filings, Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process.[98] Multiple

[97] *Id.*

[98] *See, e.g.*, SPP TOs Rehearing Request at 7, 12-15 (alternately describing Order No. 1920-A as requiring transmission providers to include Relevant State Entities' preferred Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings, or as granting "preferential filing privileges" to Relevant State Entities); Indicated PJM TOs Rehearing Request at 6 (describing Order No. 1920-A as "granting filing rights" to Relevant State Entities); MISO TOs Rehearing Request at 20 (describing Order No. 1920-A a "giv[ing] filing rights to Relevant State Entities").

rehearing petitioners assert that this requirement in Order No. 1920-A is inconsistent with the division of authority set forth in the FPA, which provides public utilities with unilateral and exclusive FPA section 205 filing rights to propose rates, terms, and conditions of service, and provides the Commission with the authority to modify existing rates under FPA section 206 after finding that the existing rate is unjust, unreasonable, or unduly discriminatory or preferential.[99]

31. Rehearing petitioners contend that requiring transmission providers to include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in transmission providers' compliance filings unlawfully conditions or encumbers transmission providers' FPA section 205 filing rights. MISO TOs state that this requirement disrupts the balance set by FPA sections 205 and 206—allowing FPA section 206 to usurp FPA section 205—and encroaches on transmission providers' FPA section 205 filing rights.[100] MISO TOs and

[99] *See, e.g.*, MISO TOs Rehearing Request at 5-7 (arguing that Order No. 1920-A disrupts the balance between the filing rights afforded to public utilities under FPA section 205 versus those afforded to the Commission under FPA section 206); *id.* at 7-8; SPP TOs Rehearing Request at 3; *id.* at 4-5 ("The FPA's distinction between section 205 and 206 filing rights is well-established and binding on the Commission."); EEI Rehearing Request at 7-8; WIRES Rehearing Request at 7-8, 10-11; Indicated PJM TOs Rehearing Request at 3-4.

[100] *See, e.g.,* MISO TOs Rehearing Request at 6-7; *id.* at 10-11; ("[T]he Commission uses its FPA section 206 authority to mandate a broad encroachment on transmission providers' FPA section 205 filing rights. Given this encumbrance, transmission providers will be unable to exercise the full breadth of their FPA section 205 rights."); *id.* at 24-27 (arguing also that even if FPA sections 205 and 206 are ambiguous as to whether the Commission has this authority, a reviewing court will no longer afford the Commission's interpretation deference).

SPP TOs argue that states may not force public utilities to make FPA section 205 filings or require them to relinquish their filing rights to other entities.[101] Indicated PJM TOs assert that this requirement "effectively forces utilities to cede their filing rights to others, contravening the statutory directive by Congress in [FPA] section 205 that grants utilities the exclusive right to propose their rates and terms of service."[102]

32. Some rehearing petitioners assert that the Commission misconstrues the structure of FPA sections 205 and 206, and particularly the rights afforded to public utilities under FPA section 205. For instance, they argue that FPA section 205 is intended for the benefit of the public utility, granting it the proactive right to initiate rate changes, in contrast to the passive role played by the Commission under that provision.[103] Rehearing petitioners also assert that the FPA section 205 rights of public utilities to initiate rate

[101] *Id.* at 18 (citing *Mass. Dep't of Pub. Utils v. FERC*, 729 F.2d 886, 886-87 (1st Cir. 1984) (*Massachusetts Department of Public Utilities*)); SPP TOs Rehearing Request at 4-5 (asserting that "states may not force public utilities to make section 205 filings"); *see also id.* at 5-6 (arguing that circumstances in which public utilities voluntarily cede statutory filing rights to others are distinct from those in which the Commission attempts to encroach on those rights).

[102] Indicated PJM TOs Rehearing Request at 2; *id.* at 10-11. *See also* EEI Rehearing Request at 6-8 (arguing that this requires utilities to file cost allocation methods they are opposed to and that the Commission did not identify text in the FPA authorizing this approach); WIRES Rehearing Request at 2, 15 (same).

[103] *See, e.g.*, MISO TOs Rehearing Request at 5-6 (citing *Emera Me. v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) (*Emera Maine*)); *id.* at 8-9, 11, 20, 25; Indicated PJM TOs Rehearing Request at 3-4, 19 n.69; *see also* SPP TOs Rehearing Request at 3.

changes are exclusive and unilateral.[104] Rehearing petitioners further contend that public utilities are the entities entitled to submit filings under FPA section 205 to set their rates and initiate rate changes.[105]

33. In addition, petitioners cite precedent that, they contend, reflects the fact that the Commission cannot diminish public utilities' FPA section 205 filing rights and, therefore, Order No. 1920-A's requirement for transmission providers to submit Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process with their compliance filings is unlawful. Many of the rehearing requests argue that the requirement to include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in transmission providers' compliance filings is contrary to *Atlantic City Electric. Co. v. FERC*.[106] They assert that *Atlantic City I* holds that public utilities—and only public utilities—have FPA section 205 filing rights to propose rate changes and that public utilities cannot be involuntarily divested of those rights as a result

[104] *See, e.g.*, Indicated PJM TOs Rehearing Request at 2-3, 10, 16; MISO TOs Rehearing Request at 5, 8, 12-15; SPP TOs Rehearing Request at 5; EEI Rehearing Request at 6-8, 12-13; WIRES Rehearing Request at 6.

[105] *See, e.g.*, WIRES Rehearing Request at 6, 8; EEI Rehearing Request at 10-11, 11 n.34; SPP TOs Rehearing Request at 9, 16 n.43, 19, 21; Indicated PJM TOs Rehearing Request at 7.

[106] 295 F.3d 1 (D.C. Cir. 2002) (*Atlantic City I*); *see also Atl. City Elec. Co. v. FERC*, 329 F.3d 856 (D.C. Cir. 2003) (*Atlantic City II*) (granting a petition for review seeking to enforce the mandate of *Atlantic City I* in response to the Commission's order on remand after *Atlantic City I*).

of an FPA section 206 compliance directive.[107] Several rehearing petitioners point to other decisions that, they contend, rejected attempts by the Commission to limit or compromise public utilities' (or, in the parallel context of the Natural Gas Act (NGA),[108] natural-gas companies') statutory authority to file rates.[109] A number of the rehearing requests also rely on *Massachusetts Department of Public Utilities*,[110] asserting that

[107] *See* MISO TOs Rehearing Request at 11-15 (discussing *Atlantic City I* and *Atlantic City II*, and asserting that these cases "stand as foundational determinations about the lawful statutory framework created by Congress vesting certain rights in public utilities under FPA section 205 and other rights in the Commission under section 206, and denying the Commission authority to overextend its authority under FPA section 206 when directing public utilities on compliance"); Indicated PJM TOs Rehearing Request at 2, 6, 11-12 (arguing that the requirement to include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in the transmittal or as an attachment to transmission providers' compliance filing forces transmission providers to cede their exclusive rights to Relevant State Entities and grants Relevant State Entities rights not provided by the FPA); SPP TOs Rehearing Request at 4-5, 9, 11-16; EEI Rehearing Request at 8-9 ("The precedent in *Atlantic City II*, is clear—the Commission cannot condition or encumber a utility's right under FPA section 205 to initiate rate changes, even as a result of an FPA section 206 compliance directive."); WIRES Rehearing Request at 5-6, 8, 10.

[108] 15 U.S.C. 717, *et seq.*

[109] *See, e.g.*, SPP TOs Rehearing Request at 5 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (*NRG Power Mktg.*); *Pub. Serv. Comm'n of N.Y. v. FERC*, 866 F.2d 487, 488-89 (D.C. Cir. 1989) (*NYPSC*); *W. Res., Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993) (*Western Resources*); *Consumers Energy Co. v. FERC*, 226 F.3d 777, 780 (6th Cir. 2000); *Louisiana v. FPC*, 503 F.2d 844, 861 (5th Cir. 1974)); MISO TOs Rehearing Request at 9, 16 (citing *NRG Power Mktg.*, 862 F.3d 108; *Emera Maine*, 854 F.3d 9; *PJM Power Providers Grp. v. FERC*, 88 F.4th 250, 270 n.122 (3d Cir. 2023)).

[110] 729 F.2d at 888.

"states may not force public utilities to make section 205 filings" or require utilities to submit "'regulator-compelled' utility-proposed changes."[111]

34. MISO TOs assert that Order No. 1920-A contravenes restrictions on the Commission's FPA section 206 authority because, by requiring attachment of Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process to transmission providers' compliance filings, it requires transmission providers to relinquish their right to file rate changes under FPA section 205 to Relevant State Entities.[112] MISO TOs argue that the Commission in Order No. 1920 acknowledged that it could not encumber these filing rights by initially allowing transmission providers to determine which Long-Term Regional Transmission Cost Allocation Method(s) to file as part of their compliance filings.[113] Indicated PJM TOs assert that FPA section 206 "does not authorize the Commission to provide [Relevant State Entities] with the statutory authority reserved solely to public utilities,

[111] SPP TOs Rehearing Request at 4-5; EEI Rehearing Request at 8 n.27; Indicated PJM TOs Rehearing Request at 6, 10; *see also* MISO TOs Rehearing Request at 9, 18, 25.

[112] MISO TOs Rehearing Request at 16-19 (arguing that this effectively forces transmission providers to make FPA section 205 filings that are not their own; also characterizing this as involuntarily transferring to Relevant State Entities the right to make FPA section 205 filings to make rate changes (citing *Atlantic City I*, 295 F.3d at 9-11; *Atlantic City II*, 329 F.3d at 858-59; *NRG Power Mktg.*, 862 F.3d at 114; *PJM Power Providers Grp.*, 88 F.4th at 270 n.122; *Emera Maine*, 854 F.3d at 24)).

[113] *See id.* at 16-17 (noting that, under Order No. 1920, filing a Relevant State Entity's proposed Long-Term Regional Transmission Cost Allocation Method was voluntary).

nor does it authorize the Commission to require public utilities to cede those rights to [Relevant State Entities] by forcing them to submit proposals and materials prepared by those [Relevant State Entities] that the public utilities do not support."[114] EEI argues that, "[b]y requiring the public utilities to file the Relevant State Entities' proposals, the Commission is requiring those public utilities to cede their statutory rights to make filings under the FPA to the Relevant State Entities and to provide those entities with statutory rights that Congress did not intend them to have."[115] SPP TOs argue that Order No. 1920-A gives "preferential filing privileges to states that the FPA does not authorize the Commission to grant," and thereby diminishes the FPA section 205 filing rights of public utilities.[116] WIRES states that the Commission does not have statutory authority to require a public utility to file another entity's rate proposal, and that Order No. 1920-A

[114] Indicated PJM TOs Rehearing Request at 11-12 (citing 16 U.S.C. 824d; *Atlantic City I*, 295 F.2d at 9-11; *Massachusetts Department of Public Utilities*, 729 F.2d at 888).

[115] EEI Rehearing Request at 8 (citing *Atlantic City II*, 329 F.3d at 858-59) (arguing that the Commission "acknowledges this when it concedes that it generally does not consider alternate compliance proposals other than those filed by the relevant public utility" (quotation marks omitted)); *see id.* at 9-12 (arguing that under the FPA the Commission may not, in setting a replacement rate, divest public utilities of their filing rights and give them to Relevant State Entities).

[116] SPP TOs Rehearing Request at 13; *see id.* at 14 ("The FPA does not contemplate any party, including states, being allowed to make compliance filings on a regulated public utility's behalf. Nor does it authorize third parties to somehow join or commandeer a public utility's compliance filing."); *id.* at 17 ("The fact that states are unable to file cost allocation methods themselves and must instead either comment on transmission providers' proposals or file section 206 complaints is exactly what the FPA requires." (quotation marks omitted)).

does not reflect a "mere change in the filing process" but rather a substantive change that the Commission is not authorized to make.[117] WIRES further argues that Order No. 1920-A effectively elevates states to the equivalent of public utilities in requiring that their proposals be included in the compliance filing, which will be assessed under the same just and reasonable standard articulated in FPA section 205.[118]

35. Many rehearing petitioners also contest the Commission's explanation for why this compliance filing requirement was statutorily permissible. MISO TOs assert that the Commission's explanation that a Relevant State Entity's proposed method or process does not constitute a "proposal" is an "empty formalism with no grounding in the statutory text" that does not change the impact of the requirement on transmission

[117] WIRES Rehearing Request at 11-12; *id.* at 13 ("[B]y requiring a transmission provider to include in its compliance filing a state-agreed upon method or process, the transmission provider is forced to share its statutory filing rights with another entity under a just and reasonable standard.").

[118] *See id.* at 13-14 (arguing that the Commission has not previously taken the approach set forth in Order No. 1920-A and that, as the Commission recognizes, transmission planning is the tariff obligation of transmission providers); *see also id.* at 10-11 ("Procedurally, the public utility's obligation under compliance is the same as that under FPA section 205, *i.e.*, the public utility must submit a just and reasonable rate."); *id.* at 15-16 ("Whether a filing is submitted under FPA section 205 or 206, the public utility's filing is equally subject to a just and reasonable standard, as both statutory provisions ultimately rely on the same standard."); *cf.* SPP TOs Rehearing Request at 30 (claiming that "[t]he Commission failed to acknowledge that it was changing policy when it decided to afford public utility and state proposals equal status when the Commission's previous approach was to favor compliance proposals by the regulated entities that were the actual subject of compliance mandates").

providers' FPA section 205 filing rights.[119] WIRES similarly argues that, despite this clarification and the fact that transmission providers are not required to characterize or justify the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process,[120] the compliance requirement remains unlawful because neither states nor Relevant State Entities are public utilities entitled to make FPA section 205 filings.[121]

36. MISO TOs argue that the Commission's distinction between FPA section 205 filings and compliance filings under FPA section 206 is a "hollow explanation" that does not allow the Commission to give filing rights to Relevant State Entities in violation of the FPA or require public utilities to cede their filing rights under FPA section 205.[122] SPP TOs acknowledge that Commission precedent distinguishes between FPA section 205 filings and compliance filings under FPA section 206,[123] but still contend that Order No. 1920-A's mandates are unlawful because they are forced encroachments on

[119] MISO TOs Rehearing Request at 19 (quoting Order No. 1920-A, 189 FERC ¶ 61,126 at P 654 n.1651).

[120] WIRES Rehearing Request at 13 (quoting Order No. 1920-A, 189 FERC ¶ 61,126 at PP 654 n.1651, 655).

[121] *See id.*

[122] MISO TOs Rehearing Request at 19-20.

[123] SPP TOs Rehearing Request at 3-4 (citing *N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,242, at P 32 (2010); *PJM Interconnection, L.L.C.*, 85 FERC ¶ 61,111, at 61,413 (1998); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 5-7, 21 (2013)).

public utility filing rights under the FPA, which may only be relinquished voluntarily.[124] EEI also recognizes that a compliance filing under FPA section 206 is not a change initiated by a public utility but rather one directed by the Commission,[125] but asserts that, even if the Commission were to act pursuant to FPA section 206 or via rulemaking, whatever rate or regulation the Commission establishes may not usurp the rights of public utilities to file proposed rates.[126]

37. SPP TOs argue that the Commission has rejected attempts to use compliance filings to bypass the FPA's filing requirements and circumvent FPA notice requirements, and that the Commission has recognized that it could not circumvent these requirements even by invoking FPA section 309.[127] They contend that the Commission's approach could lead it to improperly "bypass" FPA sections 205 and 206 in future cases, e.g., in complaint proceedings, by authorizing "favored parties to include their preferred alternative remedies in other parties' compliance filings without first having to make the first step showings under FPA section 206 that are normally required of complainants or

[124] *See id.* at 4-5 ("Courts have firmly rebuffed various attempts to alter the FPA framework, especially when the purpose was to weaken public utilities' ability to independently exercise their statutory filing rights."); *id* at 6.

[125] EEI Rehearing Request at 8-9 (citing *S. Co. Servs, Inc.*, 61 FERC ¶ 61,339, at 62,328-29 (1992), *order on reh'g*, 63 FERC ¶ 61,217 (1993)).

[126] *Id*. at 9 (citing *Atlantic City I*, 295 F.3d at 10-11).

[127] SPP TOs Rehearing Request at 15 (citing 16 U.S.C. 825h; *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,083, at P 29 (2022)).

protestors."[128] SPP TOs claim that Order No. 1920-A's attempt to weaken FPA sections 205 and 206's statutory constraints wrongly attempts to resolve a "major question" under the statute in ways that Congress did not authorize and could not have foreseen.[129]

38. Indicated PJM TOs argue that Order No. 1920-A's requirement to include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in transmission providers' compliance filings intrudes into the decision making processes of public utilities as to whether to submit a filing under FPA section 205.[130] Indicated PJM TOs state that these are "internal decisions by the public utility determined by its governing authority" that are beyond the Commission's authority to regulate and contrary to the "passive role" assigned to the Commission under FPA section 205.[131] They assert that this requirement is a "direct intervention into a public utility's decision regarding what to file even before the filing is

[128] *Id*. at 15 & n.39 ("The states or third parties would not have to show that the existing rates were unjust and unreasonable as they would under section 206.").

[129] SPP TOs Rehearing Request at 17-18 (citing *Biden v. Neb.*, 143 S. Ct. 2355, 2374 (2023); *W. Va. v. EPA*, 597 U.S. 697, 724 (2022)).

[130] Indicated PJM TOs Rehearing Request at 2-3, 6-7, 12-15.

[131] *Id.* at 12-15 (also arguing that under *EPSA*, 577 U.S. 260 and *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 403 (D.C. Cir. 2004) (*CAISO*), the Commission's authority is limited to regulating practices directly affecting jurisdictional rates and does not extend to regulating how a public utility makes decisions).

made" and not a "practice affecting a rate" subject to Commission regulation.[132] Indicated PJM TOs further assert that Commission precedent addressing RTO/ISO governance is not relevant, as the two cases addressing participation in the bodies that vote on rate proposals were decided prior to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, did not "advance[ ] to judicial review," and did not "address[ ] the D.C. Circuit's decision in *CAISO*."[133]

39. EEI, SPP TOs, and WIRES assert that there are other avenues for parties to be heard with respect to cost allocation, such that infringing on transmission providers' FPA section 205 rights is not necessary or justified. EEI argues that parties may file protests to a transmission provider's compliance filing if they wish to advocate for an alternative approach.[134] SPP TOs argue that, because states are not authorized to file cost allocation proposals, they are limited to commenting on or protesting transmission providers' proposals or filing FPA section 206 complaints.[135] WIRES argues that there are ways of evaluating whether transmission providers have provided state regulators with a formal

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[132] *Id.* at 14 (citing *Atlantic City I*, 295 F.3d at 10).

[133] *Id.* at 15 (citing *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,147, *order on reh'g,* 157 FERC ¶ 61,229 (2016); *New England Power Pool Participants Comm.*, 166 FERC ¶ 61,062 (2019)).

[134] EEI Rehearing Request at 9-10 (arguing that "[t]he Commission fails to explain what procedural infirmity would be created by requiring Relevant State Entities and other stakeholders to provide comments and feedback on these filings throughout the traditional regulatory process" and that the approach adopted in Order No. 1920-A could lead to confusion as to which proposal to provide feedback on); *see also id.* at 12.

[135] SPP TOs Rehearing Request at 17-18; *see also id.* at 15-16, 18-19.

opportunity to develop a Long-Term Regional Transmission Cost Allocation Method other than compelling transmission providers to include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filing, but that Order No. 1920-A adopts an adversarial approach of dueling compliance proposals.[136]

40. MISO TOs assert that, under Order No. 1920-A, the Commission is particularly likely to accept Relevant State Entities' Long-Term Regional Transmission Cost Allocation Methods rather than transmission providers proposals because they assert that Order No. 1920-A provides that Relevant State Entities' proposals "will be afforded heightened preference over transmission providers' own proposals."[137] MISO TOs argue that accepting Relevant State Entities' cost allocation method over the transmission provider's proposed cost allocation method would "subvert[ ] future FPA section 205 filings related to that rate scheme in a manner that disfavors the transmission provider's FPA section 205 proposals."[138]

41. Indicated PJM TOs and SPP TOs argue that, in claiming that the Commission need not accept a transmission provider's proposal on compliance even if the proposal complies with the final rule's requirements, the Commission's reliance on

[136] WIRES Rehearing Request at 14.

[137] MISO TOs Rehearing Request at 7; *see id.* at 24-25 (citing Order No. 1920-A, 189 FERC ¶ 61,126 at P 659); *id.* at 9, 33-37.

[138] *Id.* at 24-25.

Entergy Arkansas, LLC v. FERC is misplaced.[139] They contend that *Entergy* is inapposite because the Commission there rejected MISO's compliance filing before selecting a different replacement rate.[140] SPP TOs argue that the Commission can accept a proposed replacement rate from a third party (including Relevant State Entities) only after finding that the transmission provider's compliance filing does not comport with the Commission's directives.[141]

42. Indicated PJM TOs assert that the preference the Commission has articulated in its precedent for accepting public utilities' compliant, just and reasonable proposals rather than competing proposals[142] is, in fact, mandated by the FPA.[143] Indicated PJM TOs state that FPA sections 205 and 206 are part of a single statutory structure under which rates

[139] Indicated PJM TOs Rehearing Request at 22-23 (citing *Entergy*, 40 F.4th at 701-02); SPP TOs Rehearing Request at 18-19 n.49 (same); *see* Order No. 1920-A, 189 FERC ¶ 61,126 at P 658 & n.1656.

[140] Indicated PJM TOs Rehearing Request at 22-23; SPP TOs Rehearing Request at 18-19 & n.49 ("[S]tates, like every other third party, should have to show that a public utility's proposed replacement rate does not satisfy compliance directives before their preferred alternatives are considered.").

[141] SPP TOs Rehearing Request at 14-15.

[142] *See infra* P 74 (summarizing arguments that the Commission departed from this precedent without adequate explanation).

[143] Indicated PJM TOs Rehearing Request at 17-18 (arguing that "[t]he statutory structure of the FPA requires the Commission give preference to the proposal submitted on compliance by public utilities" and the Commission "cannot simply choose the one it likes best" (citing *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 340-41 (1956))); *see id.* at 20 ("This preference for the public utility's proposal is the only interpretation that conforms with the statutory text of the FPA.").

are initially established by the utility, such that the Commission must give preference to compliance proposals by public utilities over those by other entities.[144]

43. Indicated PJM TOs also assert that Order No. 1920-A "did not prescribe a specific replacement rate," instead maintaining a "light touch" and providing flexibility to transmission providers as to their compliance filings on cost allocation, and therefore "forwent its opportunity to establish a specific replacement rate pursuant to section 206."[145] Indicated PJM TOs further maintain that the Commission's approach in Order Nos. 1920 and 1920-A is inconsistent with FPA section 206, which Indicated PJM TOs state requires that the replacement be "fixed by rule or by a later order on compliance, but not by both."[146] As a result, Indicated PJM TOs claim that "any later filing made by the public utility to ensure that the public utility is compliant with the Commission's rules is made pursuant to section 205"[147] such that the Commission's "only recourse is to consider whether the rate submitted by the public utility on compliance is just and reasonable."[148] WIRES similarly argues that the Commission did

[144] *See id.* at 17.

[145] *Id.* at 27-28.

[146] *Id.* at 27 n.102 (citing 16 U.S.C. 824e(a); *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,165, at PP 21-26 (2009)).

[147] *Id.* at 27-28 n.102.

[148] *Id.* at 28; *see also, e.g.*, *id.* at 3-4 ("Unless the Commission prescribes the specific replacement rate, the Commission must accept the utility's filing if it is just and reasonable, even if the Commission prefers a different rate."); *id.* at 5, 7-8.

not "take the initiative in setting the replacement rates" but instead directed transmission providers on compliance to submit just and reasonable cost allocation methods consistent with the requirements of Order No. 1920, such that "the public utility need only propose a just and reasonable replacement rate in compliance with the Commission order."[149]

44. SPP TOs argue that certain Commission precedent cited in Order No. 1920-A[150] does not support—and, in fact, undermines—the requirement that transmission providers submit Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process with transmission providers' compliance filings.[151]

ii. Commission Determination

45. For the reasons below and those stated in Order No. 1920-A, we sustain the Commission's determination in Order No. 1920-A requiring transmission providers to include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process resulting from the Engagement Period, and associated information provided to transmission providers regarding the state

[149] WIRES Rehearing Request at 10-11.

[150] Order No. 1920-A, 189 FERC ¶ 61,126 at P 658 & n.1657 (citing *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134 at P 117 n.175; *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318 at P 115; *ANR Pipeline Co.*, 110 FERC ¶ 61,069 at P 49) (reflecting that the Commission typically does not consider alternative proposals on compliance).

[151] *See* SPP TOs Rehearing Request at 16-17 & n.43 (arguing that these cases involved acceptance of and/or giving greater weight to transmission providers' compliance filings or settlement proposals).

negotiations during the Engagement Period, in transmission providers' transmittal or as an attachment to their Order No. 1920 regional transmission planning and cost allocation compliance filings.[152] We further sustain the Commission's determination that, pursuant to its FPA section 206 authority, it will consider the entire record—including any agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and the transmission providers' proposal—when setting the replacement rate.[153]

(a) The Statutory Text and Structure, and Applicable Precedent, Support the Commission's Order No. 1920-A Approach

46. Order No. 1920-A requires that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and associated information in the transmittal or as an attachment to their Order No. 1920 compliance filings and provides for the Commission's consideration of the entire record, which includes proposals from transmission providers and attachments to transmission providers' filings, when finalizing the replacement rate. The challenges raised on rehearing to both of these aspects of Order No. 1920-A incorrectly treat filings to comply with Order Nos. 1920 and

[152] Order No. 1920-A, 189 FERC ¶ 61,126 at PP 651, 654-655.

[153] *Id.* P 659. As discussed further below, pursuant to FPA section 205, transmission providers retain their discretion over whether to make and the contents of any future FPA section 205 filings, and Order No. 1920-A's requirements do not affect that discretion. *See infra* PP 69, 118.

1920-A as arising under or implicating FPA section 205, which sets forth public utilities' filing rights and obligations. Rather, these aspects of Order No. 1920-A arise from FPA section 206, which sets forth the Commission's authority to determine and fix by order a replacement rate after appropriate findings.[154] The compliance filings required by Order Nos. 1920 and 1920-A are a tool to implement the Commission's authority under FPA section 206, and do not implicate public utilities' rights and obligations under FPA section 205. Thus, we address at the outset the statutory text and structure of the FPA, as well as relevant Commission and judicial decisions, in addressing these arguments.

47. Order Nos. 1920 and 1920-A were issued pursuant to Commission-initiated proceedings under FPA section 206.[155] As the Commission stated in Order No. 1920-A, having determined that the Commission's existing regional transmission planning and cost allocation requirements are unjust, unreasonable, and unduly discriminatory or preferential under FPA section 206, "[t]he Commission thus had both the authority and responsibility to 'determine the just and reasonable . . . practice . . . to be thereafter observed and in force.'"[156] The Commission required the submission of compliance filings to assist in effectuating the Commission's authority under FPA section 206,

[154] 16 U.S.C. 824d (setting forth public utility filing rights and obligations); 16 U.S.C. 824e (setting forth power of Commission to fix rates and charges).

[155] *See Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation & Generator Interconnection*, 179 FERC ¶ 61,028, at P 1 (2022) (NOPR); Order No. 1920, 187 FERC ¶ 61,068 at P 1; Order No. 1920-A, 189 FERC ¶ 61,126 at PP 1, 652.

[156] Order No. 1920-A, 189 FERC ¶ 61,126 at P 652 (quoting 16 U.S.C. 824e(a)).

explaining in Order No. 1920-A that "[t]his compliance filing submitted pursuant to FPA section 206 is not an FPA section 205 filing."[157]

48. While FPA sections 205 and 206 embody a complementary structure for regulating the rates and practices of public utilities, they are distinct provisions which assign rights and responsibilities to different entities under different circumstances. FPA section 205 requires that the public utility, subject to Commission oversight, "file with the Commission . . . schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges."[158] FPA section 206(a), by contrast, delineates the authority of the Commission—the subject of the provision—to modify public utilities' existing rates on appropriate findings and, itself, determine and fix by order the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be observed and in force.[159]

49. The express text of FPA section 206 does not provide public utilities with statutory filing rights with respect to the just and reasonable replacement rate following a

[157] *Id.* (citing *ISO New England Inc.*, 173 FERC ¶ 61,204 at P 8).

[158] 16 U.S.C. 824d(c); *cf. id.* 824d(a) (requiring that "[a]ll rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful").

[159] 16 U.S.C. 824e(a) (providing that "the Commission shall determine" the replacement rate and "shall fix the same by order").

finding that existing rates are unjust, unreasonable, or unduly discriminatory or preferential. Rather, the authority to "determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force" is vested in the Commission, and—in Commission-initiated proceedings under FPA section 206—the Commission must find that the replacement rate it determines and fixes meets the statutory criteria.[160] To implement this authority the Commission frequently requires public utilities to submit compliance filings, as it did in Order Nos. 1920 and 1920-A, which the Commission will review and address in further orders.[161]

50. As the D.C. Circuit held in discussing what it means to "'fix' a rate within the meaning of [FPA section 206]," when the Commission determines that an existing rate is

[160] *Id.*; *see E. Tenn. Nat. Gas Co. v. FERC*, 863 F.2d 932, 937 (D.C. Cir. 1988) (explaining that, under the parallel provisions of the NGA, "[w]hen review of existing rates is initiated by the Commission, . . . the burden of proving that the existing rates are unjust or unreasonable, and that those it orders in replacement are just and reasonable, rests with [the Commission]"); *ISO New England Inc.*, 153 FERC ¶ 61,224, at P 24 (2015) ("The Commission did not place the burden on Connecticut and Rhode Island to prove that the dynamic de-list bid threshold [proposed in a compliance filing] was unreasonable. Rather, the Commission affirmatively found the dynamic de-list bid threshold to be just and reasonable.").

[161] *See, e.g.*, *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054, at P 1762, *order on reh'g*, 185 FERC ¶ 61,063 (2023), *order on reh'g*, Order No. 2023-A, 186 FERC ¶ 61,199, *errata notice*, 188 FERC ¶ 61,134 (2024); *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247, at P 360 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197 (2021). This particular compliance process, however, is not prescribed by the statute and by no means required. *See Elec. Dist. No. 1 v. FERC*, 774 F.2d 490, 494 (D.C. Cir. 1985) (*Electrical District*) (explaining that the Commission may instead "complete the process itself and fix the rates in its initial order").

unjust and unreasonable, it is not "inevitable that the Commission has the obligation to end an unlawful rate from the moment it finds unlawfulness."[162] The court therefore rejected the Commission's argument that a replacement rate necessarily must go into effect as of the date the Commission finds that an existing rate is not lawful under the FPA, rather than the effective date provided when the Commission determines and fixes the replacement rate on compliance.[163] This decision underscores that the Commission's authority and responsibility under FPA section 206 to fix the replacement rate continued, in the Order Nos. 1920 and 1920-A context, from the point at which the Commission determines that existing rates are unlawful and requires compliance filings until the Commission fixes the replacement rate by order.[164] The submission and Commission

[162] *Electrical District*, 774 F.2d at 492. The D.C. Circuit later explained how this decision could be reconciled with *Pub. Serv. Co. of New Hampshire v. FERC*, 600 F.2d 944 (D.C. Cir. 1979), which applied a seemingly lower standard with respect to the necessary notice required under the FPA as to certain types of rates. *See Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 577-78 (D.C. Cir. 1990). The reconciliation of these cases does not affect the relevance of the analysis from the D.C. Circuit discussed herein regarding the Commission's ongoing FPA section 206 authority.

[163] *See Electrical District*, 774 F.2d at 492 ("Or to use a more remote analogy, it is not the case that once a court has concluded that a particular action challenged before it is unlawful it must immediately issue an injunction, instead of taking time for further deliberations necessary to determine what the precise terms of that injunction should be."); *see also Kern River Gas Transmission Co.*, 133 FERC ¶ 61,162, at P 22 (2010) (*Kern River*) ("Since *Electrical District*, the Commission's general practice in determining the effective date of rate changes ordered pursuant to NGA section 5 has been to follow the approach suggested by the court in that case.").

[164] *See Electrical District*, 774 F.2d at 492 (citing FPA section 206(a), 16 U.S.C. 824e(a), as establishing "the procedures that the statute establishes for adjusting unlawful rates" and finding that these procedures for the Commission to follow in fixing the replacement rate by order, pursuant to the statutory text are "not at all ambiguous").

consideration of compliance filings pursuant to those orders, and the Commission's subsequent determination of the replacement rate, are thus later stages occurring as part of a continuing process under FPA section 206, not under FPA section 205.[165] Accordingly, the Commission has distinguished compliance filings that assist the Commission's exercise of its authority under FPA section 206 from other filings made by public utilities under the distinct rights afforded to them under FPA section 205.[166]

51. FPA section 206 does not prevent the Commission, after having found an existing rate unjust and unreasonable, from choosing in a specific rulemaking proceeding to

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[165] *See id.* Similarly, *Entergy* recognizes that the Commission may select the just and reasonable rate in an FPA section 206 proceeding and that its authority to do so remains intact throughout the compliance process. 40 F.4th at 701-02. This stands in contrast to FPA section 205 proposals where the Commission's role is passive and reactive. *See City of Winnfield, La. v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984) (*City of Winnfield*); *NRG Power Mktg.*, 862 F.3d at 114.

[166] *See, e.g.*, *ISO New England Inc.*, 173 FERC ¶ 61,204 at P 8 (explaining that a filing from ISO-NE would be considered as a new FPA section 205 filing, rather than a compliance filing related to an FPA section 206 investigation, because the Commission "did not make a finding that ISO-NE's tariff was unjust and unreasonable without such revisions, a necessary precursor to the Commission considering ISO-NE's tariff revisions as a compliance filing setting forth a proposed replacement rate"); *N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,242 at P 32 (stating that "the Commission has always treated compliance filings differently than a company-initiated rate change application filed pursuant to section 205 of the FPA," including that they are not subject to the 60-day prior notice requirement under section 205(d) of the FPA); *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186, at P 28 (2010) (finding that aspects of a filing exceeded the scope of compliance and should, instead, have been submitted under FPA section 205); *PJM Interconnection, L.L.C.*, 85 FERC ¶ 61,111 at 61,413 ("Although PJM purported to file its market monitoring plan in part pursuant to Section 205 of the FPA, it was in fact a filing in compliance with Ordering Paragraph V of the November 25 Order. Such compliance filings are pursuant to a Commission directive and are not subject to the procedures of Section 205(d)."") (cleaned up).

consider the approaches of entities other than the public utility to inform the Commission's determination of the replacement rate;[167] rather, it states that "the Commission shall determine the just and reasonable rate" to be thereafter observed and in force.[168] It also does not preclude the Commission from requiring that transmission providers submit Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process with transmission providers' compliance filings.[169] Neither does FPA section 205, which governs the distinct process of a public utility filing its own rates in the first instance, subject to Commission oversight,[170] rather than the determination of a replacement rate by the Commission after appropriate findings under FPA section 206. Moreover, that a public utility is the entity that submits a compliance filing does not transform that

[167] As discussed below, Order No. 1920-A's approach to considering compliance filings on cost allocation represents a limited departure, in these particular circumstances, from the Commission's typical approach of adopting public utilities' proposals in compliance filings if they are compliant with the requirements of the final rule. *See infra* PP 86-87.

[168] 16 U.S.C. 824e(a).

[169] *See* 16 U.S.C. 824e(a), (b) (setting forth certain procedural requirements relating to proceedings under FPA section 206, which do not include such restrictions); *see also Interstate Nat. Gas Ass'n of Am. v. FERC*, 285 F.3d 18, 38–39 (D.C. Cir. 2002) (*INGAA*) (holding under parallel provisions of the NGA that "the Commission has authority under [NGA section] 5 to order hearings to determine whether a given pipeline is in compliance with FERC's rules . . . and under [NGA sections] 10 and 14 to require pipelines to submit needed information for making its [NGA section] 5 decisions"); 16 U.S.C. 825c(a), 825f(a), 825h.

[170] *See* 16 U.S.C. 824d.

submission into an FPA section 205 filing, subject to the requirements of that provision.[171] A contrary conclusion would fail to recognize and give effect to the distinct and express statutory authority afforded to the Commission in FPA section 206, which arises pursuant to specific statutory findings and which, once triggered, is subject to different requirements than FPA section 205 filings.

52. We agree with rehearing petitioners that FPA section 205 expressly provides public utilities with statutory filing rights. But when considered in the correct statutory context, the arguments on rehearing that the Commission has intruded on those public utilities' FPA section 205 filing rights by: (1) requiring that public utilities attach to their compliance filings Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and associated information; or (2) considering, and potentially adopting, Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in determining the replacement rate, are not persuasive.[172] These aspects of Order No. 1920-A were adopted pursuant to FPA section 206, to assist in building the record for the Commission's exercise of its own authority to determine and fix the just and reasonable rate, as well as in monitoring compliance with the requirements related to the Engagement Period and efficiently considering the views of

[171] *See supra* P 50 & note 166 (discussing cases distinguishing compliance filings made by public utilities, which the Commission and courts consistently and correctly treated as made under FPA section 206, from FPA section 205 filings).

[172] *See supra* PP 30-31.

both Relevant State Entities and transmission providers. FPA section 205 is not implicated by these aspects of Order No. 1920-A and arguments to the contrary conflate compliance filings to assist the Commission in implementing its authority under FPA section 206 with public utilities' rate filings under FPA section 205.

53. Efforts to connect public utilities' FPA section 205 rights to this distinct FPA section 206 process by appealing to the structure of FPA sections 205 and 206[173] are misplaced for similar reasons; these arguments incorrectly blur the line between the separate authorities assigned in FPA sections 205 and 206. As the petitioners seeking rehearing observe, public utilities have the statutory right under FPA section 205 to file proposals to set and revise their rates of their own initiative in the first instance, and under that section, the Commission plays an essentially passive role in reviewing—and then accepting or rejecting—those proposals based on their consistency with the statutory requirements.[174] And as discussed below, public utilities retain their discretion as to whether to file—or not file—those proposals using this FPA section 205 authority.[175] But as to existing, Commission-approved rates, the FPA separately assigns to the Commission under FPA section 206 the authority to review those rates of its own

[173] *See supra* P 32.

[174] *See, e.g.*, EEI Rehearing Request at 13; Indicated PJM TOs Rehearing Request at 2-4; MISO TOs Rehearing Request at 5-6; SPP TOs Rehearing Request at 3, 5-6; WIRES Rehearing Request at 8.

[175] *See infra* P 118.

initiative or in response to a complaint.[176] Upon appropriate findings, the Commission—not the public utility—has the authority itself to determine and fix the replacement rate,[177] including determining such rate through the use of compliance filings.[178] Subsequently, public utilities may seek to revise that Commission-determined replacement rate through the exercise of their FPA section 205 rights.[179] FPA sections 205 and 206 are thus complementary provisions under a coherent statutory structure, but they embody a statutorily-imposed division of rights and responsibilities between public utilities under FPA section 205 and the Commission under FPA section 206.[180]

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[176] 16 U.S.C. 824e(a).

[177] *Id.*; *see also FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014) (stating that, under FPA section 206, "[i]t is the Commission's job—not the petitioner's—to find a just and reasonable rate." (internal quotations omitted)).

[178] Arguments on rehearing attempting to conflate compliance filings under FPA section 206 with public utilities' filings under FPA section 205 because both are evaluated based on a just and reasonable standard, *see, e.g.*, WIRES Rehearing Request at 14-15, incorrectly blur the lines between these two distinct statutory provisions.

[179] *See, e.g.*, *PJM Power Providers Grp. v. FERC*, 88 F.4th at 270 n.122 (describing the statutory structure and stating that public utilities may seek, through FPA section 205 filings, to modify rates set by the Commission under FPA section 206).

[180] *See, e.g.*, *Emera Maine*, 854 F.3d at 24 (describing this division, where FPA section 205 is intended for the benefit of the utility, but FPA section 206 has a "quite different" purpose of empowering the Commission to modify rates upon complaint or its own initiative, with "entirely different" and "stricter" procedures, such as the burden of proof and required two-step findings under FPA section 206 (quotation marks and citations omitted)).

54. Nor does the precedent that the rehearing requests rely on[181] to claim that Order No. 1920-A unlawfully intrudes on public utilities' FPA section 205 filing rights support this argument.[182] These cases do not address the context—applicable here—of how the Commission may exercise its authority, under FPA section 206, to determine the just and reasonable replacement rate, including how or from whom it obtains views concerning the replacement rate or which replacement rate it may determine and fix. Rather, they arise in proceedings under different statutory provisions—particularly including FPA section 205 and the parallel context of NGA section 4[183]—as discussed in greater detail below. As a result, none of these cases support the conclusion that the Commission intrudes on FPA section 205 when it exercises its authority under FPA section 206 by requiring that public utilities attach to their compliance filings Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and associated information or by potentially adopting that agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in determining the replacement rate.

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[181] *See, e.g.*, *Atlantic City I*, 295 F.3d at 9-11; *Atlantic City II*, 329 F.3d at 858-59; *NRG Power Mktg.*, 862 F.3d at 114; *Western Resources*, 9 F.3d at 1578; *Massachusetts Department of Public Utilities*, 729 F.2d at 886-88.

[182] *See supra* P 33 (summarizing the arguments by rehearing petitioners asserting that Order No. 1920-A is contrary to judicial precedent relating to public utilities' FPA section 205 filing rights).

[183] 15 U.S.C. 717c.

55. *Atlantic City I* provides a straightforward example of this distinction. The D.C. Circuit there rebuffed a Commission attempt, under FPA section 205,[184] to require that public utilities cede to an ISO their FPA section 205 right to make unilateral changes in rate design, terms or conditions of service such that "only the ISO could propose changes in rate design."[185] The court held that the Commission "lacks the authority to require the petitioners to cede their right under [FPA] section 205 . . . to file changes in rate design with the Commission,"[186] explaining that the Commission was "attempting to deny the utility petitioners the very statutory rights given to them by Congress."[187] Here, by contrast, public utilities retain all of their rights to file proposed rate changes under FPA section 205. Order No. 1920-A's approach to cost allocation in compliance filings, under which transmission providers must attach or include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and associated material in transmission providers' compliance filings and the Commission may consider and adopt Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process, is

[184] 16 U.S.C. 824d.

[185] *Atlantic City I*, 295 F.3d at 7; *see id.* at 9 ("FERC disapproved this sharing arrangement and directed the utility petitioners to give up all authority to make unilateral changes to rate design.").

[186] *Id.* at 11.

[187] *Id.* at 9.

pursuant to the Commission's authority to set a replacement rate in FPA section 206 proceedings.[188]

56. Other cases that the rehearing requests rely on are similarly inapposite because they rejected attempts by the Commission or its predecessor, the Federal Power Commission (FPC), to modify public utilities' FPA section 205 filings or natural gas companies' NGA section 4 filings, without first exercising its authority and carrying its burden under FPA section 206 or NGA section 5, as appropriate.[189] Also distinguishable are cases involving Commission attempts—in NGA section 4 proceedings—to require that natural gas companies refile their rates at regular intervals, rather than the

[188] *Atlantic City II* is inapposite for the same reason, as that decision involved a petition to enforce the mandate of *Atlantic City I* where the Commission "rather than simply vacating the offending portions of its prior order . . . commanded the utilities comprising the ISO to relitigate before it the very issues upon which they had theretofore prevailed before th[e] court." *Atlantic City II*, 329 F.3d at 858; *see also id.* at 859 ("[W]e reaffirm and clarify our prior decision that [the Commission] has no jurisdiction to enter limitations requiring utilities to surrender their rights under [section] 205 of the FPA to make filings to initiate rate changes.").

[189] *See NRG Power Mktg.*, 862 F.3d at 110, 114-17 & n.2 (explaining that, in FPA section 205 proceedings, the Commission may not unilaterally impose a new rate scheme of its own making without the consent of the utility, but that it "may unilaterally impose a new rate scheme on a utility or [RTO] only under a different provision of the Act[,][FPA section 206,]" which was not "the basis for [the Commission's] decision in this case"); *Western Resources*, 9 F.3d at 1577-79 ("After careful consideration of the statutory framework, we cannot accept the Commission's argument that [NGA section] 4 permits it to approve any rate, no matter how materially different from that proposed by the pipeline, so long as it can be viewed as a 'part' of the original request."); *Louisiana v. FPC*, 503 F.2d at 861-62 ("The difficulty is this: FPC approved the interim four-level plan as 'just and reasonable,' and in the next breath it ordered a new, three-level plan to take its place.").

Commission employing its NGA section 5[190] authority to review existing rates.[191] Again, none of these cases address the circumstances presented here, where the Commission has invoked its FPA section 206 authority, made findings that existing practices do not meet the statutory standard, and then further exercised its authority to determine and fix the replacement rate.

57. *Massachusetts Department of Public Utilities* also does not support rehearing petitioners' arguments. In that case, the D.C. Circuit held that the Commission correctly concluded that Massachusetts could not compel a public utility to exercise its FPA section 205 rights to change its Commission-jurisdictional rates.[192] The court there described the "procedural dichotomy" reflected in FPA sections 205 and 206.[193] It explained that Massachusetts's argument that it could compel a public utility to make FPA section 205 rate changes "would prevent the utility from choosing among reasonable rate-practice alternatives."[194] By contrast, the Commission's view was "more consistent with the purposes of the entire procedural scheme" in that it allows the utility's filed rate to remain in effect absent a finding that the rate is unjust, unreasonable, or unduly

[190] 15 U.S.C. 717d.

[191] *See, e.g.*, *Consumers Energy Co. v. FERC*, 226 F.3d 777, 780–81 (6th Cir. 2000); *NYPSC*, 866 F.2d 487, 488–92 (D.C. Cir. 1989).

[192] *Massachusetts Department of Public Utilities*, 729 F.2d at 886-87.

[193] *Id.* at 886-88.

[194] *Id.* at 888.

discriminatory or preferential and allows the utility to change its rate so long as the utility can prove the proposed change is reasonable.[195] This same "procedural dichotomy" supports the lawfulness of Order No. 1920-A; public utilities are not exercising (or being compelled to exercise) their FPA section 205 filing rights. Rather, the Commission has made the requisite findings to support the exercise of its own authority under FPA section 206—a posture that the court in *Massachusetts Department of Public Utilities* differentiated[196]—and the compliance filings that Order Nos. 1920 and 1920-A require and the subsequent fixing of the replacement rate by order occurs under that authority, not FPA section 205.

(b) Inclusion of Relevant State Entities' Agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in Transmission Providers' Compliance Filings

58. As explained above, Order No. 1920-A's compliance process with respect to cost allocation does not infringe on or encumber transmission providers' FPA section 205 filing rights, as a matter of statutory text, structure, and applicable precedent.

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[195] *Id.*; *see id.* (explaining further that "the net effect of accepting Massachusetts' argument is to allow a state to do what FERC itself cannot, namely, to change an *inter*state rate practice that FERC has not found unreasonable" and also identifying pragmatic considerations relating to the availability of refunds under FPA section 205 and concerns of "confusion, possibly chaos" that could result if states attempted to require conflicting changes); 16 U.S.C. 824e(a).

[196] *Massachusetts Department of Public Utilities*, 729 F.2d at 866-88 (contrasting the two procedural "tracks" under which rates are regulated in FPA sections 205 and 206).

Specifically, the compliance process requirement that transmission providers include in their transmittals or attach to their Order No. 1920 regional transmission planning and cost allocation compliance filings Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process does not infringe or encumber transmission providers' FPA section 205 filing rights. We address in additional detail here certain of the arguments raised on rehearing challenging this requirement.

59. We disagree with rehearing petitioners' claims that requiring transmission providers to include or attach these materials in transmission providers' FPA section 206 compliance filings in response to Order Nos. 1920 and 1920-A constitutes a "filing" requirement under FPA section 205, requires transmission providers to "cede" FPA section 205 filing rights or encumbers those rights, or grants such filing rights to Relevant State Entities. The Commission required only that transmission providers include this material in their FPA section 206 compliance filings, either in the transmittal or an attachment thereto.[197] The Commission did not require transmission providers to independently characterize this material.[198] The Commission was further clear that "the transmission providers decide what to submit as their actual Order No. 1920 compliance proposal, including relevant tariff language and supporting evidence or arguments."[199]

[197] Order No. 1920-A, 189 FERC ¶ 61,126 at P 651.

[198] *Id.* P 655.

[199] *Id.* P 654 n.1651 ("The requirement to include Relevant State Entities' Long-Term Regional Transmission Cost Allocation Method and/or State Agreement

Put in practical terms, in Order No. 1920-A, the Commission requires nothing more from transmission providers than attaching one or more additional documents, produced by parties other than transmission providers, to a compliance filing made under FPA section 206, to assist in building the record for the Commission's exercise of its own authority to determine and fix the just and reasonable rate under that statutory provision, as well as monitoring compliance with the requirements related to the Engagement Period and efficiently considering the views of both Relevant State Entities and transmission providers.[200] Furthermore, this is a one-time filing requirement associated with this FPA section 206 proceeding—not an ongoing obligation affecting any future filings by

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Process as an addition to the compliance filing does not constitute a 'proposal' from the transmission provider.").

[200] FPA section 206 does not mandate a specific process through which the Commission chooses to build the record to determine and fix the replacement rate; rather, FPA section 206 merely requires a hearing prior to finding the existing rate unjust and reasonable, and then empowers the Commission to determine and fix the replacement rate by order. *See* 16 U.S.C. 824e; *see also Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 653, 655-56 (1990) (holding that when the Due Process Clause is not implicated and an agency's governing statute contains no specific procedural mandates, the APA establishes the maximum procedural requirements a reviewing court may impose on agencies); *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) ("Even apart from the [APA,] this Court has for more than four decades emphasized that the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments."); *FPC v. Transcont'l Gas Pipe Line Corp.*, 423 U.S. 326, 333 (1976); *Towns of Concord, Norwood, & Wellesley, Mass. v. FERC*, No. 90–1179, 1991 WL 17224, at *3 (D.C. Cir. 1991) (noting "the Commission's broad authority to establish its own rules of procedure and structure its own methods of inquiry"); 5 U.S.C. 706(2)(D) (permitting courts to hold unlawful and set aside action found to be "without observance of procedure *required by law*" (emphasis added)).

transmission providers under section 205 or any other section of the FPA.[201] And where transmission providers' FPA section 205 rights are at stake, Order No. 1920-A does not include these same requirements.[202]

60. Arguments asserting that the Commission has offered only a "hollow" explanation for this requirement, resting on "empty formalisms,"[203] wrongly conflate the two distinct procedural postures and authorities set forth in FPA sections 205 and 206. The fact that a "compliance filing submitted pursuant to FPA section 206 [as required by Order Nos. 1920 and 1920-A] is not an FPA section 205 filing"[204] carries legal consequences. Moreover, as the Commission explained, the requirement to include materials from Relevant State Entities in the context of this FPA section 206 compliance filing "does not constitute a 'proposal' from the transmission provider"[205] and transmission providers remain free to present whatever proposal they desire (and believe is compliant with the requirements of Order Nos. 1920 and 1920-A). Furthermore, transmission providers retain their full and exclusive discretion as to whether to file—or not file—proposed changes to Long-Term Regional Transmission Cost Allocation Method(s) and/or State

[201] Order No. 1920-A, 189 FERC ¶ 61,126 at P 651.

[202] *See infra* P 118.

[203] MISO TOs Rehearing Request at 19-20; *see also* WIRES Rehearing Request at 13; SPP TOs Rehearing Request at 4-5; EEI Rehearing Request at 8-9.

[204] Order No. 1920-A, 189 FERC ¶ 61,126 at P 652.

[205] *Id.* P 654 n.1651

Agreement Process under FPA section 205. Transmission providers continue to be able to fully participate in the FPA section 206 compliance process, their FPA section 205 rights are not implicated in this process, and FPA section 206 does not constrain the Commission, as it effectuates its own authority under that section, from requiring transmission providers to include information from Relevant State Entities in transmission providers' compliance filings to assist the Commission in setting the just and reasonable rate.

61. SPP TOs' argument that "[t]he Commission previously rejected attempts to use compliance filings to bypass the FPA's filing requirements" and cannot "'circumvent the notice and filing requirements of FPA sections 205 and 206'"[206] is immaterial because Order No. 1920-A does not have these effects—no notice and filing requirements are "bypassed," and no filings under FPA section 205 are required at all. Rather, Order No. 1920-A's approach to cost allocation in the required compliance filings is a proper exercise of the Commission's authority under FPA section 206. For the same reason, we disagree with SPP TOs' assertion that Order No. 1920-A raises a "major question" because it attempts to weaken FPA sections 205 and 206's statutory constraints:[207] Order No. 1920-A is a clear and unequivocal application of the Commission's authority under FPA section 206.

[206] SPP TOs Rehearing Request at 15 & nn.37-38 (quoting *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,083 at P 29).

[207] *Id.* at 17-18.

62. We similarly disagree with SPP TOs' claim that Order No. 1920-A sets a precedent in which, "in a future section 206 complaint proceeding, the Commission could authorize states or other favored parties to include their preferred alternative remedies in other parties' compliance filings without first having to make the first step showings under FPA section 206 that are normally required."[208] The Commission considers compliance filings in FPA section 206 rulemaking proceedings only after it makes a first-step determination that existing rates are unjust, unreasonable, or unduly discriminatory or preferential,[209] as it did in Order No. 1920. Once such a finding is made, the Commission determines and fixes the replacement rate, including through the use of compliance filings.[210]

63. Indicated PJM TOs claim that Order No. 1920-A intrudes into transmission providers' decision making processes by requiring that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation

[208] *Id.* at 15.

[209] 16 U.S.C. 824e(a); *see, e.g.*, *Emera Maine*, 854 F.3d at 24 (holding that "unlike section 205, section 206 mandates a two-step procedure that requires FERC to make an explicit finding that the existing rate is unlawful before setting a new rate").

[210] In a complaint proceeding under FPA section 206, the burden of proof to make this first prong showing is on the complainant, *see id.* 824e(b), but once that showing is made, the replacement rate is determined and fixed by the Commission, *see id.* 824e(a); *see also supra* PP 51 (discussing that the Commission is not, under the FPA, constrained to consider proposals only from particular entities in receiving compliance filings); *infra* PP 86-87 (discussing the Commission's ordinary practice of accepting the compliant, just and reasonable proposal of the public utility and its reasons for taking a different approach with respect to cost allocation under Order No. 1920-A).

Method(s) and/or State Agreement Process in transmission providers' compliance filings.[211] We disagree, however, with the factual premise of this argument—that the requirement to include the Relevant State Entities' Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in transmission providers' compliance filings changes transmission providers' decision-making process as to what proposal transmission providers choose to make in their compliance filing.[212] Regardless of Order No. 1920-A's filing requirement, transmission providers will need to decide whether to adopt Relevant State Entities' Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process, or file a different proposal. And if transmission providers decide to file a different proposal, the requirement to simply include or attach, without characterization, Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and associated information received from Relevant State Entities need not involve deliberation. In short, the Commission is not regulating transmission providers' decision as to what proposal they make on compliance.[213]

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[211] Indicated PJM TOs Rehearing Request at 12-15.

[212] *See id.* at 12-13.

[213] For this reason, Indicated PJM TOs' discussion of the applicability of precedent relating to RTO governance, *see* Indicated PJM TOs Rehearing Request at 15 & n.50, is mistaken and beside the point. We further find that the Commission's regulation of cost allocation methods for Long-Term Regional Transmission Facilities as practices directly affecting Commission-jurisdictional rates falls well within its authority pursuant to *EPSA*, 577 U.S. at 278. Moreover, *CAISO*, in which the court found that a Commission attempt to order a public utility to replace its governing board exceeded the Commission's authority, 372 F.3d at 398, 403, bears no resemblance whatsoever to the facts before us

64. Indicated PJM TOs' argument is also incorrect for other reasons. This argument is further premised on an alleged intrusion on public utilities' "internal decisions on whether to submit a filing *under section 205 of the FPA* and the content of that filing."[214] But, as discussed above, compliance filings are not submitted under FPA section 205. The compliance filing at issue here is a one-time requirement under FPA section 206. So the premise of this argument is also mistaken as a matter of law and fact.

65. EEI, SPP TOs, and WIRES each argue that there are other avenues (e.g., protests) for parties to be heard with respect to cost allocation, such that allegedly infringing on transmission providers' FPA section 205 rights by requiring inclusion of Relevant State Entities' materials in transmission provider's compliance filings is not necessary or justified.[215] For the most part, these arguments appear to be claims that the Commission's decision on this point was arbitrary and capricious or that the Commission should have adopted a different approach.[216] At times, however, rehearing petitioners

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here, given that the Commission is in no way regulating transmission providers decision-making process or governance structure. Indeed, we note that Indicated PJM TOs' argument proves too much: every time the Commission directs a public utility to make a compliance filing, it requires that the utility make decisions as to what proposal to adopt.

[214] Indicated PJM TOs Rehearing Request at 6-7 (emphasis added); *see also id.* at 2-3; *id.* at 14 (citing *Atlantic City I*, which addressed FPA section 205 rights, and referring to the "passive" role of the Commission, which pertains under FPA section 205).

[215] *See* EEI Rehearing Request at 9-10, 12; SPP TOs Rehearing Request at 15-18; WIRES Rehearing Request at 14.

[216] *See infra* PP 78-80 (addressing these arguments).

link these arguments to their claims that the Commission has afforded Relevant State Entities rights not found in the FPA.[217] We reject these arguments as inconsistent with the statutory text and structure, as well as applicable precedent. Although protests are one way that other entities can be heard, the FPA does not limit the Commission's ability to determine how to build the record when determining and fixing an appropriate replacement rate under FPA section 206.[218]

(c) Commission Consideration of Relevant State Entities' Agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process

66. The above discussion of the statutory text, structure, and precedent rebuts the core of the challenges to the Commission's determination that it will "consider the entire record—including the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process and the transmission providers' proposal—when setting the replacement rate."[219] We address in

[217] *See, e.g.*, EEI Rehearing Request at 9 (arguing that the Commission "goes beyond its authority under the FPA" and that the proper method for submitting an alternative to a replacement rate proposed by a public utility on compliance is to file a protest); SPP TOs Rehearing Request at 17-18 ("The fact that states 'are unable to file cost allocation methods themselves' and must instead either comment on transmission providers' proposals or file section 206 complaints is exactly what the FPA requires." (quoting Order No. 1920-A, 189 FERC ¶ 61,126 at P 645)); WIRES Rehearing Request at 11, 14 (advancing this argument in contending the Commission does not have statutory authority to require a public utility to file another entity's rate proposal).

[218] *See supra* PP 51-52, 59.

[219] Order No. 1920-A, 189 FERC ¶ 61,126 at P 659.

additional detail certain of the specific arguments raised on rehearing challenging Order No. 1920-A in this respect.

67. We continue to conclude that "the Commission need only select a replacement rate that complies with the final rule and that is adequately supported in the record, and then intelligibly explain the reasons for its choice."[220] Claims that Order No. 1920-A distorts the statutory scheme by "elevating" Relevant State Entities to the equivalent of public utilities by requiring that their agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process be included in the compliance filing, which will be assessed under the same just and reasonable standard as articulated in FPA section 205,[221] are unpersuasive. As discussed above, FPA section 206 does not specify that the Commission may only consider public utilities' proposals for a replacement rate; rather, FPA section 206 merely requires a hearing prior to finding the existing rate unjust and reasonable, and then empowers the Commission to determine and fix the replacement rate by order.[222] In fact, the D.C. Circuit has explained that the Commission is not required to await public utilities' proposals on compliance at all but may instead determine and fix the replacement rate coincident with the finding under the first prong of FPA section 206 that the existing rate is unjust and unreasonable.[223] And

[220] *Id*. P 658 (citing *Entergy*, 40 F.4th at 701-02).

[221] *See, e.g.*, SPP TOs Rehearing Request at 13-14.

[222] *See supra* P 51.

[223] *See Electrical District*, 774 F.2d at 494; *Kern River Gas Transmission Co.*, 133 FERC ¶ 61,162 at PP 21-22 ("[A]s an alternative to waiting for the pipeline to

while the Commission has typically adopted public utilities' compliant just and reasonable proposals for the replacement rate without considering alternate proposals by other entities, FPA section 206 does not prevent the Commission from taking a different approach in a specific rulemaking proceeding. Rather, and as discussed further below,[224] where the Commission has adopted transmission providers' proposals on compliance where it finds them compliant with the requirements of the final rule, it has done so based on pragmatic considerations and pursuant to its authority and discretion to determine and fix a just and reasonable rate.[225]

68. Relatedly, MISO TOs misunderstand Order No. 1920-A in contending that the Commission has ascribed "heightened importance" to state-developed cost allocation methods in the context of planning to meet Long-Term Transmission Needs, such that the Commission will be particularly likely to accept Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement

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calculate the rates in a compliance filing, the Commission may calculate and fix the rate itself in the initial order.").

[224] *See infra* PP 71, 86-87.

[225] *See, e.g.*, *Entergy*, 40 F.4th at 701–02 ("[A]t bottom, Petitioners simply argue that, in its view, a better method exists. But [the Commission] is not required to choose the best solution, only a reasonable one." (quotation marks and citation omitted)); *Duke Energy Trading & Mktg., L.L.C. v. FERC*, 315 F.3d 377, 382 (D.C. Cir. 2003) ("[T]here may be a number of different potential rates all of which are just and reasonable."); *Kern River*, 142 FERC ¶ 61,132 at P 37 ("Here, the Commission is acting under NGA section 5, not section 4. However, just as there may be several just and reasonable rates, terms, or conditions which a pipeline may propose in a section 4 proceeding, there may be several just and reasonable rates, terms or conditions which the Commission may adopt as a just and reasonable remedy in a section 5 proceeding.").

Process rather than those of transmission providers.[226] Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Methods and State Agreement Processes take on heightened importance in relation to other commenters' views, not in relation to transmission providers' proposals for a replacement rate in transmission providers' compliance filings. Further, MISO TOs' argument disregards the Commission's explanation that "the Commission will consider the entire record—including the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process and the transmission provider's proposal—when setting the replacement rate."[227] The Commission did not state that it was adopting any generic or *per se* preference for Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process. Rather, the Commission provided that it will make determinations as to the appropriate replacement rate on a case-by-case basis, based on the entire record and consistent with the Commission's statutory authority and discretion to determine and fix the replacement rate.[228] And, consistent with the

[226] *See, e.g.*, MISO TOs Rehearing Request at 24-25, 33-37 (citing Order No. 1920-A, 189 FERC ¶ 61,126 at P 659).

[227] Order No. 1920-A, 189 FERC ¶ 61,126 at P 659; *see also id.* (explaining that the Commission was "not required to accept a cost allocation proposal from a transmission provider simply because it may comply with Order No. 1920" but could, instead, "adopt any cost allocation method proposed by Relevant State Entities and submitted on compliance so long as it complies with Order No. 1920").

[228] *See id*. P 658 (explaining how the Commission will consider replacement rate proposals) (citing 16 U.S.C. 824e, 825*l*(b)).

discussion herein, nothing prevents the Commission from determining and fixing the replacement rate of its choosing, including choosing the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process, pursuant to FPA section 206, so long as it is consistent with the final rule, adequately supported in the record, and the Commission adequately explains the reason for its choice.

69. MISO TOs claim that "[i]f the Commission accepts the Relevant State Entities' Cost Allocation Method over the transmission provider's method . . . the Commission has subverted future FPA section 205 filings related to that rate scheme in a manner that disfavors the transmission provider's FPA section 205 proposals."[229] Although MISO TOs do not sufficiently explain this specific argument,[230] namely by indicating how they believe the Commission is "subverting" future FPA section 205 filings, this argument again appears to ascribe effects to Order No. 1920-A that it does not have, which we have already addressed. Irrespective of the replacement rate that the Commission sets under FPA section 206, the Commission will assess transmission providers' future FPA section 205 filings according to the statutory standard prescribed by the FPA for such filings. Nothing in Order No. 1920-A "disfavors" or "subvert[s]" those hypothetical

[229] MISO TOs Rehearing Request at 24-25.

[230] A rehearing request must set forth with specificity the grounds on which the request is based. 16 U.S.C. 825*l*(a); 18 CFR 385.713(c)(2) (2024); *see ZEP Grand Prairie Wind, LLC*, 183 FERC ¶ 61,150, at P 10 (2023); *Ind. Util. Regul. Comm'n v. FERC*, 668 F.3d 735, 738-40 (D.C. Cir. 2012).

future filings.[231] Moreover, any challenges related to the Commission's treatment of such future FPA section 205 filings can be raised when those filings are made.

70. We find unpersuasive Indicated PJM TOs' and SPP TOs' arguments that *Entergy* is inapposite to Order No. 1920-A because the Commission in that case first rejected MISO's compliance filing before selecting a different replacement rate.[232] First, the Commission's determination that it may, in compliance proceedings, consider and set as the replacement rate Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process is consistent with both the text and structure of the FPA, for the reasons already discussed.[233] Second, *Entergy* supports this conclusion because it reflects that the Commission, when addressing compliance filings in FPA section 206 proceedings, is not required to adopt a replacement rate proposed by public utilities,[234] but instead may determine and fix any

[231] Challenges to the Commission's treatment of those potential filings are not before us at this time.

[232] *See* Indicated PJM TOs Rehearing Request at 22-23; SPP TOs Rehearing Request at 18-19 n.49.

[233] *See supra* PP 48-53.

[234] In other words, if compliance filings were subject to the requirements of FPA section 205, under which the Commission plays a passive role, once the Commission rejected MISO's proposal in *Entergy* it would not have been empowered to itself fashion a different rate. *Entergy* reflects that this is not the case, as the Commission itself fashioned the replacement rate and the court upheld this result. *See Entergy*, 40 F.4th at 701-02.

just and reasonable replacement rate of its choosing.[235] Third, Indicated PJM TOs and SPP TOs misconstrue *Entergy* as reflecting a requirement that the Commission must first reject a public utility's proposal on compliance before adopting a different replacement rate. That the Commission in that case elected to first consider and reject MISO's proposal[236] before selecting a different replacement rate does not demonstrate that it was legally required to do so—and nothing in *Entergy* holds to the contrary.[237]

71. We are also not convinced by Indicated PJM TOs' contention that the statutory structure of FPA sections 205 and 206 mandates a preference for the public utility's proposal on compliance.[238] Although the Commission has historically identified prudential and policy reasons for adopting public utilities' proposals in compliance

[235] *See id.* (noting that the Commission "is not required to choose the best solution, only a reasonable one" (citations omitted)).

[236] The approach in *Entergy* was consistent with the Commission's general practice with respect to compliance filings under FPA section 206 by public utilities, but, as we have explained above, this practice is not a statutory or legal requirement under FPA section 206.

[237] Contrary to SPP TOs' contention that the Commission erroneously relied on certain cases that do not support its approach, *see* SPP TOs Rehearing Request at 16-17, the Commission cited these cases in "recogni[tion]" of the Commission's typical practice that it "generally does not consider alternate compliance proposals other than those filed by the relevant public utility (here, the transmission provider)," before then explaining why it was not adopting that practice in Order No. 1920-A with respect to these cost allocation proposals. Order No. 1920-A, 189 FERC ¶ 61,126 at P 659; *see F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. at 515 ("To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position." (emphasis in original)).

[238] *See* Indicated PJM TOs Rehearing Request at 17-18, 20.

filings if they are compliant with the requirements of a final rule issued pursuant to FPA section 206,[239] these prudential and policy reasons are not statutory commands.[240] Interpreting the FPA as Indicated PJM TOs urge renders meaningless this aspect of the statutory divide of FPA sections 205 and section 206 and would impermissibly convert the Commission's statutory authority to determine the replacement rate into a substantive statutory right for the public utilities.

72. Indicated PJM TOs and WIRES are similarly incorrect in arguing that the Commission is limited to considering whether the rate submitted by the public utility on compliance is just and reasonable because the Commission failed to prescribe a specific replacement rate in Order No. 1920-A.[241] Consistent with the D.C. Circuit's holding in

[239] *See, e.g.*, *Kern River*, 142 FERC ¶ 61,132 at P 37 (noting that "[i]f the pipeline supports one such just and reasonable remedy, the Commission finds that adopting the pipeline's remedy, in preference to other possible remedies, properly recognizes the NGA's policy of giving pipelines the primary initiative to establish their rates, terms, and conditions of service" but also recognizing that "there may be several just and reasonable rates, terms or conditions which the Commission may adopt as a just and reasonable remedy in [an NGA] section 5 proceeding"); *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134 at P 117 n.175 ("Because PJM may make a section 205 filing to revise these [OATT] provisions, we find it reasonable to accept PJM's proposal over alternatives if PJM's proposal is just and reasonable.").

[240] *See* 16 U.S.C. 824e(a); *Electrical District*, 774 F.2d at 492. Reinforcing this conclusion, the D.C. Circuit has explained that the Commission is not required to await public utilities' proposals on compliance at all but may instead set the replacement rate. *See Electrical District*, 774 F.2d at 494; *Kern River Gas Transmission Co.*, 133 FERC ¶ 61,162 at PP 21-22 ("[A]s an alternative to waiting for the pipeline to calculate the rates in a compliance filing, the Commission may calculate and fix the rate itself in the initial order.").

[241] Indicated PJM TOs Rehearing Request at 28; *see also, e.g.*, *id.* at 3-4, 5, 7-8; WIRES Rehearing Request at 10-11.

Electrical District, the Commission is not "obligat[ed] to end an unlawful rate from the moment it finds unlawfulness" but rather may "tak[e] time for further deliberations necessary to determine what the precise terms of [the replacement rate] should be."[242] The "not at all ambiguous" procedures set forth in FPA section 206 establish that after finding existing rates are unjust, unreasonable, or unduly discriminatory or preferential "'the Commission shall determine the just and reasonable rate . . . *to be thereafter observed and in force, and shall fix the same by order*.'"[243] Claims that the Commission somehow in Order No. 1920 or 1920-A forfeited to transmission providers the responsibility—assigned to the Commission by the statute's plain text— to fix the replacement rate, consistent with the requirements of those orders, are not grounded in the statutory text or structure, and are contrary to precedent.[244]

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[242] *Electrical District*, 774 F.2d at 492; *see also Entergy*, 40 F.4th at 701-02 (affirming order in which the Commission, after rejecting MISO's compliance filings, subsequently determined the replacement rate on its own initiative, under FPA section 206).

[243] *Electrical District*, 774 F.2d at 492 (quoting FPA section 206(a), 16 U.S.C. 824e(a); emphasis in original).

[244] Contrary to Indicated PJM TOs' argument, *see* Indicated PJM TOs Rehearing Request at 27 n.102, the Commission's decision in *Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,165 (2009) does not suggest that the Commission forwent the opportunity to establish a specific replacement rate. Rather, the discussion in that case addressed the point at which a sufficient degree of specificity has been provided such that a rate can be deemed fixed for purposes of a particular effective date, *id.* PP 21-26, and—in fact—is consistent with viewing the Commission's authority under FPA section 206 as part of an ongoing process until the replacement rate is fixed.

b. Compliance with the APA

i. Rehearing Requests

73. Several petitioners argue that the Commission failed to engage in reasoned decision-making as required by the Administrative Procedure Act (APA) in adopting the requirement that transmission providers include in the transmittal or as an attachment to their compliance filings any Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process agreed to by Relevant State Entities as well as any and all supporting evidence and/or justification related to such method(s) and/or process.[245] MISO TOs, Indicated PJM TOs, SPP TOs, and EEI argue that the Commission failed to explain why states did not already have adequate opportunities to provide input to cost allocation through previously existing processes—generally connecting these arguments to their view that the compliance filing requirements in Order No. 1920-A are inconsistent with FPA section 205.[246] MISO TOs and SPP TOs argue

[245] Indicated PJM TOs Rehearing Request at 8 (citing *Mayor of Balt. v. Azar*, 973 F.3d 258, 275 (4th Cir. 2020) (other citations omitted)); MISO TOs Rehearing Request at 20-21 (citing 5 U.S.C. § 706 (other citations omitted)); SPP TOs Rehearing Request at 2 (citing 5 U.S.C. § 706(2)).

[246] MISO TOs Rehearing Request at 8-9, 20-22 (arguing that the Commission provides notice and comment review of compliance filings, through Commission Rules of Practice and Procedure 211 and 214, which is "reasonable and more statutorily aligned" than the approach adopted in Order No. 1920-A); Indicated PJM TOs Rehearing Request at 8 ("The Commission made no finding and there is no substantial evidence that the Commission would not have been able to consider those proposals or that the [Relevant State Entities] would not have been able to submit their proposals to the Commission or were in any way impeded from doing so."); *id.* at 12 n.35, 32-33; SPP TOs Rehearing Request at 29 (arguing that the importance the Commission ascribes to state perspectives reflects that state views would be taken seriously if presented through other means, such that there is no need for additional avenues for state participation

that Order No. 1920-A's compliance filing requirements are inconsistent with the Commission's determination that transmission providers have the obligation, subject to Commission oversight, to engage in transmission planning and cost allocation.[247] WIRES argues that the approach the Commission selected in Order No. 1920-A is adversarial, leading to delay and litigation, and that "the record demonstrates that there are other less intrusive means by which states can meaningfully participate in the development of Long-Term Regional [Transmission] Cost Allocation [M]ethods and State Agreement Processes."[248] EEI argues that the Commission's stated justification for requiring transmission providers to include in their compliance filings the preferred approach of Relevant State Entities to cost allocation (i.e., the unique role of Relevant State Entities) does not relate to cost allocation and does not justify infringing on utilities'

through "preferential filing privileges that are not contemplated by the FPA"); EEI Rehearing Request at 9-10 ("After all, state commissions are already afforded special treatment under the Commission's procedural rules because they can intervene in rate proceedings as a matter of right.").

[247] MISO TOs Rehearing Request at 22-23 (citing Order No. 1920-A, 189 FERC ¶ 61,126 at P 661) ("The Commission fails to explain how it maintains this 'tariff obligation' if it requires transmission providers to subordinate their interests and preferences those of state entities."); SPP TOs Rehearing Request at 14, 29 (similar).

[248] WIRES Rehearing Request at 14, 16-17 (asserting that the same set of facts relied on in Order No. 1920 were used to justify the requirements of Order No. 1920-A, such that "there seems little connection between what are essentially the same facts and the choices made"). WIRES here challenges both the compliance filing requirements, discussed above, and certain consultation requirements set forth by Order No. 1920-A, *see infra* Consultation with Relevant State Entities After the Engagement Period section, as arbitrary and capricious for the same reasons.

FPA filing rights.[249] EEI further argues that the requirement to include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in transmission providers' compliance filings could confuse stakeholders as to which material to provide feedback on—that of the transmission provider or of the Relevant State Entities—and result in stakeholder feedback that is not focused on the transmission provider's proposal.[250]

74. MISO TOs, Indicated PJM TOs, SPP TOs, and EEI all argue that the Commission has departed—without sufficient basis or explanation—from its precedent establishing a preference for accepting the compliant just and reasonable compliance proposals of public utilities (or, in the context of the NGA, natural-gas companies), rather than competing proposals.[251] They assert that this preference is justified (as recognized by

[249] EEI Rehearing Request at 12.

[250] *Id*. at 10.

[251] *See* MISO TOs Rehearing Request at 33-38 (arguing that the Commission failed to provide adequate reasoning to support this decision); Indicated PJM TOs Rehearing Request at 18-20; *id.* at 21 (arguing that "the Commission does not explain how these considerations [that it identified as supporting its approach in Order No. 1920-A] are any different in the planning process under Order No. 1920 and 1920-A than they are in the planning processes under other prior rule changes" such as Order No. 1000); SPP TOs Rehearing Request at 16-17; *id.* at 30 (arguing that this departure from the Commission's approach in other contexts is arbitrary and capricious); EEI Rehearing Request at 10-11. These petitioners cite several Commission decisions reflecting this preference, *see, e.g.*, *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318 at P 115 n.124; *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084, at P 21 n.18 (2008); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 85 (2006); *Kern River Gas Transmission Co.*, Opinion No. 486-F, 142 FERC ¶ 61,132 at P 37 & n.50 ; *ANR Pipeline Co.*, 109 FERC ¶ 61,138, at P 28 (2004), *order on reh'g*, 111 FERC ¶ 61,113, at P 19 (2005), as well as certain judicial decisions, *see, e.g.*, *Emera Maine*, 854 F.3d at 674; *Pub. Serv. Comm'n of N.Y. v. FERC*, 642 F.2d 1335, 1343-44 (D.C. Cir.

Commission precedent) because public utilities have the primary initiative to set their rates, terms, and conditions of service and because, should the Commission adopt a compliance proposal from an entity other than the public utility, the public utility could immediately refile its own proposal under FPA section 205.[252]

75. SPP TOs contend that the Commission improperly imposed different requirements on compliance proposals addressing cost allocation for Relevant State Entities versus transmission providers.[253] Specifically, SPP TOs state that compliance filings by transmission providers must comply with five of Order No. 1000's six regional cost allocation principles, but Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process must merely comply with the cost-causation principle and any other legal requirements for cost allocation.[254] SPP TOs aver that it is unclear how the Commission will choose between competing replacement rate proposals given that they are subject to different criteria, and assert that the Commission will struggle to explain a decision to adopt, as the

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1980); *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 514 (D.C. Cir. 1985); *Consol. Edison Co. v. FERC*, 165 F.3d 992, 1000 (D.C. Cir. 1999).

[252] *See, e.g.*, MISO TOs Rehearing Request at 33-35; *id.* at 37-38 (arguing that Order No. 1920-A creates a layer of bureaucratic delay); Indicated PJM TOs Rehearing Request at 18-21.

[253] *See* SPP TOs Rehearing Request at 20-21.

[254] *See id.*; *see also id.* at 7 (arguing that Order No. 1920-A violates the structure of FPA sections 205 and 206 because it imposes on transmission providers a higher burden than on Relevant State Entities).

replacement rate, Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process.[255]

ii. Commission Determination

76. We disagree with arguments raised on rehearing that the Commission failed to comply with the APA in adopting the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and associated information in their Order No. 1920 regional transmission planning and cost allocation compliance filings.

77. Under the APA, agency action must be upheld unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.[256] In *South Carolina*, the D.C. Circuit set forth the standard that the Commission must meet in issuing a rule for the court to find that the Commission met its obligations under the APA:

> The Commission must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. The Commission's factual findings are conclusive if supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires more than a scintilla but less than a preponderance of evidence. When applied to rulemaking proceedings, the substantial evidence test is identical to the familiar arbitrary and capricious standard, which requires the Commission to specify the

[255] *See id*.

[256] 5 U.S.C § 706(2)(A).

> evidence on which it relied and to explain how that evidence supports the conclusion it reached.[257]

78. We disagree with the rehearing petitioners who argue that the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings fails to satisfy these requirements. Specifically, we disagree with the arguments by MISO TOs, Indicated PJM TOs, SPP TOs, and EEI that the Commission failed to explain why states did not already have adequate opportunities to provide input on regional transmission cost allocation issues through previously existing processes. Recognizing the increased importance of state engagement regarding cost allocation for Long-Term Regional Transmission Facilities, the Commission in Order No. 1920 established the Engagement Period and required transmission providers on compliance to explain how they complied with the requirement to provide a forum for negotiation of a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process that enables meaningful participation by Relevant State Entities.[258] In Order No. 1920-A, the Commission reiterated that it is critical to the success of the Long-Term Regional Transmission Planning reforms that states have an opportunity to have a

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[257] *South Carolina*, 762 F.3d at 54 (quotation marks omitted) (citing *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); 16 U.S.C. 825*l*(b); *Murray Energy Corp. v. FERC*, 629 F.3d 231, 235 (D.C. Cir. 2011); *Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636, 645 (D.C. Cir. 2010); *Wis. Gas Co. v. FERC*, 770 F.2d 1144, 1156 (D.C. Cir. 1985)).

[258] Order No. 1920, 187 FERC ¶ 61,068 at PP 126, 1354, 1357.

significant role in the establishment of just and reasonable Long-Term Regional Transmission Cost Allocation Methods and State Agreement Processes.[259] Consistent with these findings, when the Commission adopted the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process, and any information relevant thereto, in their compliance filings, the Commission found that the additional requirement would allow it to better evaluate whether transmission providers have complied with Order No. 1920's requirement to provide a forum for negotiations that enables meaningful participation by Relevant State Entities during the Engagement Period.[260] The Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process agreed upon by Relevant State Entities during the Engagement Period are thus evidence for compliance purposes that will assist the Commission as it determines and fixes the replacement rate.

79. Moreover, receiving Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process, and any information relevant thereto, in tandem with transmission providers' compliance filings is procedurally consistent with the Commission's intention, as stated in Order No. 1920-A, to review the entire record in determining and fixing a replacement rate. We further conclude that, in these circumstances, there is significant administrative efficiency in

[259] Order No. 1920-A, 189 FERC ¶ 61,126 at PP 649, 654-657.

[260] *Id.*

receiving these materials together, as—for instance—it will allow interested stakeholders to comment simultaneously on both transmission providers' proposal and Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process. We anticipate that this process will provide the Commission with a more comprehensive, better-developed record for the exercise of its FPA section 206 authority to determine and fix the replacement rate.[261]

80. Rehearing petitioners argue that there are other avenues available for Relevant State Entities to present their views, such as through protests.[262] But the availability of such alternative approaches, and rehearing petitioners' view that they are adequate or preferable, does not render Order No. 1920-A's requirements unjust and unreasonable or arbitrary and capricious.[263] The Commission has adequately explained and supported the approach that it adopted in Order No. 1920-A.

81. We also disagree with MISO TOs' and SPP TOs' arguments that Order No. 1920-A's compliance filing requirements are inconsistent with the Commission's

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[261] *Id.* P 659.

[262] *See, e.g.*, EEI Rehearing Request at 9-10; SPP TOs Rehearing Request at 17-18, 29; WIRES Rehearing Request at 14.

[263] *See, e.g.*, *EPSA*, 577 U.S. at 292 ("A court is not to ask whether a regulatory decision is the best one possible or even whether it is better than the alternatives. Rather, the court must uphold a rule if the agency has 'examine[d] the relevant [considerations] and articulate[d] a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.'" (alterations in original) (quoting *State Farm*, 463 U.S. at 43)); *Entergy*, 40 F.4th at 701–02 ("[A]t bottom, Petitioners simply argue that, in its view, a better method exists. But [the Commission] is not required to choose the best solution, only a reasonable one." (quotation marks and citation omitted)).

determination that transmission providers have the obligation, subject to Commission oversight, to engage in transmission planning and cost allocation. Order No. 1920-A is clear that, as in Order No. 1920, transmission providers decide what to submit as their actual Order No. 1920 compliance proposal, including relevant tariff language and supporting evidence or arguments, whether they decide to propose the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process or a different Long-Term Regional Transmission Cost Allocation Method.[264] This requirement therefore does not diminish transmission providers' role in transmission planning and cost allocation matters. Further, Order No. 1920-A retains the Commission's oversight of transmission providers' transmission planning and cost allocation, as the Commission will exercise its authority under FPA section 206 to determine the replacement rate on compliance.[265]

82. We disagree with WIRES that Order No. 1920-A is arbitrary and capricious because, in WIRES' opinion, Order No. 1920-A "adopts an adversarial approach" that is "likely to engender years of costly litigation that would cast a cloud over successfully siting and developing critically needed transmission in a timely manner."[266] To begin

[264] Order No. 1920-A, 189 FERC ¶ 61,126 at P 654 n.1651 ("The requirement to include Relevant State Entities' Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process as an addition to the compliance filing does not constitute a 'proposal' from the transmission provider.").

[265] *Id.* P 659.

[266] WIRES Rehearing Request at 14.

with, as rehearing petitioners recognize,[267] absent Order No. 1920-A's requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings, Relevant State Entities would be able to submit their agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in comments in opposition to transmission providers' compliance filings. Therefore, were a transmission provider to choose not to propose Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process on compliance, the proceedings related to the transmission provider's compliance filing could still result in disagreement between the transmission provider and Relevant State Entities, regardless of whether the Commission required transmission providers to include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings. However, as discussed above, the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings, as well as any information that Relevant State Entities provide to them regarding the state negotiations during the Engagement Period, will allow the Commission to better evaluate whether transmission providers have complied with Order

[267] *See, e.g.*, EEI Rehearing Request at 9-10; SPP TOs Rehearing Request at 17-18, 29; WIRES Rehearing Request at 14.

No. 1920's requirement to provide a forum for negotiations that enables meaningful participation by Relevant State Entities during the Engagement Period.[268] Moreover, we believe that ensuring that such a forum exists—and verifying compliance with this requirement—is likely to reduce the prospect of disputes over cost allocation methods by ensuring Relevant State Entities' views are considered by transmission providers and therefore that their participation is meaningful.[269] Therefore, on balance, the Commission reasonably required that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings.

83. We also disagree with WIRES' argument that the Commission's adoption of Order No. 1920-A's "compliance mandates" is arbitrary and capricious because the Commission in Order No. 1920-A "defend[ed] its amendments by using the same justification relied upon in Order No. 1920."[270] In Order No. 1920-A, the Commission "weighed [the] competing views" presented by rehearing petitioners and, based upon the substantial evidence it identified in Order No. 1920, concluded that the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional

[268] We note that no rehearing petitioners challenge the requirements of Order Nos. 1920 and 1920-A regarding the Engagement Period.

[269] *E.g.*, Order No. 1920, 187 FERC ¶ 61,068 at P 124 ("As the Commission discussed in the NOPR and we continue to find in this final rule, facilitating state regulatory involvement in the cost allocation process could minimize delays and additional costs associated with state and local siting proceedings.").

[270] WIRES Rehearing Request at 15.

Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings is just and reasonable.[271] The Commission further concluded that this and other requirements adopted in Order No. 1920-A strike a reasonable balance between, on the one hand, recognizing the rights and responsibilities of the Commission and transmission providers over regional transmission planning and, on the other, the states' critical interests in the resulting Long-Term Regional Transmission Facilities and how the costs associated with those facilities will be allocated.[272] Therefore, the Commission's decision-making in this regard satisfies the APA.

84. We also are not persuaded by EEI's argument that the unique role of Relevant State Entities does not relate to cost allocation or justify the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings.[273] In Order No. 1920-A, the Commission reiterated that states play a

[271] *See Entergy*, 40 F.4th at 701-02 ("It is not our job to determine that 'FERC made the better call,' rather, our 'important but limited role is to ensure that the Commission engaged in reasoned decisionmaking.'" (quoting *EPSA*, 577 U.S. at 295)). *See also* Order No. 1920-A, 189 FERC ¶ 61,126 at P 649 ("As the Commission recognized in Order No. 1920, and we reiterate in this order, it is critical to the success of the Long-Term Regional Transmission Planning reforms that states have an opportunity to have a significant role in the establishment of just and reasonable Long-Term Regional Transmission Cost Allocation Methods and State Agreement Processes." (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1415)); *id.* P 659 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 126, 268, 1293, 1362-1364, 1404, 1407, 1410-1411, 1415, 1477, 1515).

[272] Order No. 1920-A, 189 FERC ¶ 61,126 at P 660.

[273] *See* EEI Rehearing Request at 12.

unique role in Long-Term Regional Transmission Planning, as their laws, regulations, and policies drive the need for Long-Term Regional Transmission Facilities, and they typically will have responsibility to consider and approve the siting, permitting, and construction of Long-Term Regional Transmission Facilities selected in a regional transmission plan.[274] As such, states affect whether Long-Term Regional Transmission Facilities are timely, efficiently, and cost-effectively developed such that customers actually receive the benefits associated with the selection of more efficient or cost-effective transmission solutions.[275] The effect of Relevant State Entities' decisions on such timely, efficient, and cost-effective development of Long-Term Regional Transmission Facilities directly relates to the allocation of costs for those facilities. It is therefore reasonable to require that transmission providers provide the Commission with any Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process that Relevant State Entities have agreed upon.

85. Further, we disagree with EEI that stakeholders are likely to be confused as to whether they should provide feedback on the transmission provider's proposal or the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process that Relevant State Entities have agreed upon.[276] As the Commission clarified in

[274] Order No. 1920-A, 189 FERC ¶ 61,126 at P 659.

[275] *Id.* (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 126, 268, 1293, 1362-1364, 1404, 1407, 1410-1411, 1415, 1477, 1515).

[276] *See* EEI Rehearing Request at 10.

Order No. 1920-A, any Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process agreed upon by Relevant State Entities and included in a transmission provider's transmittal or as an attachment to its compliance filing does not constitute a proposal from the transmission provider. Furthermore, commenters may provide their support for, or feedback on, either or both the transmission provider's proposal and any Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process agreed upon by Relevant State Entities.

86. We disagree with MISO TOs, Indicated PJM TOs, SPP TOs, and EEI that the Commission departed—without sufficient basis or explanation—from its precedent establishing a preference for accepting compliant, just and reasonable compliance proposals of public utilities rather than competing proposals.[277] The Supreme Court has held that "agency action representing a policy change [need not] be justified by reasons more substantial than those required to adopt a policy in the first instance."[278] Rather, where an agency changes its position, "it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates."[279]

[277] *See* MISO TOs Rehearing Request at 33-38; Indicated PJM TOs Rehearing Request at 18-21; SPP TOs Rehearing Request at 16-17, 30; EEI Rehearing Request at 10-11.

[278] *FCC v. Fox Television Stations, Inc.*, 556 U.S. at 514.

[279] *Id.* at 515.

87. Order No. 1920-A satisfies these requirements. First, as explained above,[280] the Commission's typical practice of accepting compliant just and reasonable compliance proposals of public utilities rather than competing proposals is just that: a practice, not a requirement of the FPA. Next, in Order No. 1920-A, the Commission recognized that, while it generally does not consider alternate compliance proposals other than those filed by the relevant public utility,[281] there are "good reasons" for considering Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in addition to transmission providers' proposals here.[282] Specifically, and as discussed: (1) states play a unique role in Long-Term Regional Transmission Planning;[283] (2) states affect whether Long-Term Regional Transmission Facilities are timely, efficiently, and cost-effectively developed;[284] and (3) given the inherent uncertainty involved in planning to meet Long-Term Transmission Needs, state-developed cost allocation methods and State Agreement Processes take on

[280] *See supra* Requirements Concerning Relevant State Entities' Agreed-upon Cost Allocation Methods, Statutory Filing Rights Under the FPA section.

[281] Order No. 1920-A, 189 FERC ¶ 61,126 at P 659 (citing *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134 at P 117 n.175; *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318 at P 115; *ANR Pipeline Co.*, 110 FERC ¶ 61,069 at P 49).

[282] *Id.* P 659.

[283] *Id.*; *supra* P 84.

[284] Order No. 1920-A, 189 FERC ¶ 61,126 at P 659 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 126, 268, 1293, 1362-1364, 1404, 1407, 1410-1411, 1415, 1477, 1515); *supra* P 84.

heightened importance.[285] The Commission thus adequately explained its belief, based on these "good reasons," that considering Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process along with the transmission provider's proposal is not simply warranted, but "better" than considering the transmission provider's proposal alone and to the exclusion of alternatives.[286]

88. We recognize that, even if the Commission adopts Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process as the replacement rate under FPA section 206, transmission providers may subsequently file an FPA section 205 proposal seeking to implement their preferred approach to cost allocation.[287] Nonetheless, we sustain Order No. 1920-A's determination that the Commission will consider the entire record on compliance in selecting the replacement rate and may permissibly adopt Relevant State Entities' agreed-upon approach. While transmission providers' ability to submit an FPA section 205 filing of their own initiative proposing a set of preferred rates is a consideration the Commission has identified as relevant to our typical approach to

[285] Order No. 1920-A, 189 FERC ¶ 61,126 at P 659 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 227).

[286] *FCC v. Fox Television Stations, Inc.*, 556 U.S. at 514-15.

[287] *See* MISO TOs Rehearing Request at 35, 37-38; Indicated PJM TOs Rehearing Request at 20-21.

assessing compliance filings,[288] this consideration—standing alone—cannot render it inherently arbitrary and capricious for the Commission to require, in FPA section 206 proceedings, a replacement rate other than the one proposed by the transmission provider. A contrary conclusion would effectively amend FPA section 206, removing the Commission as the entity that "determine[s] the just and reasonable rate . . . to be thereafter observed and in force."[289] As discussed above, this is not the design Congress enacted.[290]

89. We disagree with SPP TOs' argument that the Commission improperly imposed different requirements on Long-Term Regional Transmission Cost Allocation Methods agreed upon by Relevant State Entities—which need not comply with any of the Order No. 1000 regional cost allocation principles—and Long-Term Regional Transmission Cost Allocation Methods to which Relevant State Entities do not agree—which must comply with Order No. 1000 regional cost allocation principles (1) through (5).[291] We reiterate that all cost allocation methods must comply with the cost causation principle, as

[288] *See PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134 at P 117 n.175 ("Because PJM may make a section 205 filing to revise these Tariff provisions, we find it reasonable to accept PJM's proposal over alternatives if PJM's proposal is just and reasonable.").

[289] 16 U.S.C. 824e(a).

[290] *See supra* Requirements Concerning Relevant State Entities' Agreed-upon Cost Allocation Methods, Statutory Filing Rights Under the FPA section.

[291] *See* SPP TOs Rehearing Request at 7, 20-21.

required by the FPA.[292] We also continue to find that although there are different requirements for cost allocation methods resulting from a State Agreement Process or Long-Term Regional Transmission Cost Allocation Method that Relevant State Entities indicate that they have agreed to and have asked transmission providers to file, as compared to Long-Term Regional Transmission Cost Allocation Methods to which states do not agree, this distinction is appropriate to afford flexibility in order to encourage their use of these methods, which are likely to facilitate agreement over development of such Long-Term Regional Transmission Facilities and thus facilitate the selection of more efficient or cost-effective Long-Term Regional Transmission Facilities.[293] We further find speculative and disagree with SPP TOs' assertion that the Commission will struggle to explain a decision to adopt Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process as the replacement rate. If the Commission fixes Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process as the replacement rate, the Commission will necessarily and intelligibly explain why that method(s) and/or process complies with the final rule based on support in the record.[294]

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[292] Order No. 1920-A, 189 FERC ¶ 61,126 at P 763 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1305 & n.2786).

[293] Order No. 1920, 187 FERC ¶ 61,068 at P 1477; *see also* Order No. 1920-A, 189 FERC ¶ 61,126 at P 763 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1477).

[294] *See Entergy*, 40 F.4th at 701-02.

c. Cooperative Federalism

i. Rehearing Requests

90. SPP TOs argue that Order No. 1920-A is contrary to the FPA's structure of cooperative federalism because "[t]here is a very real possibility that a proposal could be added to a compliance filing despite one or more of the Relevant State Entities' opposition."[295] In this respect, SPP TOs differentiate Order No. 1920-A from the Commission action at issue in the Supreme Court's decision in *EPSA*, asserting that the Court there upheld the Commission's "treatment of demand response resources in wholesale markets [because it] did not 'negate state decisions' regarding retail demand response programs on the basis that there was a 'veto power . . . granted to the States.'"[296]

ii. Commission Determination

91. We are not persuaded by SPP TOs' argument invoking cooperative federalism principles. The Supreme Court in *EPSA* addressed arguments that the Commission's regulation of demand response, pursuant to the Commission's authority over wholesale markets, allegedly intruded on a particular area of reserved state authority over retail

[295] SPP TOs Rehearing Request at 30-31 ("[U]nder Order No. 1920-A, some state policies could be imposed, not only on the transmission provider, but on dissenting states if the Commission used its claimed power to accept favored compliance filings reached through any means other than unanimity."); *see also id.* at 31 ("When the outcome of the Engagement Period process was merely advisory as the Commission originally ordered in Order No. 1920, the methodology developed during the Engagement Period could only be filed with the Commission on compliance if adopted by the transmission provider *as its own.*").

[296] *Id.* (quoting *EPSA*, 577 U.S. at 288).

rates.[297] SPP TOs do not point to a similar alleged intrusion on a particular area of reserved state authority here. Moreover, even in that context where reserved state authority was implicated, *EPSA* did not describe the state veto power afforded in the Commission's order on demand response as "dispositive" as SPP TOs contend,[298] but rather as a "finishing blow . . . [that] removes any conceivable doubt as to [the order's] compliance with [FPA section 201(b)]'s allocation of federal and state authority."[299] In other words, the Court treated the state "veto power" in that case as confirming the Commission's compliance with principles of cooperative federalism, having already discussed at length why the Commission, regulating within the areas of its jurisdiction, was not intruding on state prerogatives.[300] We further note that, in Order No. 1920-A, the Commission explained that it would defer to the Relevant State Entities themselves to determine what constitutes "agreement" on a Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process.[301] Accordingly, we continue to

[297] *See EPSA*, 577 U.S. at 281-82.

[298] SPP TOs Rehearing Request at 31.

[299] *EPSA*, 577 U.S. at 287-88.

[300] *See id.* at 281-87 (concluding the Commission's order was consistent with FPA section 201(b) notwithstanding that it "affects—even substantially—the quantity or terms of retail sales" because it "addresses—and addresses only—transactions occurring on the wholesale market" that are within the Commission's jurisdiction, and the Commission's regulatory justification "are all about, and only about, improving the wholesale market").

[301] Order No. 1920-A, 189 FERC ¶ 61,126 at P 654 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1360).

find that the Commission's approach in Order No. 1920-A is consistent with the division of responsibility set forth in the FPA, consistent with our discussion in Order No. 1920-A.[302]

d. Sub-Delegation

i. Rehearing Requests

92. MISO TOs and SPP TOs assert that the Commission in Order No. 1920-A impermissibly sub-delegated its authority to Relevant State Entities.[303] MISO TOs argue that the Commission is giving Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process "heightened importance" over those of transmission providers, with the effect of permitting Relevant State Entities to set interstate transmission rates.[304] MISO TOs state that statutory authority to determine whether transmission rates are unwarranted or excessive lies with the Commission, under the FPA, and cannot be sub-delegated to state commissions.[305] SPP TOs assert that the Commission "effectively purports to delegate the right to file

[302] *Id.* PP 135-165.

[303] *See* MISO TOs Rehearing Request at 8, 9-10, 38-41; SPP TOs Rehearing Request at 32-34.

[304] MISO TOs Rehearing Request at 38-41 (arguing that the "most reasonable way to interpret the rule is that the Commission is empowering states with such new 'authority,' permitting Relevant State Entities to dictate transmission cost allocation, critically, over the objection of the filing utility itself").

[305] *Id.* at 39-41 (citing Order No. 1920-A, 189 FERC ¶ 61,126 (Christie, Comm'r, concurring at P 3)).

compliance filings—which [is] granted to public utilities under the FPA—to the states," which is impermissible under *Atlantic City I* and other cases, but also not within the set of circumstances in which federal agencies may sub-delegate matters to the states.[306] SPP TOs also assert that under Order No. 1920-A "the Commission will, in practice, show a high degree of deference to alternative state proposals that would be tantamount to a sub-delegation of Commission authority to the states."[307]

ii. Commission Determination

93. We find arguments that the Commission has unlawfully sub-delegated its authority[308] are incorrect because there is no sub-delegation, impermissible or otherwise, of Commission authority here.[309] Contrary to MISO TOs' and SPP TOs' claims, the Commission has not sub-delegated to states its FPA section 206 authority to determine the replacement rate: the Commission has expressly stated that it will consider the entire

[306] SPP TOs Rehearing Request at 32-33 (citing *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 565, 567-68 (D.C. Cir. 2004) (*U.S. Telecom*)).

[307] *Id.* at 33-34.

[308] *See* MISO TOs Rehearing Request at 8, 9-10, 38-41; SPP TOs Rehearing Request at 32-34.

[309] *U.S. Telecom* does not support MISO TOs' or SPP TOs' arguments. There, the FCC had extensively sub-delegated its authority over unbundling of mass market switches to state commissions—indeed, there was no dispute that such a sub-delegation had occurred, with the FCC arguing instead that the sub-delegation was permissible. *See U.S. Telecom*, 359 F.3d at 564-68. Here, by contrast, the compliance process set forth in Order No. 1920-A as to cost allocation provides a vehicle for the receipt of Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and the Commission retains all decision-making authority under FPA section 206 to determine the replacement rate.

record before it and, itself, determine the replacement rate.[310] That the Commission will entertain on compliance Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process, *in addition* to any proposals made by transmission providers, and may fix one of those as the replacement rate does not suggest that the Commission has abdicated to states the Commission's clear and exclusive authority to determine and fix the replacement rate under FPA section 206. SPP TOs' argument that the Commission has unlawfully sub-delegated to states the right to make compliance filings, which—SPP TOs claim—is granted solely to public utilities, is also mistaken. As explained above, the compliance process assists the Commission in determining the replacement rate, under FPA section 206. Order No. 1920-A requires that transmission providers—not states—make compliance filings, and sets out the information that transmission providers must include in those filings. Arguments that Order No. 1920-A intrudes on public utilities' rights or unlawfully assigns those rights to Relevant State Entities are incorrect.[311]

[310] Order No. 1920-A, 189 FERC ¶ 61,126 at P 659; *see also supra* P 68 (explaining that the Commission expects to determine the replacement rate on a case-by-case basis, consistent with its authority and discretion to select from the range of just and reasonable replacement rates).

[311] *See supra* Requirements Concerning Relevant State Entities' Agreed-upon Cost Allocation Methods, Statutory Filing Rights Under the FPA section.

e. First Amendment

i. Rehearing Requests

94. Indicated PJM TOs argue that the requirement to include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in transmission providers' compliance filings is governmentally compelled speech that violates the First Amendment to the Constitution.[312] Indicated PJM TOs assert that the First Amendment protects the right to petition the government, including through filings with courts and administrative agencies.[313] Indicated PJM TOs contend that the compliance filing requirement violates their rights not to speak by mandating that a public utility present views with which it disagrees when filing its own proposal.[314] Indicated PJM TOs state that the Supreme Court has held that "the government may not require that an entity present views with which it disagrees when it

[312] Indicated PJM TOs Rehearing Request at 29-34 (citing, *inter alia*, *Pac. Gas & Elec. Co. v. Pub. Util. Comm'n of Cal.*, 475 U.S. 1, 12-14 (1986) (*PG&E*)); *cf.* SPP TOs Rehearing Request at 13-14 (arguing that requiring a transmission provider to include Relevant State Entities' information with its own commandeers the transmission provider's compliance filing, citing *PG&E*, 475 U.S. 1).

[313] Indicated PJM TOs Rehearing Request at 29 (citing U.S. Const. amend. I; *E. R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961); *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000)).

[314] *Id.* at 30-32 (citing *PG&E*, 475 U.S. at 12-14; *Moody v. Netchoice, LLC*, 603 U.S. 707, 726-33 (2024); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977); *United States v. United Foods, Inc.*, 533 U.S. 405, 409-10 (2001)).

engages in expressive speech."[315] They compare this case to the Supreme Court's decision in *PG&E*, which overturned a state regulation requiring a utility to include material from a consumer advocacy group in a newsletter regularly included in the utility's billing envelopes expressing the utility's views of energy policy.[316]

95. Indicated PJM TOs state that the Order No. 1920-A compliance filing requirement at issue here would not meet the strict scrutiny standard under the First Amendment, asserting that it is not content neutral because it is "intended to give more weight to the views of [Relevant State Entities] in the Order No. 1920 context than it normally would give in other proceedings" and that there is no compelling government interest justifying the requirement.[317] Indicated PJM TOs also argue that the compliance filing requirement would not survive the intermediate scrutiny standard, stating that it is not narrowly tailored to achieve the Commission's stated interest, and burdens substantially more of transmission providers' First Amendment petitioning right than necessary to advance that interest.[318]

96. Indicated PJM TOs assert that the limitations the Commission imposed on the compliance filing requirement—that transmission providers do not need to separately

[315] *Id.* at 30 (citing *Moody,* 603 U.S. at 726-33).

[316] *See id.* (discussing *PG&E*, 475 U.S. at 12-14).

[317] *Id.* at 31-32.

[318] *Id.* at 32-33 (arguing that states have other opportunities to make their views known, rendering the requirement unnecessary).

characterize or justify Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process—do not obviate this alleged First Amendment violation.[319] They also state that it is "inconsequential that the Commission knows and understands that the [Relevant State Entities'] proposal is not the public utility transmission provider's proposal."[320] Indicated PJM TOs assert specifically that the state-generated information at issue is not relevant to the transmission provider's rate proposal, but rather the compliance filing requirement mandates that transmission providers submit information that "undermines the public utility transmission provider's own advocacy."[321]

ii. Commission Determination

97. We disagree with the arguments raised on rehearing by Indicated PJM TOs that the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their Order No. 1920 regional transmission planning and cost allocation compliance filings violates the First Amendment.[322] We agree as a general matter that

[319] *See id.* at 33.

[320] *Id.* at 33-34 (citing *Moody*, 603 U.S. at 739-40; *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 655 (1994)).

[321] *Id.* at 34.

[322] *See id.* at 29-34; *cf.* SPP TOs Rehearing Request at 13-14.

transmission providers have First Amendment rights.[323] However, Order No. 1920-A does not implicate those rights. Order No. 1920-A imposes no actual burden or limitation on transmission providers' speech, but instead requires nothing more than the attachment of one or more files, containing the information provided by Relevant State Entities, to transmission providers' compliance proposals under FPA section 206.

98. As explained, given states' unique role in Long-Term Regional Transmission Planning and the heightened importance of state-developed cost allocation methods and State Agreement Processes, the Commission will consider the entire record—including the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process and the transmission provider's proposal—when setting the replacement rate.[324] The requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings assists the Commission in monitoring compliance with the requirements related to the Engagement Period, allows the Commission to efficiently consider the views of both Relevant State Entities and transmission providers, and helps ensure that the Commission has a sufficient record on compliance to set a just and

[323] *PG&E*, 475 U.S. at 8.

[324] Order No. 1920-A, 189 FERC ¶ 61,126 at P 659; *supra* P 29.

reasonable replacement rate.[325] Correctly viewed in this light, the compliance requirements of Order No. 1920-A do not compel speech in violation of the First Amendment. Indeed, a myriad of Commission orders have similarly directed public utilities, following a finding that an existing rate is unjust, unreasonable, and unduly discriminatory, to submit information they otherwise would not submit that is necessary for the Commission to determine whether they have met the relevant orders' requirements.[326] Considering the critical importance of Relevant State Entities' views as to how the costs of Long-Term Regional Transmission Facilities will be allocated,[327] the requirement that transmission providers include information concerning those views in their compliance filings is akin to any other "informational requirement[ ] that public

[325] *See supra* Requirements Concerning Relevant State Entities' Agreed-upon Cost Allocation Methods, Statutory Filing Rights Under the FPA section.

[326] For example, transmission providers' First Amendment rights were not implicated by Order No. 1000's directive that transmission providers propose on compliance an *ex ante* method(s) for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation and show on compliance (i.e., provide record evidence) that this proposed method(s) is just and reasonable and not unduly discriminatory by, *inter alia*, demonstrating that it satisfies the regional cost allocation principles. Order No. 1000, 136 FERC ¶ 61,051 at PP 558, 603. As in Order No. 1000, Order No. 1920-A requires that transmission providers provide the necessary record evidence—which, given the importance of states' views on cost allocation, necessarily includes those views—for the Commission to act on transmission providers' compliance filings.

[327] Order No. 1920-A, 189 FERC ¶ 61,126 at P 649.

utilities must follow to support their filings"[328] and, therefore, does not implicate any First Amendment concerns.[329]

99. Further, we disagree with Indicated PJM TOs' contention that "the Commission is not requiring the transmission provider to file state-generated information that is relevant to the Commission's decision on the *transmission provider's rate proposal*."[330] Given the importance of Relevant State Entities' views as to how the costs of Long-Term Regional Transmission Facilities will be allocated, we find that those views—and any

[328] Indicated PJM TOs Rehearing Request at 29. *See also* Order No. 1920-A, 189 FERC ¶ 61,126 at P 657 ("[W]e direct these facilitation and informational requirements on compliance pursuant to the Commission's authority under FPA section 206."); *supra* The Statutory Text and Structure, and Applicable Precedent, Support the Commission's Order No. 1920-A Approach section.

[329] *Full Value Advisors, LLC v. SEC*, 633 F.3d 1101, 1108-09 (D.C. Cir. 2011) (holding that required disclosures of information related to the securities over which institutional managers exercise control "are indistinguishable from other underlying and oft unnoticed forms of disclosure the Government requires for its 'essential operations.'" (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 645 (1943) (Murphy, J., concurring)); *United States v. Sindel*, 53 F.3d 874, 878 (8th Cir. 1995) (holding that disclosures required by the Internal Revenue Service did not implicate the First Amendment); *Scahill v. District of Columbia*, 909 F.3d 1177, 1185 (D.C. Cir. 2018); *see also Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978) ("Numerous examples could be cited of communications that are regulated without offending the First Amendment, such as the exchange of information about securities, corporate proxy statements, the exchange of price and production information among competitors, and employers' threats of retaliation for the labor activities of employees." (citations omitted)).

[330] Indicated PJM TOs Rehearing Request at 34 (emphasis in original). *Cf.* Order No. 1920-A, 189 FERC ¶ 61,126 at P 659 ("[T]he Commission will consider the entire record – including the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method and/or State Agreement Process and the transmission provider's proposal – when setting the replacement rate.").

agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process—are relevant to the Commission's decision on the transmission provider's rate proposal.[331] Moreover, even if this material were not relevant to the assessment of transmission providers' proposals, this would not alter our conclusion that Order No. 1920-A's requirements do not impinge on transmission providers' First Amendment rights, as discussed below.[332]

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[331] *See* Order No. 1920-A, 189 FERC ¶ 61,126 at P 657 ("We find that these additional requirements will allow the Commission to better evaluate whether transmission providers have complied with Order No. 1920's requirement to provide a forum for negotiation that enables meaningful participation by Relevant State Entities during the Engagement Period." (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1357)).

[332] We further note that the Commission regularly requires public utilities to submit information relevant to other entities' proposals or positions on issues. *See, e.g.*, *pro forma* Large Generator Interconnection Procedures, § 11.3 (Execution and Filing) (requiring, when an interconnection customer determines that negotiations with the transmission provider on the terms of the Large Generator Interconnection Agreement (LGIA) are at an impasse and requests that the transmission provider submit the unexecuted LGIA to the Commission, that the transmission provider "shall file the LGIA with FERC, together with its explanation of any matters as to which Interconnection Customer and Transmission Provider disagree"); *Wholesale Competition in Regions with Organized Elec. Mkts.*, Order No. 719, 73 FR 64100 (Oct. 28, 2008), 125 FERC ¶ 61,071, at P 274 (2008), *order on reh'g*, Order No. 719-A, 74 FR 37776 (Jul. 29, 2009), 128 FERC ¶ 61,059, *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009) (requiring RTOs/ISOs to submit a compliance filing identifying any significant minority views as to remaining barriers to comparable treatment of jurisdictional demand response resources); *Allegheny Elec. Coop., Inc. v. PJM Interconnection, L.L.C*, 119 FERC ¶ 61,165, at P 14, app., attach. (Data and Document Request to PJM Interconnection, L.L.C) (2007) (directing PJM, in response to a complaint alleging tariff violations by PJM related to actions taken by PJM management with respect to the submission of reports by the PJM Market Monitoring Unit (MMU), to provide "[c]omplete details of any communications . . . with any MMU personnel regarding suggested alterations to the State of the Market Report . . . [and] [a]ny and all documents made in connection with such communication(s)").

100. Turning to Indicated PJM TOs' specific First Amendment claims, as a preliminary matter it is unclear which rights protected by the First Amendment Indicated PJM TOs believe are implicated by Order No. 1920-A. The First Amendment protects against government action abridging both "the freedom of speech" and the right "to petition the government for a redress of grievances."[333] Although the Supreme Court has described these two rights as "cognate rights,"[334] the Court has also explained that courts "should not presume there is always an essential equivalence in the two Clauses or that Speech Clause precedents necessarily and in every case resolve Petition Clause claims."[335] We assume that Indicated PJM TOs' position is that Order No. 1920-A violates both transmission providers' freedom of speech and their right to petition the government,[336] and we therefore address these claims separately.[337]

101. As to the First Amendment right to petition, we disagree with Indicated PJM TOs that the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State

[333] U.S. Const. amend. I.

[334] *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

[335] *Borough of Duryea v. Guarnieri*, 564 U.S 379, 388 (2011).

[336] *See* Indicated PJM TOs Rehearing Request at 29-30 (arguing that Order No. 1920-A "compel[s] speech in violation of the First Amendment" and "violat[es] First Amendment petitioning rights").

[337] *Borough of Duryea*, 564 U.S at 388 (there is not a presumption of "essential equivalence" in the speech and petition clauses negating the need to address them individually).

Agreement Process in their compliance filings violates transmission providers' "First Amendment petitioning rights."[338] The Supreme Court has described the First Amendment right to petition as "allow[ing] citizens to express their ideas, hopes, and concerns to their government," and a petition as "convey[ing] the special concerns of its author to the government and, in its usual form, request[ing] action by the government to address those concerns."[339] Assuming, *arguendo*, that transmission providers' filings made in compliance with the requirements of Order Nos. 1920 and 1920-A—or filings made in compliance with the requirements of any Commission order for that matter[340]—constitute petitions under the First Amendment,[341] we find that the

[338] Indicated PJM TOs Rehearing Request at 30.

[339] *Borough of Duryea*, 564 U.S at 388-89 (citing *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896-97 (1984)).

[340] *S. Co. Svcs.*, 61 FERC at 62,328-29 (1992) ("A compliance filing is not a change initiated by a utility, but rather is a change expressly directed by the Commission . . . which the utility is merely implementing or carrying out."); *id.* at 62,330 ("A public utility submits compliance filings in response to Commission directives. The Commission issues these directives under its authority to fix a rate by order.").

[341] Indicated PJM TOs contend that "a public utility's right to present its rates and charges and proposals that affect such rates and charges with the Commission are protected speech under the First Amendment" based on the general observation that "[m]aking a submission or filing with a governmental body is First Amendment protected petitioning." Indicated PJM TOs Rehearing Request at 29 (citing *Noerr Motor Freight, Inc.*, 365 U.S. at 138; *Trucking Unlimited*, 404 U.S. at 510; *White v. Lee*, 227 F.3d at 1231). However, we find no relevant parallels between, on the one hand, the compliance requirements adopted in Order No. 1920-A and, on the other, the "publicity campaign designed to influence the passage of state laws" in *Noerr Motor Freight, Inc.*, 365 U.S. at 131, the alleged conspiracy "to institute state and federal proceedings to resist and defeat applications . . . to acquire [highway carrier] operating rights or to transfer or

requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings does not infringe on transmission providers' right to petition. Order No. 1920-A does not prevent transmission providers from "express[ing] their ideas" to the Commission or "request[ing] action by the [Commission] to address [their] concerns."[342] Rather, Order No. 1920-A makes clear that "transmission providers decide what to submit as their actual Order No. 1920 compliance proposal, including relevant tariff language and supporting evidence or arguments, whether they decide to propose the Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process or a different Long-Term Regional Transmission Cost Allocation Method."[343]

102. As to the First Amendment guarantee of freedom of speech, we find that the line of cases Indicated PJM TOs rely on in support of their argument that the compliance requirements of Order No. 1920-A violate transmission providers' right not to speak are inapposite. In both *PG&E* and *Moody*, the Supreme Court reviewed government action regulating the communication of *political* messages to and amongst the *public*.[344] In

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register those rights" in *Trucking Unlimited*, 404 U.S. at 509, or the opposition to a zoning permit in *White v. Lee*.

[342] *See Borough of Duryea*, 564 U.S at 388-89.

[343] Order No. 1920-A, 189 FERC ¶ 61,126 at P 654 n.1651.

[344] *PG&E* concerned an order issued by the California Public Utilities Commission requiring PG&E to include third-party political editorials in its monthly billing statements to its customers. *PG&E*, 475 U.S. at 5-6, 12 (describing the audience of these editorials

contrast with the political discourse at issue in *PG&E* and *Moody*, the Supreme Court has held that under the standard articulated in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*,[345] commercial speech—"that is, expression related solely to the economic interests of the speaker and its audience"[346]—is entitled to a "limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values."[347] Further, courts have held that the First Amendment is not violated when agencies require the disclosure of information, not to influence public debate, but instead as a means to fulfilling the agencies' statutory mandates.[348] Given

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as the "public at large"). In *Moody*, the Supreme Court reviewed a Texas law banning censorship on social-media platforms with over 50 million monthly active users, which officials justified on the basis that those platforms "skewed against politically conservative voices." *Moody*, 603 U.S. at 718-19, 721.

[345] 447 U.S. 557 (1980) (*Central Hudson*).

[346] *Id.* at 561; *see also Md. Shall Issue, Inc. v. Anne Arundel Cnty.*, 91 F.4th 238, 248 (4th Cir. 2024) (rejecting the argument that "commercial speech" is limited to speech that "propose[s] a commercial transaction" and describing that argument as "understand[ing] 'commercial' far too narrowly").

[347] *See Bd. of Trs. of State Univ. of N.Y. v. Fox,* 492 U.S. 469, 477 (1989) ("Our jurisprudence has emphasized that 'commercial speech' . . . is subject to 'modes of regulation that might be impermissible in the realm of noncommercial expression.'" (quoting *Ohralik*, 436 U.S. at 456)); *Central Hudson*, 447 U.S. at 563 ("The Constitution therefore accords a lesser protection to commercial speech than to other constitutionally guaranteed expression."); *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 64-65 (1983). *See also Rubin v. Coors Brewing Co.*, 514 U.S. 476, 492 (1995) (Stevens, J., concurring) ("The First Amendment generally protects the right not to speak as well as the right to speak. In the commercial context, however, government . . . often requires affirmative disclosures that the speaker might not make voluntarily." (internal citations omitted)).

[348] *See Full Value Advisors, LLC*, 633 F.3d at 1108-09 ("Here the Commission—not the public—is [the regulated entity's] only audience. The

that Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process relate "solely to the economic interests"[349] of those who will be allocated the costs of Long-Term Regional Transmission Facilities, and that disclosure of this information is made to the Commission so that it may ensure compliance with its directives,[350] we find Indicated PJM TOs' reliance on *PG&E* and *Moody* misplaced.[351]

[Dodd–Frank Wall Street Reform and Consumer Protection] Act is an effort to regulate complex securities markets, inspire confidence in those markets, and protect proprietary information in the process. It is not a veiled attempt to 'suppress unpopular ideas or information or manipulate the public debate through coercion rather than persuasion'" (citing *Turner Broad. Sys., Inc.*, 512 U.S. at 641)); *Sindel*, 53 F.3d at 878 ("There is no right to refrain from speaking when 'essential operations of government may require it for the preservation of an orderly society,—as in the case of compulsion to give evidence in court.' The IRS summons requires [appellant] only to provide the government with information which his clients have given him voluntarily, not to disseminate publicly a message with which he disagrees." (quoting *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. at 645 (Murphy, J., concurring))).

[349] *See Central Hudson*, 447 U.S. at 561; *Md. Shall Issue, Inc.*, 91 F.4th at 248.

[350] *S. Co. Svcs.*, 61 FERC at 62,330. *See also* Order No. 1920, 187 FERC ¶ 61,068 at P 1768 (requiring each transmission provider to submit a compliance filing "as necessary to demonstrate that it meets all of the requirements adopted in [Order No. 1920]").

[351] Indicated PJM TOs cite to, but do not discuss, several additional Supreme Court decisions in stating that "the Commission's desire to receive the views of the [Relevant State Entities] on cost allocation does not justify mandating that the public utility present those views when filing its own proposal." Indicated PJM TOs Rehearing Request at 31 (citing *Turner Broad. Sys., Inc.*, 512 U.S. at 647; *Hurley v. Irish-Am. Gay, Lesbian, & Bisexual Grp. of Bos., Inc.*, 515 U.S. 557, 570 (1995); *Mia. Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 256-58 (1974)). These cases are distinguishable on the facts from Order No. 1920-A. *Hurley* and *Tornillo*, like *PG&E* and *Moody*, concerned expression in the public sphere on matters beyond those of a purely commercial nature. *See Hurley*, 515 U.S. at 561-62, 570 (discussing whether a public accommodations law prohibiting discrimination on the basis of sexual orientation compelled organizers of

103. Even assuming for the sake of argument that the compliance requirements of Order No. 1920-A implicate transmission providers' freedom of speech under the First Amendment, we disagree with Indicated PJM TOs' contention that any infringement on transmission providers' rights should be judged under strict scrutiny or the form of intermediate scrutiny described by Indicated PJM TOs.[352] In arguing that strict scrutiny should apply because the compliance requirements of Order No. 1920-A are not content-neutral,[353] Indicated PJM TOs ignore that the Supreme Court "has consistently applied intermediate scrutiny to commercial speech restrictions, even those that were content- and speaker-based."[354] We find, assuming Order No. 1920-A's compliance

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Boston's St. Patrick's Day parade to allow a group of openly gay, lesbian, and bisexual descendants of Irish immigrants to march in the parade in violation of organizers' First Amendment rights); *Tornillo*, 418 U.S. at 243 (reviewing a statute "granting a political candidate a right to equal space to reply to criticism and attacks on his record by a newspaper"). Further, the portion of *Turner* cited by Indicated PJM TOs merely discusses why the requirements at issue there were "unrelated to the content of speech" (i.e., content-neutral), and does not explore the appropriate standard of review for regulations concerning a particular category of speech, such as commercial speech. *Turner Broad. Sys., Inc.*, 512 U.S. at 647.

[352] Indicated PJM TOs Rehearing Request at 31.

[353] *Id.* at 31 n.116 ("Here, the requirement to file the [Relevant State Entities'] proposal is applied only when the transmission provider disagrees with the content of the [Relevant State Entities'] proposal." (citing *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015); *Turner Broad. Sys., Inc.*, 512 U.S. at 642)).

[354] *Greater Phila. Chamber of Com. v. Philadelphia*, 949 F.3d 116, 138 (3rd Cir. 2020). *See also Sorrell v. IMS Health Inc.*, 564 U.S. 552, 571-72 (2011) (applying *Central Hudson* intermediate scrutiny to a law imposing a "targeted, content-based burden"). The Supreme Court has described a content-based regulation as being "targeted at specific subject matter . . . even if it does not discriminate among viewpoints within that subject matter. *Reed*, 576 U.S. at 169. While content-based regulations of noncommercial speech are typically subject to strict scrutiny, content-based regulations

requirements implicate transmission providers' First Amendment rights at all, the less demanding standard applied to commercial speech set forth in *Central Hudson*, should apply to the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings given that these requirements "relate[ ] solely to [transmission providers'] economic interests."[355] Furthermore, we find that this requirement satisfies *Central Hudson*. Under *Central Hudson*, the Supreme Court undertakes a four-part analysis to determine whether a regulation that infringes on an entity's First Amendment rights is unconstitutional:

> At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest

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of commercial speech are not. *See, e.g.*, *SEC v. AT&T, Inc.*, 626 F. Supp. 3d 703, 743 (S.D.N.Y 2022) ("[D]efendants' suggestion that all content-based regulations must satisfy strict scrutiny overlooks the significant body of decisions involving laws and regulations mandating affirmative disclosures of information . . . . These disclosure provisions are explicitly content based.").

[355] *Central Hudson*, 447 U.S. at 561; *Recht v. Morrisey*, 32 F.4th 398, 409 (4th Cir. 2022) ("To be clear: Commercial speech regulations are analyzed under *Central Hudson.*"); *Stuart v. Camnitz*, 774 F.3d 238, 244 (4th Cir. 2014). *See also Ohralik*, 436 U.S. at 456 ("To require a parity of constitutional protection for commercial and noncommercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech.").

> asserted, and whether it is not more extensive than is necessary to serve that interest.[356]

104. First, the Commission has a substantial interest in monitoring transmission providers' compliance with the requirements concerning the Engagement Period, being able to efficiently consider the views of both Relevant State Entities and transmission providers, and ensuring that when setting the replacement rate on compliance, the record before it includes Relevant State Entities' views concerning how the cost of Long-Term Regional Transmission Facilities will be allocated,[357] and the Commission directly and materially advances that substantial interest by requiring that transmission providers document those views in their compliance filings.[358] Additionally, Order No. 1920-A is not more extensive than is necessary to serve the Commission's substantial interest because it requires only the attachment of one or more files, containing the information provided by Relevant State Entities, to transmission providers' proposal and does not require that transmission providers separately characterize any of this information.[359]

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[356] *Central Hudson*, 447 U.S. at 566. Courts have described the *Central Hudson* analysis as a type of intermediate scrutiny. *See Recht v. Morrisey*, 32 F.4th at 408.

[357] *Central Hudson*, 447 U.S. at 569 ("The State's concern that rates be fair and efficient represents a clear and substantial governmental interest."); Order No. 1920-A, 189 FERC ¶ 61,126 at PP 649, 659.

[358] *Edenfield v. Fane*, 507 U.S. 761, 767 (1993).

[359] Contrary to Indicated PJM TOs' contention, the fact that Relevant State Entities could alternatively submit their agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in comments in response to transmission providers' compliance filings is immaterial under intermediate scrutiny. Indicated PJM TOs Rehearing Request at 32-33. Under intermediate scrutiny, both for content-neutral regulations of noncommercial speech and for commercial speech,

B. Consultation with Relevant State Entities After the Engagement Period

1. Order Nos. 1920 and 1920-A

105. In Order No. 1920, the Commission declined to require future Engagement Periods but noted that transmission providers may hold future Engagement Periods if they believe that such periods would be beneficial.[360]

106. In Order No. 1920-A, the Commission set aside Order No. 1920, in part, and required that, as part of transmission providers' obligations with respect to transmission planning and cost allocation, transmission providers shall consult with Relevant State Entities: (1) prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process; or (2) if Relevant State Entities seek, consistent with their chosen method to reach agreement, for the transmission provider to amend that method(s) or process.[361] The Commission found that the consultation requirement will provide a mechanism through which transmission providers and Relevant State Entities can engage with each other regarding possible future FPA

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regulations need not be the least restrictive means of achieving the government's substantial interest. *Recht v. Morrisey*, 32 F.4th at 409; *Bd. of Trs. of State Univ. of N.Y.*, 492 U.S. at 477 ("The ample scope of regulatory authority [with respect to commercial speech] would be illusory if it were subject to a least-restrictive means requirement, which imposes a heavy burden on the State."); *Turner Broad. Sys., Inc.*, 520 U.S. at 217-18 ("Our precedents establish that when evaluating a content-neutral regulation which incidentally burdens speech, we will not invalidate the preferred remedial scheme because some alternative solution is marginally less intrusive on a speaker's First Amendment interests.").

[360] Order No. 1920, 187 FERC ¶ 61,068 at P 1368.

[361] Order No. 1920-A, 189 FERC ¶ 61,126 at P 691.

section 205 filings that seek to change cost allocation methods accepted by the Commission in compliance with Order No. 1920.[362] The Commission further required transmission providers to include in their OATTs a description of how they will consult with Relevant State Entities in these circumstances. Additionally, for a consultation initiated by a transmission provider, the Commission required the transmission provider to document publicly on their OASIS or other public website the results of their consultation with Relevant State Entities prior to filing their amendment. For a consultation initiated by Relevant State Entities, if the transmission provider chooses not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process preferred by Relevant State Entities during the required consultation, the Commission also required the transmission provider to document publicly on their OASIS or other public website the results of their consultation with Relevant State Entities, including an explanation for why they have chosen not to propose any amendments.[363]

107. The Commission found that these requirements will ensure that states have the opportunity to be involved in establishing cost allocation methods for Long-Term Regional Transmission Facilities subsequent to the Commission's acceptance of

[362] *Id.* The Commission clarified that this consultation requirement neither requires transmission providers to submit, nor prohibits transmission providers from submitting, FPA section 205 filings to modify cost allocation methods accepted in compliance with Order No. 1920, and transmission providers therefore retain their currently effective FPA section 205 rights. *Id.* P 691 n.1747.

[363] *Id.*

transmission providers' filings made in compliance with Order No. 1920, which has the potential to minimize additional costs and delays in the siting process and to facilitate the development of Long-Term Regional Transmission Facilities.[364] The Commission noted that, while it provided transmission providers with flexibility as to the form and duration of their required consultation with Relevant State Entities, one way transmission providers could satisfy the requirement to consult with Relevant State Entities is by revising their OATTs to include a process under which the transmission provider must present to the Commission, in addition to its own FPA section 205 proposal, an alternative cost allocation method proposed by Relevant State Entities for evaluation by the Commission on equal footing.[365] The Commission noted that transmission providers could also satisfy the requirement to consult with Relevant State Entities by revising their OATTs to include mechanisms similar to those used in SPP[366] and MISO.[367]

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[364] *Id.* P 692 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 126).

[365] *Id.* (citing ISO New England Inc., FERC FPA Electric Tariff, ISO New England Inc. Agreements and Contracts, TOA, Transmission Operating Agreement (5.0.0), 3.04(h)(vi)(C); *The Governors of Conn., Me., Mass., N.H., R.I., Vt.*, 112 FERC ¶ 61,049, at P 25 (2005)).

[366] *Id.* (citing SPP, Governing Documents Tariff, Bylaws, First Revised Volume No. 4 (0.0.0), 7.2 (Regional State Committee); *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, at PP 218-220, *order on reh'g*, 109 FERC ¶ 61,010, at PP 92-94 (2004); *Sw. Power Pool, Inc.*, 108 FERC ¶ 61,003, at P 127 & n.90 (2004), *order on reh'g*, 110 FERC ¶ 61,138, at P 33 (2005)).

[367] *Id.* (citing MISO, FERC Electric Tariff, MISO Rate Schedules, MISO Transmission Owner Agreement, app. K (Filing Rights Pursuant To Section 205 Of The FPA) (3.0.0), II.E.3.a.i-ii; *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,165, at PP 30, 32 (2013)).

2. Challenges to Order No. 1920-A

a. Statutory Filing Rights Under the FPA

i. Rehearing Requests

108. Several rehearing petitioners argue that the consultation requirement unlawfully impinges on transmission providers' FPA section 205 filing rights by conditioning the exercise of those rights on consultation with Relevant State Entities before filing a proposed tariff amendment.[368] They argue that FPA section 205 is intended for the benefit of the public utilities, that this provision provides public utilities with the unilateral and exclusive right to make filings setting their rates (subject to Commission approval), and that the Commission cannot encumber this right by conditioning it on such consultation.[369] In support, some rehearing petitioners cite *Atlantic City I* as reflecting that the Commission cannot abridge the statutory rights afforded to public utilities by Congress.[370] MISO TOs, SPP TOs, and WIRES also rely on a statement in *City of*

[368] *See* MISO TOs Rehearing Request at 5-9, 27-31; Indicated PJM TOs Rehearing Request at 3, 7; SPP TOs Rehearing Request at 2, 7, 10-12; EEI Rehearing Request at 7, 11-12; WIRES Rehearing Request at 5-9.

[369] *See, e.g.*, MISO TOs Rehearing Request at 29-31 (citing *Atlantic City I*, 295 F.3d at 9-10; *Emera Maine*, 854 F.3d at 24; *Vistra Corp. v. FERC*, 80 F.4th 302, 318 (D.C. Cir. 2023); *MISO Transmission Owners v. FERC*, 45 F.4th 248, 253 (D.C. Cir. 2022); EEI Rehearing Request at 13-14 ("In seeking to create such a condition, the Commission seeks to fundamentally and unlawfully alter its role, as well as transmission providers' and public utilities' rights, under section 205."); WIRES Rehearing Request at 7-8.

[370] *See, e.g.*, MISO TOs Rehearing Request at 27-28; EEI Rehearing Request at 13-14; WIRES Rehearing Request at 7-8; SPP TOs Rehearing Request at 11 (also

Cleveland v. Federal Power Commission that a public utility "may, without negotiation or consultation with anyone, set the rates it will charge prospective customers, and change them at will, so long as they have not been set aside by the Commission on grounds of inconsistency with the [FPA]."[371]

109. MISO TOs argue that the requirement that transmission providers consult with Relevant State Entities prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process "encumbers the transmission providers' ability to exercise their FPA section 205 rights to amend their tariffs 'at any time.'"[372] SPP TOs similarly argue that the Commission cannot "impos[e] pre-conditions that could delay section 205 filings, potentially for an indefinite time."[373] WIRES argues that this requirement is a pre-condition to transmission providers exercising their filing

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asserting that this approach contravenes *Massachusetts Department of Public Utilities*, 729 F.2d at 888).

[371] 525 F.2d 845, 855 (D.C. Cir. 1976) (*City of Cleveland*) (citing *United Gas Pipe Line Co.*, 350 U.S. at 338-344; *Permian Basin Area Rate Cases*, 390 U.S. 747, 822 (1968)); *see* MISO TOs Rehearing Request at 30-31 (also noting the Commission's passive role under FPA section 205); SPP TOs Rehearing Request at 7; WIRES Rehearing Request at 6, 8.

[372] MISO TOs Rehearing Request at 27-29 (quoting *Atlantic City I*, 295 F.3d at 9) (asserting that this aspect of Order No. 1920-A "provides Relevant State Entities with the ability to delay and exert statutorily inappropriate influence or control over the transmission providers' statutory right to file rate changes").

[373] SPP TOs Rehearing Request at 11 (citing *NRG Power Mktg.*, 862 F.3d at 115; *Western Resources*, 9 F.3d at 1578; *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010), *order on reh'g*, 137 FERC ¶ 61,074, at P 187 (2011), *vacated in part sub nom. Ill. Com. Comm'n v. FERC*, 721 F.3d 764 (7th Cir. 2013)).

rights that is not contemplated under the statute which could, "[i]n the extreme, . . . serve as a prohibition to a public utility's ability to file revisions under FPA section 205," in contrast to the intent of the FPA to allow public utilities to act quickly and without obstacles.[374]

110. EEI asserts that the consultation requirement impermissibly changes the Commission's role from passively considering rate proposals to actively infringing upon public utilities' exclusive power under FPA section 205 to initiate rate changes.[375] EEI contends that the structure of the consultation requirement implicitly shows that the Commission recognizes that it cannot reject a tariff filing by a public utility for failing to consult a Relevant State Entity.[376]

111. A number of the rehearing requests also argue that decisions by public utilities to adopt a similar consultation mechanism in certain circumstances, allow greater state participation in regional transmission planning or cost allocation, or otherwise cede their FPA section 205 filing rights to other entities do not support the Commission's decision here because those decisions were voluntary, rather than compelled by the Commission.[377] EEI recommends that the Commission reconsider the consultation

[374] WIRES Rehearing Request at 8-9.

[375] EEI Rehearing Request at 13.

[376] *Id.* at 14.

[377] *See* MISO TOs Rehearing Request at 29; SPP TOs Rehearing Request at 5-6; EEI Rehearing Request at 14-15.

requirement, averring that uncoerced, voluntary agreements, such as when transmission owners in the MISO region voluntarily ceded certain rights to the Organization of MISO States in 2013, offer a lawful and more appropriate means of ensuring engagement between transmission providers and Relevant State Entities.[378]

112. MISO TOs, Indicated PJM TOs, and SPP TOs contend that Order No. 1920-A is also inconsistent with the FPA in requiring, in certain circumstances, that transmission providers publicly document the results of their consultations with Relevant State Entities on transmission providers' OASIS or other public website.[379] In particular, SPP TOs assert that the Commission may not "require a public utility to justify a decision *not* to make a section 205 filing when the filing decision is wholly voluntary under the FPA."[380] Indicated PJM TOs argue, citing *Atlantic City I*, that "inherent in a public utility's right to file to change its own rates under section 205 is its right to *not* change its own just and reasonable rates" and that "nothing in section 205 requires a utility to explain why it is not changing a just and reasonable rate."[381]

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[378] EEI Rehearing Request at 14-15 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,165 at P 30).

[379] *See* MISO TOs Rehearing Request at 5 ("These changes reframe the roles of the entities involved, blurring the FPA's division of authority."); Indicated PJM TOs Rehearing Request at 7, 15-17; SPP TOs Rehearing Request at 2, 7, 10-11.

[380] SPP TOs Rehearing Request at 11.

[381] Indicated PJM TOs Rehearing Request at 16; *id.* at 16-17 (arguing that the statutory vehicle for Relevant State Entities to attempt to change a Commission-approved cost allocation method is a complaint pursuant to FPA section 206).

ii. Commission Determination

113. We disagree with the arguments that Order No. 1920-A's cost allocation consultation requirement is unlawful because it infringes on or abridges transmission providers' FPA section 205 filing rights. The consultation requirement does not regulate transmission providers' filing rights under FPA section 205, but rather addresses the practices through which cost allocation methods for Long-Term Regional Transmission Facilities are developed, which is integrally tied to the likelihood of the construction of those facilities and their associated costs.[382]

114. In Order No. 1000, the Commission required—and the D.C. Circuit upheld—that transmission providers' transmission planning processes "have a method for allocating *ex ante* among beneficiaries the costs of new transmission facilities in the regional transmission plan, and the method must satisfy six regional cost allocation principles."[383] In doing so, the Commission regulated not only the substantive content of such cost allocation methods (i.e., consistency with the six regional cost allocation principles), but also the very practice of developing cost allocation methods by "[r]eforming the practice[ ] of failing to engage in . . . *ex ante* cost allocation."[384] Order No. 1920-A's

[382] *South Carolina*, 762 F.3d at 48; *see id.* at 82-83 (discussing how "the lack of methods that ascertain the beneficiaries of new and improved transmission facilities and allocate costs to entities that benefit" creates risks to transmission providers and results in misaligned incentives).

[383] *Id.* at 48.

[384] *Id.* at 57 (holding that this reform was within the Commission's jurisdiction to regulate); *see also id.* at 84-87.

consultation requirement, similarly, aims to ensure the development and application of cost allocation methods that will themselves facilitate the timely, efficient development of Long-Term Regional Transmission Facilities, through states' critical role in that process.

115. In Order No. 1920-A, the Commission determined—and we here sustain—that requiring transmission providers to consult with Relevant State Entities will provide an opportunity for state input, which "has the potential to minimize additional costs and delays in the siting process and to facilitate the development of Long-Term Regional Transmission Facilities."[385] As the Commission explained in the NOPR, Long-Term Regional Transmission Planning "may entail a more complex set of considerations compared to existing regional transmission planning requirements, which, in turn, may increase the importance of ensuring that the cost allocations method for projects identified and developed through these processes are perceived as fair."[386] "As

[385] Order No. 1920-A, 189 FERC ¶ 61,126 at P 692 ("We find that these requirements will ensure that states have the opportunity to be involved in establishing cost allocation methods for Long-Term Regional Transmission Facilities subsequent to the Commission's acceptance of transmission providers' filings made in compliance with Order No. 1920.").

[386] NOPR, 179 FERC ¶ 61,028 at P 54 (proposing to "address these concerns in part through greater state involvement, particularly in the development of cost allocation methods"); *see id.* P 244; *id.* PP 297-300 (discussing the challenges associated with developing cost allocation methods perceived as fair, especially in multi-state transmission planning regions, and how this may undermine the development of more efficient or cost-effective regional transmission facilities; discussing the critical role of states in such processes); *id.* P 301 ("We believe that providing an opportunity for state involvement in regional transmission planning cost allocation processes is becoming more important as states take a more active role in shaping the resource mix and demand, which, in turn, means that those state actions are increasingly affecting the long-term

such, . . . state entities charged with siting transmission facilities within their state may, at least in certain circumstances, take a more skeptical approach to evaluating applications to site Long-Term Regional Transmission Facilities."[387] To address this problem, the Commission proposed that providing opportunities for state involvement in establishing a cost allocation method "would help to address any such concerns on the part of state regulators, increasing the likelihood that Long-Term Regional Transmission Facilities are actually developed, and without delay."[388]

116. Order No. 1920 sustained these preliminary findings from the NOPR, which provide the foundation for the expanded opportunities for state participation in cost allocation adopted in that order and in Order No. 1920-A.[389] The Commission in Order

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transmission needs for which we are proposing to require public utility transmission providers to plan in this NOPR.").

[387] *Id.* P 317; *see also id.* P 314 (discussing how additional state involvement in cost allocation may "decrease the controversy over development of such facilities," and thereby "reduce instances in which a Long-Term Regional Transmission Facility is selected, has an established *ex ante* cost allocation method that applies to it, but nevertheless fails to be developed because it cannot receive a necessary state regulatory approval. After all, states retain siting authority over transmission facilities and will review whether Long-Term Regional Transmission Facilities are consistent with the public interest and state siting regulations."); *cf. id.* P 321 ("Moreover, state siting proceedings may proceed more efficiently if states have better information about the costs and benefits of such regional transmission facilities.").

[388] *Id.* P 317.

[389] *See* Order No. 1920, 187 FERC ¶ 61,068 at P 124 ("As the Commission discussed in the NOPR and we continue to find in this final rule, facilitating state regulatory involvement in the cost allocation process could minimize delays and additional costs associated with state and local siting proceedings."); *id.* P 126 (concluding that ensuring a dedicated process through which states have an opportunity to participate in the development of regional cost allocation "is particularly relevant to

No. 1920-A recognized that such concerns over inadequate state participation—and the Commission's findings as to how increased state involvement in cost allocation can help ensure that the benefits of Long-Term Regional Transmission Planning are realized—will also arise in the future, as transmission providers consider whether changes are warranted to the cost allocation process.[390] Likewise, the same dynamic may occur where Relevant State Entities have identified an alternative approach to the existing cost allocation mechanism; consulting with the Relevant State Entities regarding alternative approaches may increase Relevant State Entities' confidence in Long-Term Regional Transmission

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Long-Term Regional Transmission Planning, given: (1) the lengthy planning horizon . . . ; (2) the resultant increased uncertainty for Long-Term Regional Transmission Facilities; and (3) accordingly, the increased importance for state engagement regarding cost allocation to increase the likelihood such facilities obtain needed siting approvals from the states and are thus timely and cost-effectively developed"); *id.* PP 1293, 1295, 1362, 1404, 1411; Order No. 1920-A, 189 FERC ¶ 61,126 at P 659 ("[G]iven the inherent uncertainty involved in planning to meet Long-Term Transmission Needs, state-developed cost allocation methods and State Agreement Process take on heightened importance."); *id.* PP 10, 59; 632, 671-673, 677-678.

[390] *See* Order No. 1920-A, 189 FERC ¶ 61,126 at P 692 ("We find that these requirements will ensure that states have the opportunity to be involved in establishing cost allocation methods for Long-Term Regional Transmission Facilities subsequent to the Commission's acceptance of transmission providers' filings made in compliance with Order No. 1920, which has the potential to minimize additional costs and delays in the siting process and to facilitate the development of Long-Term Regional Transmission Facilities."); *see also id.* P 688 (summarizing NESCOE's argument that "a transmission provider could undo the efforts of Relevant State Entities in agreeing to a Long-Term Regional Transmission Cost Allocation Method during the initial Engagement Period by filing a new Long-Term Regional Transmission Cost Allocation Method without consulting with Relevant State Entities"); *id.* P 691 ("We are persuaded by NARUC's and NESCOE's arguments raised on rehearing.").

Planning processes, thereby minimizing delays, disputes, and costs associated with those processes.

117. The Commission in Order No. 1920-A therefore addressed transmission providers' processes for developing cost allocation methods for Long-Term Regional Transmission Facilities by requiring that transmission providers engage in consultation with Relevant State Entities on cost allocation to receive input from these key stakeholders.[391] Specifically, it required the adoption of the consultation mechanisms discussed above, and required "transmission providers to include in their OATTs a description of how they will consult with Relevant State Entities in these circumstances."[392] These consultation practices occur prior to any FPA section 205 filing that transmission providers might make addressing cost allocation and are directed toward transmission providers' communications with Relevant State Entities regarding cost allocation, rather than any such FPA section 205 filing.[393]

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[391] Order No. 1920-A also provided examples of how transmission providers could satisfy these consultation requirements, including revising their OATTs to adopt mechanisms similar to those used in SPP and MISO, *id.* P 692, but it did not rely on the voluntary decision of RTOs/ISOs to adopt such mechanisms as support for establishing these requirements. Thus, arguments on rehearing that such voluntary decisions are distinguishable from a Commission-imposed consultation requirement, *see* MISO TOs Rehearing Request at 29; SPP TOs Rehearing Request at 5-6; EEI Rehearing Request at 14-15, are beside the point.

[392] Order No. 1920-A, 189 FERC ¶ 61,126 at P 691.

[393] Indeed, there may not be any FPA section 205 filing associated with any such consultation, as the transmission provider has full discretion on whether or not to proceed with any FPA section 205 filing.

118. We agree with rehearing petitioners that FPA section 205 expressly grants rights to transmission providers. But contrary to the arguments raised on rehearing,[394] regulation of these consultation practices does not infringe on those rights.[395] Transmission providers retain their full and exclusive discretion as to whether to file—or not file—proposed changes to Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process under FPA section 205. Transmission providers likewise retain their full and exclusive discretion to determine the content of any such proposal, notwithstanding that transmission providers are required to engage in this consultation process. Transmission providers also control the timing of when they choose to make any such filing, including, to reiterate, *whether to make such a filing at all*.[396] Under this framework, the Commission demonstrably retains its passive and reactive role of reviewing the transmission providers' FPA section 205 filings.[397] As a result, FPA section 205 continues to function to the benefit of the transmission providers

[394] *See supra* P 108.

[395] Order No. 1920-A, 189 FERC ¶ 61,126 at P 691 n.1747 ("We clarify that this consultation requirement neither requires transmission providers to submit, nor prohibits transmission providers from submitting, FPA section 205 filings to modify cost allocation methods accepted in compliance with Order No. 1920, and transmission providers therefore retain their currently effective FPA section 205 rights.").

[396] The Commission also afforded "transmission providers flexibility as to the form and duration of their required consultation with Relevant State Entities." *Id.* P 692.

[397] *Emera Maine*, 854 F.3d at 24.

in allowing them, subject to Commission review and approval, to propose to set and change their own rates.[398]

119. Thus, the precedent relied on by rehearing petitioners challenging these requirements is inapposite. As discussed in greater detail above, the court in *Atlantic City I*[399] was not addressing a Commission regulation akin to the regulation of transmission providers' consultation practices relating to cost allocation for Long-Term Regional Transmission Facilities.[400] Rather, the court there overturned a Commission order requiring that public utilities clearly cede to an ISO their FPA section 205 rights, such that only the ISO could propose changes in rate design. Here, by contrast, transmission providers retain the full scope of their FPA section 205 filing rights. For similar reasons, this consultation requirement does not contravene *Massachusetts Department of Public Utilities*[401] because transmission providers retain their full authority to file only the FPA section 205 proposals of their own choosing, as well as the right to file nothing at all.[402]

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[398] *See, e.g.*, *id.* (contrasting FPA sections 205 and 206, noting that FPA section 205 is intended for the benefit of the utility, allowing it to propose to change its own rates, subject to the Commission's passive and reactive oversight); *Vistra Corp.*, 80 F.4th at 318; *MISO Transmission Owners*, 45 F.4th at 253.

[399] 295 F.3d at 9-11.

[400] *See supra* P 55 (discussing the facts and holding of *Atlantic City I*).

[401] 729 F.2d at 886-87.

[402] *See supra* P 57 (discussing the facts and holding of *Massachusetts Department of Public Utilities*). For similar reasons, we are not persuaded by Indicated PJM TOs' suggestion of a tension between this consultation requirement and the availability of a

120. We are also not persuaded by challenges to this consultation requirement relying on *City of Cleveland*.[403] In that case, the court considered "whether the Federal Power Commission erred in adopting a rate structure specified in a schedule filed by a public electric utility without resolving its municipal customer's contention that the schedule contravenes a preexisting agreement between the parties."[404] The court held that where a public utility has actually agreed to particular rates, by contract, the Commission cannot overlook that agreement and approve different rates.[405] While the court in that case stated that a utility "may, without negotiation or consultation with anyone, set the rates it will charge prospective customers, and change them at will, so long as they have not been set aside by the Commission on grounds of inconsistency with the [FPA],"[406] the court was

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complaint under FPA section 206 as a mechanism to compel a change to a transmission provider's cost allocation method. *See* Indicated PJM TOs Rehearing Request at 16-17. The consultation requirement does not allow Relevant State Entities to compel a transmission provider to change or not change its cost allocation method.

[403] *See* MISO TOs Rehearing Request at 30-31; SPP TOs Rehearing Request at 7; WIRES Rehearing Request at 6, 8.

[404] *See City of Cleveland*, 525 F.2d at 846, 853-54.

[405] *See id.* at 855 (explaining that the petitioner's "thesis is that . . . it had reached agreement with CEI as to the rates to be charged for the proposed load transfer service, and that a racheting of contract demand was not a part of the bargain" such that a "rachet clause" included in the public utility's proposed rate schedule had been impermissibly included); *id.* at 855-56 ("[A] utility is no more at liberty to alter an agreed rate as yet unfiled than it is to depart from one that has been filed.").

[406] *Id.* at 855; *see also United Gas Pipe Line Co.*, 350 U.S. at 343 ("The obvious implication is that, except as specifically limited by the Act, the rate-making powers of natural gas companies were to be no different from those they would possess in the

not called upon to address the Commission's authority, under FPA section 206, to regulate transmission providers' practices for developing cost allocation methods.[407] Moreover, that decision substantially pre-dates the Supreme Court and D.C. Circuit's precedent affirming the Commission's authority over the practices of public utilities that directly affect the areas subject to the Commission's jurisdiction.[408] Regardless, under Order No. 1920-A, transmission providers are still entitled, subject to Commission review and approval, "without negotiation or consultation with anyone, [to] *set* the rates [they] will charge prospective customers, and *change* them at will,"[409] including as to cost allocation. Despite Order No. 1920-A's regulation of their pre-filing practices, transmission providers' filing rights as set forth by FPA section 205[410] remain wholly intact and unchanged; any FPA section 205 filing that transmission providers make seeking to set or change their rates does not need to reflect a compromise proposal resulting from negotiation or consultation.

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absence of the Act: to establish ex parte, and change at will, the rates offered to prospective customers . . . .").

[407] *See City of Cleveland*, 525 F.2d at 851-57.

[408] *See EPSA*, 577 U.S. at 288; *South Carolina*, 762 F.3d at 48; *cf. CAISO*, 372 F.3d at 403 (overturning Commission order, finding that it did not meet the "directly affects" test).

[409] *City of Cleveland*, 525 F.2d at 855 (emphasis added).

[410] *See* 16 U.S.C. 824d(c) (providing that "every public utility shall file with the Commission . . . schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges").

121. MISO TOs, SPP TOs, and WIRES assert that the requirement that transmission providers consult with Relevant State Entities prior to an FPA section 205 filing unlawfully limits their ability to propose to change their rates at any time.[411] We disagree. Order No. 1920-A's regulation of transmission provider practices in this respect may result in practical considerations affecting the timing of transmission providers' FPA section 205 filings, which transmission providers must plan for in order to file their proposal at their preferred time, but it does not amount to a curtailment of transmission providers' filing rights. Indeed, the same challenge could be leveled at essentially *any* Commission order that imposes a requirement on a public utility that may affect the contents of a FPA section 205 filing, because meeting this requirement could impose a practical constraint on the timing of that filing.[412] We note that transmission providers must follow any applicable stakeholder processes to that effect under their currently effective governing documents, and we view those to be functionally similar to the consultation requirement.[413]

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[411] *See supra* P 109.

[412] For instance, where the Commission imposes a requirement on a public utility to consider a certain issue (e.g., a category of factors affecting Long-Term Transmission Needs) in support of ensuring just and reasonable rates, doing so could delay the utility's ability to make an FPA section 205 filing as compared to a situation without that requirement.

[413] *See, e.g.*, PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA, § 18.6(a) (requiring the support of PJM stakeholders for certain FPA section 205 filings to amend PJM's Operating Agreement).

122. None of the precedent cited by MISO TOs, SPP TOs, or WIRES holds to the contrary. While *Atlantic City I* states that under FPA section 205(d) "a public utility may file changes to rates, charges, classification, or service at any time upon 60 days notice,"[414] it does not suggest that a Commission regulation that might, as a practical matter, affect the timing of such filings is unlawful as an intrusion on public utilities' filing rights.[415] Neither do the cases on which SPP TOs rely,[416] which addressed Commission attempts to modify a FPA section 205 filing made by a public utility[417] or explained that, where a filing is made under FPA section 205, the Commission has "a statutory obligation to process the filing in a timely manner."[418]

123. Challenges to Order No. 1920-A's requirements that transmission providers publicly document the results of their consultation with Relevant State Entities[419] do not change our analysis. Here, too, these documentation requirements do not impinge on or

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[414] 295 F.3d at 9; *see* MISO TOs Rehearing Request at 28.

[415] *See* 295 F.3d at 9-11; *see supra* P 55 (discussing the holding of *Atlantic City I*).

[416] *See* SPP TOs Rehearing Request at 11 (citing *NRG Power Mktg*., 862 F.3d at 115; *City of Winnfield*, 774 F.2d at 876; *Western Resources*, 9 F.3d at 1578; *Midwest Indep. Transmission Sys. Operator, Inc*., 137 FERC ¶ 61,074 at P 187).

[417] *See NRG Power Mktg.*, 862 F.3d at 115; *City of Winnfield*, 774 F.2d at 876; *Western Resources*, 9 F.3d at 1578. That these cases discuss notice requirements under FPA section 205 does not support SPP TOs' suggestion that a Commission regulation is invalid as abridging FPA section 205 filing rights if it may, as a practical matter, require greater planning on a public utilities' part to make their filing at a desired time.

[418] *Midwest Indep. Transmission Sys. Operator, Inc*., 137 FERC ¶ 61,074 at P 187.

[419] *See* MISO TOs Rehearing Request at 5; Indicated PJM TOs Rehearing Request at 7, 15-17; SPP TOs Rehearing Request at 2, 7, 10-11.

alter transmission providers' FPA section 205 filing rights, as transmission providers retain their full, exclusive, and unilateral right to file, or not file,[420] FPA section 205 proposals of their own choosing. This aspect of Order No. 1920-A regulates only transmission providers' practices around publicly documenting their consultation with Relevant State Entities, pursuant to the Commission's authority under FPA section 206. The Commission has often introduced documentation requirements aimed at increasing transparency.[421] Nothing in FPA section 205 precludes the Commission from exercising

[420] *See* Indicated PJM TOs Rehearing Request at 16 (arguing that inherent in a public utility's right to change its own rates under FPA section 205 is the right not to seek to change its rates under that provision); SPP TOs Rehearing Request at 11 (arguing that the filing decision is wholly voluntary under FPA section 205).

[421] *See, e.g.*, Order No. 1920, 187 FERC ¶ 61,068 at P 1753 (requiring transmission providers to publicly document certain information, including Long-Term Transmission Needs discussed in interregional transmission coordination meetings); *id.* PP 1625-1630 (establishing documentation and transparency requirements for local transmission planning processes); Order No. 2023, 184 FERC ¶ 61,054 at PP 135-137 (requiring transmission providers to publicly post available generator interconnection information); Order No. 1000, 136 FERC ¶ 61,051 at P 458 (directing transmission providers "to maintain a website or e-mail list for the communication of information related to interregional transmission coordination procedures" to stakeholders); *id.* PP 668-669 (requiring that "cost allocation methods and their corresponding data requirements for determining benefits and beneficiaries [of regional and interregional transmission facilities] must be open and transparent" in order to "ensure[] that such methods are just and reasonable and not unduly discriminatory or preferential"); *Reform of Generator Interconnection Procs. & Agreements*, Order No. 845, 163 FERC ¶ 61,043, at PP 305, 307 (requiring transmission providers to post interconnection study metrics, in order to "increase the transparency of interconnection study completion timeframes"), *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137 (2018), *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019); *Uplift Cost Allocation & Transparency in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 844, 163 FERC ¶ 61,041, at PP 27, 30-34 (2018) (finding that certain RTO/ISO reporting practices were insufficiently transparent, resulting in unjust and unreasonable rates, and establishing four public reporting requirements).

that FPA section 206 authority to require documentation of these discussions, including in scenarios where the transmission provider elects not to file an FPA section 205 proposal to change its approach to cost allocation.

124. Moreover, the Commission has authority under the FPA to require the disclosure of information as necessary or appropriate to assist the Commission in the administration of its duties under the FPA, in the "manner or form" as the Commission may prescribe and providing "specific answers to all questions upon which the Commission may need information."[422] Order No. 1920-A's requirements that transmission providers publicly document the results of their consultation with Relevant State Entities fall comfortably within this broad authority.[423]

b. Compliance with the APA

i. Rehearing Requests

125. MISO TOs, SPP TOs, and WIRES assert that Order No. 1920-A's consultation requirement is inconsistent with the objectives of Order No. 1920 and insufficiently

[422] 16 U.S.C. 825c(a) ("[E]very public utility shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this chapter"); *see also id.* 825f(a), 825h; *INGAA,* 285 F.3d at 39; *PJM Interconnection* ¶ 61,224, at P 26 (2015) ("Court and Commission precedent recognize that the Commission retains the ability to require informational filings without exceeding its authority under section 205. The Commission's authority to prescribe informational filings and require informational reports, moreover, is statutory."); *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,037, at P 12 (2008); *supra* note 421 (public documentation requirements issued pursuant to FPA section 206).

[423] For instance, these requirements will help ensure that consultations with Relevant State Entities are occurring consistent with transmission providers' tariffs.

supported and is therefore arbitrary and capricious under the APA.[424] MISO TOs argue that the requirement contravenes the stated purpose of Order No. 1920 of promoting efficiency and cost-effectiveness of transmission solutions stating that "when the Commission places roadblocks, such as additional consultations and detailed explanations of decisions, in the way of reaching appropriate [c]ost [a]llocation [m]ethods, it belies the purpose of the reforms, does not demonstrate a clear path of reasoning, and is, thus, arbitrary and capricious."[425] SPP TOs broadly challenge Order No. 1920-A's consultation requirement as insufficiently supported by the Commission's explanation that states have a unique role and voice in regional transmission planning, given that states have other avenues to be heard and transmission providers have every incentive to consult voluntarily with Relevant State Entities.[426] WIRES argues that "[b]ecause the record demonstrates that there are other less intrusive means by which

[424] MISO TOs Rehearing Request at 32-33 (citing 5 U.S.C. 706; *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099, 1102 (D.C. Cir. 2019)); SPP TOs Rehearing Request at 28 (citing *State Farm*, 463 U.S. at 43); WIRES Rehearing Request at 15 (citing 5 U.S.C. 706(2)(A); *Am. Gas Ass'n v. FERC*, 593 F.3d 14, 19 (D.C. Cir. 2010); *Rio Grande Pipeline Co. v. FERC*, 178 F.3d 533, 541 (D.C. Cir. 1999)).

[425] MISO TOs Rehearing Request at 32-33; *see also id.* at 27.

[426] SPP TOs Rehearing Request at 28-29 (arguing that there is no need to "create preferential filing privileges" not contemplated by the FPA and "that statutory limits exist and may frustrate some parties cannot be a reasoned basis for evading those limits"); *see also id.* at 11-12 (arguing that the Commission's explanation for the consultation requirements cannot support infringing on transmission providers' FPA section 205 filing rights, and that "public utilities will continue to have every incentive to *voluntarily* consult with Relevant State Entities and to consider their input before making section 205 filings").

states can meaningfully participate in the development of Long-Term Regional [Transmission] Cost Allocation [M]ethods and State Agreement Processes, the Commission's revisions are arbitrary and capricious."[427]

ii. Commission Determination

126. We disagree with the arguments raised on rehearing that the Commission failed to comply with the APA in adopting the requirement that transmission providers consult with Relevant State Entities prior to amending the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process.[428] First, MISO TOs mischaracterize the consultation requirement in calling it a "roadblock[ ] . . . in the way of reaching appropriate [c]ost [a]llocation [m]ethods,"[429] as Order No. 1920-A provides transmission providers flexibility as to both the form and duration of the required consultation.[430] Moreover, Order No. 1920-A does not require that transmission

[427] WIRES Rehearing Request at 16-17 (asserting that the same set of facts relied on in Order No. 1920 were used to justify the requirements of Order No. 1920-A, such that "there seems little connection between what are essentially the same facts and the choices made."). WIRES here challenges both the consultation requirements and the compliance filing requirements adopted in Order No. 1920-A, discussed above, *see supra* Requirements Concerning Relevant State Entities' Agreed-upon Cost Allocation Methods section, as arbitrary and capricious for the same reasons.

[428] *See* MISO TOs Rehearing Request at 32-33; SPP TOs Rehearing Request at 28; WIRES Rehearing Request at 15.

[429] MISO TOs Rehearing Request at 33.

[430] Order No. 1920-A, 189 FERC ¶ 61,126 at P 692.

providers post any detail beyond the results of any consultation,[431] and for consultations initiated by Relevant State Entities, Order No. 1920-A requires only an explanation for why the transmission provider has chosen not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process preferred by Relevant State Entities during the required consultation.[432] Contrary to MISO TOs' contention that the consultation requirement contravenes the purpose of Order No. 1920, we find that the consultation requirement directly furthers the essential purpose of Long-Term Regional Transmission Planning to develop more efficient or cost-effective regional transmission facilities.[433] The consultation requirement, in ensuring that states have the opportunity to be involved in development of cost allocation methods for Long-Term Regional Transmission Facilities subsequent to the Commission's acceptance of transmission providers' filings made in compliance with Order No. 1920, has the potential to minimize additional costs and delays in the siting process and to facilitate the development of Long-Term Regional Transmission Facilities.[434] Therefore, on balance, we find that the consultation requirement adopted in

[431] *See* MISO TOs Rehearing Request at 33 (asserting that that this requirement obligates transmission providers to provide "detailed explanations of decisions").

[432] Order No. 1920-A, 189 FERC ¶ 61,126 at P 691.

[433] Order No. 1920, 187 FERC ¶ 61,068 at P 125.

[434] Order No. 1920-A, 189 FERC ¶ 61,126 at P 692.

Order No. 1920-A is an appropriate, tailored means of furthering Order No. 1920's essential purpose.

127. We also disagree with SPP TOs' and WIRES' arguments that the Commission's adoption of the consultation requirement is arbitrary or capricious because Relevant State Entities have other means of participating in the development of Long-Term Regional Transmission Cost Allocation Methods and/or State Agreement Process, or because transmission providers would otherwise be incented to consult with Relevant State Entities and consider their input before making FPA section 205 filings.[435] In Order No. 1920-A, the Commission found that the consultation requirement will ensure that states have the opportunity to be involved in developing cost allocation methods for Long-Term Regional Transmission Facilities subsequent to the Commission's acceptance of transmission providers' filings made in compliance with Order No. 1920.[436] Transmission providers may already have an incentive to provide states with an opportunity to be involved in establishing cost allocation methods for Long-Term Regional Transmission Facilities subsequent to the Commission's acceptance of transmission providers' filings made in compliance with Order No. 1920—given such involvement has the potential to minimize additional costs and delays in the siting process and to facilitate the development of Long-Term Regional Transmission

[435] *See* SPP TOs Rehearing Request at 28-29; WIRES Rehearing Request at 16-17.

[436] Order No. 1920-A, 189 FERC ¶ 61,126 at P 692.

Facilities.[437] However, the consultation requirement adopted in Order No. 1920-A *ensures* that Relevant State Entities have such an opportunity.

c. First Amendment

i. Rehearing Requests

128. Indicated PJM TOs argue that the requirement that transmission providers explain why they have chosen not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process preferred by Relevant State Entities during the required consultation violates the First Amendment to the United States Constitution.[438] Indicated PJM TOs contend that the First Amendment protects transmission providers' right to speak as well as their right not to speak, and that this requirement constitutes governmentally compelled speech that the Commission cannot require.[439]

ii. Commission Determination

129. Above, we address Indicated PJM TOs' argument that transmission providers' First Amendment rights are violated by Order No. 1920-A's requirement that transmission providers include in the transmittal or as an attachment to their Order No. 1920 regional transmission planning and cost allocation compliance filing the

[437] *Id.* P 692 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 126).

[438] Indicated PJM TOs Rehearing Request at 29.

[439] *Id.* at 29-30, 33-34 (citing *Wooley*, 430 U.S. at 714; *United Foods, Inc.*, 533 U.S. at 409-10; *PG&E*, 475 U.S. at 10-19; *Central Hudson*, 447 U.S. 557).

Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process agreed to by Relevant State Entities during the Engagement Period.[440] For similar reasons, we find that the requirement that transmission providers explain why they have chosen not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process preferred by Relevant State Entities during the required consultation does not implicate transmission providers' rights under the First Amendment. As discussed above,[441] the requirement that transmission providers explain why they have chosen not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process preferred by Relevant State Entities during the required consultation is a regulation of the practices surrounding cost allocation to ensure the development of cost allocation methods that will facilitate the timely, efficient development of Long-Term Regional Transmission Facilities, given the critical role of states in that process. This requirement is not a "veiled attempt to . . . 'manipulate the public debate through coercion'"[442] but rather an integral component in Order No. 1920's

[440] *See supra* Requirements Concerning Relevant State Entities' Agreed-upon Cost Allocation Methods section.

[441] Consultation with Relevant State Entities After the Engagement Period, Statutory Filing Rights Under the FPA section.

[442] *Full Value Advisors, LLC*, 633 F.3d at 1108-09 (rejecting a First Amendment challenge to a statute "indistinguishable from other underlying and oft unnoticed forms of disclosure the Government requires for its 'essential operations'" (first quoting *Turner Broad. Sys., Inc.*, 512 U.S. at 641; then quoting *W. Va. State Bd. of Educ. v. Barnette,* 319

reforms facilitating the timely, efficient development of Long-Term Regional Transmission Facilities, and thus ensuring just and reasonable Commission-jurisdictional rates. We therefore find no difference for the purposes of the First Amendment between this requirement and Order No. 1000's reform, necessary to ensure just and reasonable Commission-jurisdictional rates, of the "practices of failing to engage in . . . *ex ante* cost allocation for development of new regional transmission facilities."[443]

130. As with Indicated PJM TOs' First Amendment arguments with respect to the requirement that transmission providers include Relevant State Entities' agreed-upon Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process in their compliance filings, we find that Indicated PJM TOs' reliance on cases concerning compelled expression of political and ideological messages such as *Wooley* and *PG&E* is misplaced. The Supreme Court has consistently held that "expression related solely to the economic interests of the speaker and its audience"[444] is entitled to only a "limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values."[445] The requirement that transmission providers

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U.S. at 645)). *See also Sindel*, 53 F.3d at 878; *Scahill v. District of Columbia*, 909 F.3d at 1185.

[443] *South Carolina*, 762 F.3d at 57 (describing this Order No. 1000 reform as "involv[ing] a core reason underlying Congress' instruction in [FPA] Section 206").

[444] *Central Hudson*, 447 U.S. at 561; *see also Md. Shall Issue, Inc.*, 91 F.4th at 248.

[445] *See Bd. of Trs. of State Univ. of N.Y.*, 492 U.S. 469; *see supra* Requirements Concerning Relevant State Entities' Agreed-upon Cost Allocation Methods section.

explain why they have chosen not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process preferred by Relevant State Entities during the required consultation does not compel transmission providers to utter phrases "repugnant to their moral, religious, and political beliefs,"[446] but instead simply requires that they explain their disagreement with Relevant State Entities as to the economic matter of how the cost of Long-Term Regional Transmission Facilities ought to be allocated.[447] Therefore, at most, the requirement that transmission providers explain why they have chosen not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process preferred by Relevant State Entities during the required consultation should be judged under the *Central Hudson* standard applied to regulations on commercial speech.[448] We find that this requirement satisfies *Central Hudson*, as it

[446] *Wooley*, 430 U.S. at 707.

[447] *Md. Shall Issue*, *Inc.*, 91 F.4th at 248.

[448] *Recht*, 32 F.4th at 409. While Indicated PJM TOs argue that either strict or intermediate scrutiny should apply to the requirement that transmission providers include in their compliance filings the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process agreed upon by Relevant State Entities, Indicated PJM TOs do not specify the level of constitutional scrutiny they believe should apply to the requirement that transmission providers explain why they have chosen not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process preferred by Relevant State Entities during the required consultation. Indicated PJM TOs Rehearing Request at 31-33. For the avoidance of doubt, we find that strict scrutiny is inapplicable to the requirement that transmission providers explain why they have chosen not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State

directly advances the Commission's substantial interest in ensuring that states have the opportunity to be involved in establishing cost allocation methods for Long-Term Regional Transmission Facilities subsequent to the Commission's acceptance of transmission providers' filings made in compliance with Order No. 1920, which has the potential to minimize additional costs and delays in the siting process and to facilitate the development of Long-Term Regional Transmission Facilities,[449] and is "in proportion to" and not more extensive than is necessary to serve the Commission's substantial interest.[450]

C. Definition of Relevant State Entities

1. Order Nos. 1920 and 1920-A

131. In Order No. 1920, the Commission defined a "Relevant State Entity" as "any state entity responsible for electric utility regulation or siting electric transmission

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Agreement Process preferred by Relevant State Entities during the required consultation after the Engagement Period.

[449] Order No. 1920-A, 189 FERC ¶ 61,126 at P 692 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 124, 126).

[450] *See Bd. of Trs. of State Univ. of N.Y.*, 492 U.S. at 480 (quoting *In re R.M.J.*, 455 U.S. 191, 203 (1982)). As discussed above at note 359, regulations on commercial speech such as the requirement that transmission providers explain why they have chosen not to propose any amendments to the Long-Term Regional Transmission Cost Allocation Method(s) and/or State Agreement Process preferred by Relevant State Entities during the required consultation need not be the least restrictive means of achieving the government's substantial interest. *Id.* Thus, the fact that Relevant State Entities could alternatively "file their own proposal under FPA section 206" has no bearing on the constitutionality of this requirement. Indicated PJM TOs Rehearing Request at 33.

facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state."[451] In response to comments on the NOPR, the Commission declined to expand the definition of Relevant State Entities to include additional entities, including electric cooperatives, and explained that providing state regulators with a formal opportunity to develop cost allocation methods in Long-Term Regional Transmission Planning could increase state support for Long-Term Regional Transmission Facilities that transmission providers select and that this may increase the likelihood that such facilities are sited and ultimately developed with fewer costly delays and better ensure just and reasonable Commission-jurisdictional rates.[452] The Commission made clear, however, that nothing in Order No. 1920 diminishes the role of stakeholders that are not Relevant State Entities nor absolves transmission providers of any existing obligations that they may have to provide opportunities for stakeholder input.[453]

132. Order No. 1920 provided opportunities for Relevant State Entities to participate in Long-Term Regional Transmission Planning, including, but not limited to, the requirements that transmission providers in each transmission planning region:

(1) consult with and seek support from Relevant State Entities regarding the evaluation

[451] Order No. 1920, 187 FERC ¶ 61,068 at PP 44, 1355; *see also* Order No. 1920-A, 189 FERC ¶ 61,126 at P 701.

[452] Order No. 1920, 187 FERC ¶ 61,068 at P 1364.

[453] *Id.* P 1000.

process, including selection criteria, that transmission providers propose to use to identify and evaluate Long-Term Regional Transmission Facilities for selection;[454] (2) include in their OATTs a process to provide Relevant State Entities and interconnection customers with the opportunity to voluntarily fund the cost of, or a portion of the cost of, a Long-Term Regional Transmission Facility that otherwise would not meet the transmission providers' selection criteria;[455] and (3) provide a forum for negotiation of a Long-Term Regional Transmission Cost Allocation Method(s) and/or a State Agreement Process that enables meaningful participation by Relevant State Entities.[456] The Commission declined to expand participation in the Engagement Period beyond Relevant State Entities but stated that other participants beyond Relevant State Entities may participate in the State Agreement Process, if agreed to by Relevant State Entities.[457]

133. In Order No. 1920-A, the Commission recognized the valuable insight that municipal electric regulatory bodies and non-public utilities provide as stakeholders in Commission-sanctioned processes but declined requests to expand the definition of Relevant State Entity to encompass other entities.[458] In support of its decision, the Commission emphasized that state entities responsible for electric utility regulation or

[454] *Id.* P 994.

[455] *Id.* P 1012.

[456] *Id.* P 1354.

[457] *Id.* PP 1364 & n.2914, 1402, 1416, 1421.

[458] Order No. 1920-A, 189 FERC ¶ 61,126 at PP 700-701.

siting electric transmission facilities are uniquely situated to influence whether or not a Long-Term Regional Transmission Facility reaches completion.[459] The Commission continued to find that "regional transmission facilities face significant uncertainty and risk of not reaching construction if certain stakeholders—in particular, a state regulator responsible for permitting transmission facilities—do not perceive the regional transmission facilities' value as commensurate with their costs."[460] However, the Commission did not make a determination on whether an individual state's laws, regulations, and/or policies, or inclusion in a larger association of regulators, deem any particular entity to be a Relevant State Entity, though the Commission noted that state law may be a persuasive or dispositive factor in such determinations.[461]

2. Rehearing Requests

134. NRECA requests that the Commission modify the definition of Relevant State Entity to include any entity that establishes or regulates electric rates under state law, in light of Order No. 1920-A's modifications to the roles played by Relevant State Entities.[462] NRECA states that Order No. 1920-A substantially changes the final rule by creating expanded and additional opportunities for Relevant State Entities to influence and determine Long-Term Regional Transmission Planning and associated cost allocation

[459] *Id.* P 701 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1364).

[460] *Id.* P 700 (citing Order No. 1920, 187 FERC ¶ 61,068 at P 1364).

[461] *Id.* P 703.

[462] NRECA Rehearing Request at 12.

methods, such as requiring incorporation of input from Relevant State Entities in developing Long-Term Scenarios and requiring compliance filings to include any Long-Term Regional Transmission Cost Allocation Method or State Agreement Process agreed upon by Relevant State Entities.[463]

135. NRECA argues that Order No. 1920-A's modifications to the final rule are incomplete, and the Commission's goal of giving the entities that represent electric consumers under state law a greater voice in transmission planning and cost allocation decisions is not met, because the order does not ensure comparable representation of all electric consumers in a state.[464] NRECA points out that many state public utility commissions do not regulate the rates of all electric utilities in their respective states and that often electric cooperatives establish their rates independently of their state's utility commission. NRECA asserts that the Commission arbitrarily and without explanation excluded or allowed transmission planning regions to exclude the representatives of some electric consumers from the more robust process created by Order No. 1920-A.[465] NRECA states that the Commission's definition of Relevant State Entity in Order Nos. 1920 and 1920-A is not bound by statute or prior regulations, as the Commission crafted this definition for the purpose of Order Nos. 1920 and 1920-A.[466]

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[463] *Id.* at 5-8.

[464] *Id.* at 9.

[465] *Id.* at 10.

[466] *Id.* at 11-12 (citing Order No. 1920-A, 189 FERC ¶ 61,126 at P 704).

136. NRECA argues that the FPA's prohibition on undue discrimination or preference extends to practices affecting jurisdictional rates as well as the rates themselves.[467] Accordingly, NRECA claims that Order No. 1920-A is arbitrary, capricious, not in accordance with law, and not the product of reasoned decision-making, as it does not require transmission providers to provide the expanded opportunities for participation in transmission planning and cost allocation decision-making processes on a nondiscriminatory and non-preferential basis to all entities "responsible for electric utility regulation" under state law.[468]

137. Finally, NRECA argues that the Commission should clarify or modify Order No. 1920-A to require transmission providers to demonstrate in their compliance filings how they are ensuring that all entities that establish or regulate electric rates under state law will be treated without undue discrimination or preference.[469]

3. Commission Determination

138. We are not persuaded by NRECA's request to expand the definition of Relevant State Entity to include any entity that establishes or regulates electric rates under state law.[470] As discussed in Order No. 1920-A, while we recognize the important role that many stakeholders, including municipal electric regulatory bodies and non-public utility

[467] *Id.* at 13.

[468] *Id.* at 4, 13-14.

[469] *Id.* at 15.

[470] *Id.* at 12.

entities, play in Commission-sanctioned processes, we continue to find that the definition of Relevant State Entities should encompass only state entities responsible for electric utility regulation or siting electric transmission facilities within the state or portion of a state located in the transmission planning region, including any state entity as may be designated for that purpose by the law of such state.[471]

139. In Order No. 1920-A, the Commission reaffirmed and enhanced the important role of states in the Long-Term Regional Transmission Planning process by recognizing that meaningful engagement with states is critical to the success of the Long-Term Regional Transmission Planning reforms established in Order No. 1920.[472] Specifically, the Commission in Order No. 1920-A better integrated states' input into regional transmission planning and cost allocation processes, both in the transmission providers' development of Order No. 1920 compliance filings and the ongoing implementation of these reforms in the future.

140. Importantly, however, this strengthened role of Relevant State Entities does not limit or inhibit other entities from engaging robustly via the Commission's or state's standard procedures for public participation. We also reiterate that Order No. 1920 allows other participants, including the municipal electric regulatory bodies and non-public utility entities mentioned above that do not otherwise meet the definition of a Relevant State Entity, to participate in a State Agreement Process, if agreed to by

[471] Order No. 1920-A, 189 FERC ¶ 61,126 at P 701.

[472] *Id.* P 3.

Relevant State Entities.[473] Further, we emphasize that nothing in Order No. 1920 or Order No. 1920-A prevents transmission providers generally from consulting or working closely with stakeholders in addition to Relevant State Entities to ensure the success of Long-Term Regional Transmission Planning. Indeed, we welcome such collaboration.

141. We disagree with NRECA's argument that the definition of Relevant State Entity allows for unduly discriminatory and preferential transmission planning and cost allocation practices by not expressly encompassing any entity that establishes or regulates electric rates under state law.[474] As discussed in Order No. 1920, allowing Relevant State Entities to better realize Long-Term Regional Transmission Facilities' value through an enhanced role in the regional transmission planning process greatly increases the likelihood of their support for those facilities. Relevant State Entities play a unique role in that they retain a variety of authorities that are integral to the success of Long-Term Regional Transmission Planning.[475] Therefore, the support of Relevant State Entities may increase the likelihood that those facilities are sited and ultimately developed with fewer costly delays, and thus better ensures just and reasonable Commission-jurisdictional rates.[476] Additionally, we reiterate that we are not excluding

[473] Order No. 1920, 187 FERC ¶ 61,068 at PP 1364 n.2914, 1402; Order No. 1920-A, 189 FERC ¶ 61,126 at P 701.

[474] NRECA Rehearing Request at 13.

[475] Order No. 1920, 187 FERC ¶ 61,068 at P 1000.

[476] *Id.* P 1364.

any specific entities from this process; instead, we make no findings regarding whether any individual municipal electric regulatory body or non-public utility entity meets the definition of a Relevant State Entity, as those determinations properly rest with entities in a state, based upon their interpretation of their state laws.[477]

142. We further are not persuaded by NRECA's request for a requirement that transmission providers demonstrate in their compliance filings how they are ensuring that all entities that establish or regulate electric rates under state law will be treated without undue discrimination or preference.[478] Nothing in Order No. 1920 diminishes the role of stakeholders that are not Relevant State Entities, nor absolves transmission providers of any existing obligations that they may have to provide opportunities for stakeholder input.[479]

D. Other Cost Allocation Issues

1. Order Nos. 1920 and 1920-A

143. In Order No. 1920, the Commission found that there is substantial evidence to support the determination that sufficiently long-term, forward-looking, and comprehensive regional transmission planning and cost allocation to meet Long-Term Transmission Needs is not occurring on a consistent and sufficient basis, and that the absence of such processes is resulting in piecemeal transmission expansion to address

[477] Order No. 1920-A, 189 FERC ¶ 61,126 at P 703.

[478] NRECA Rehearing Request at 15.

[479] *See* Order No. 1920, 187 FERC ¶ 61,068 at P 1000.

relatively near-term transmission needs. The Commission found that the status quo approach results in transmission providers undertaking investments in relatively inefficient or less cost-effective transmission infrastructure, the costs of which are ultimately recovered through Commission-jurisdictional rates.[480]

144. The Commission concluded that revisions to the Commission's regional transmission planning and cost allocation requirements are necessary to ensure that Commission-jurisdictional rates, terms, and conditions are just, reasonable, and not unduly discriminatory or preferential. The Commission found that, absent the reforms instituted by Order No. 1920, regional transmission planning processes will continue to fail to identify, evaluate, and select regional transmission facilities that can more efficiently or cost-effectively meet Long-Term Transmission Needs, requiring customers to pay for relatively inefficient or less cost-effective transmission development.[481]

145. The Commission therefore concluded, based on the record in the proceeding, that there is substantial evidence to support the conclusion that deficiencies in the Commission's existing regional transmission planning and cost allocation requirements are resulting in Commission-jurisdictional rates that are unjust, unreasonable, and unduly discriminatory or preferential.

146. As relevant here, the Commission specifically found that the Commission's current cost allocation requirements, which were designed and established in the context

[480] *Id.* P 112.

[481] *Id.* P 113.

of existing Order No. 1000 regional transmission planning processes, are insufficient to appropriately allocate costs associated with regional transmission facilities that are selected in accordance with the new Long-Term Regional Transmission Planning requirements that the Commission established in Order No. 1920. Accordingly, the Commission found that it is both necessary and appropriate to establish specific cost allocation requirements that are tailored to the Long-Term Regional Transmission Planning reforms in Order No. 1920.[482]

147. In Order No. 1920-A, the Commission responded to rehearing requests that argued that the Commission had failed to satisfy its FPA section 206 burden to demonstrate that existing Order No. 1000 regional transmission planning and cost allocation processes are unjust, unreasonable, or unduly discriminatory or preferential[483] and sustained its Order No. 1920 determinations as to its action under the first prong of FPA section 206.[484] As relevant here, the Commission continued to find that the Commission made adequate findings and marshalled substantial evidence under the first prong of FPA section 206, and that it found rehearing petitioners' arguments to the contrary to be unpersuasive. The Commission concluded that the evidence on which it relied—both empirical and generic

[482] *Id.* P 126.

[483] *See* Order No. 1920-A, 189 FERC ¶ 61,126 at PP 70-71 (describing rehearing requests received from Designated Retail Regulators, Undersigned States, Arizona Commission, and Industrial Customers challenging the sufficiency under the first prong of FPA section 206 of the evidence relied upon by the Commission in Order No. 1920).

[484] *Id.* P 72.

factual predictions—was more than sufficient to meet its evidentiary burden under FPA section 206.[485]

2. Rehearing Requests

148. Indicated PJM TOs and SPP TOs argue that the Commission failed to make an adequate finding under the first prong of FPA section 206 that substantial evidence supports the determination that existing regional cost allocation methods are unjust and unreasonable.[486] Indicated PJM TOs state that FPA section 206 requires the Commission to prove that each rate or practice affecting such rate that it seeks to change is unlawful based on substantial evidence.[487] Indicated PJM TOs assert that "[t]he Commission makes several findings that *the existing regional planning process* is unjust and unreasonable but makes no findings that the existing *regional cost allocation method[]* is unjust and unreasonable."[488] Indicated PJM TOs aver that the findings in Order Nos. 1920 and 1920-A that an existing rate is unjust and unreasonable are confined to the transmission planning process, and that the Commission "simply assume[d]" that existing

[485] *Id.* PP 72-83.

[486] Indicated PJM TOs Rehearing Request at 7, 23-27; SPP TOs Rehearing Request at 7-8, 21-28.

[487] Indicated PJM TOs Rehearing Request at 24-25 (citing 16 U.S.C. 825*l*(b); *Emera Maine*, 854 F.3d at 24; *South Carolina*, 762 F.3d at 56-69).

[488] *Id.* at 5; *see id.* at 7 (emphasis in original).

regional cost allocation methods are unjust and unreasonable on the basis of evidence that existing regional transmission planning processes are unjust and unreasonable.[489]

149. Indicated PJM TOs argue that the Commission justified its decision by stating that existing cost allocation methods do not properly reflect the benefits to be considered in the new Order No. 1920 long-term transmission planning requirements and that there is no process to engage states in the development of regional cost allocation methods, but there is not substantial evidence in the record or analysis supporting these determinations.[490] Indicated PJM TOs argue that the Commission acknowledged that it may be just and reasonable to continue to apply existing regional cost allocation methods, that the Commission cannot conclude that a rate is unjust and unreasonable simply because it differs from the rate the Commission seeks to impose, and that the Commission has shifted the burden onto public utilities to demonstrate their cost allocation methods are consistent with the requirements of Order No. 1920.[491] Indicated PJM TOs contend that because the Commission has not carried its burden under the first prong of FPA section 206 with respect to the cost allocation methods for Long-Term

[489] *Id.* at 24 (citing Order No. 1920-A, 189 FERC ¶ 61,126 at PP 47 & n.80, 52 & n.92).

[490] *Id.* at 25 (arguing that the Commission failed to consider the example of whether PJM's cost allocation method for multi-driver projects would be appropriate under Order No. 1920 or whether PJM's existing State Agreement Approach provided sufficient state involvement in cost allocation processes).

[491] *See id.* at 26 (citing *Emera Maine*, 854 F.3d at 22-26; Order No. 1920-A, 189 FERC ¶ 61,126 at P 714).

Regional Transmission Facilities, any proposals related to such cost allocation methods must be made and considered under FPA section 205 and approved if just and reasonable.[492]

150. SPP TOs assert that Order Nos. 1920 and 1920-A do not present substantial evidence establishing a causal link between the Commission's changes to its transmission planning requirements and the need for replacement rates on cost allocation.[493] SPP TOs acknowledge that the Commission made such findings in Order Nos. 1920 and 1920-A but contend that these findings fall short of statutory requirements.[494] Specifically, they argue that "[t]he creation of new benefits in the transmission planning process does not support the Commission's conclusion that a new transmission cost allocation scheme is also needed" because costs need not be allocated with exacting precision and there is more than one just and reasonable rate, such that existing rates may still be just and reasonable.[495] Further, SPP TOs contend that the Commission disavowed in Order No. 1920 any causal link between the benefits required to be used and measured for planning purposes and the proposed replacement rate such that an acceptable cost allocation method need not include a mechanism for allocating the costs of Long-Term

[492] *Id.* at 26-27 (citing 16 U.S.C. 824d(e); *Sw. Power Pool, Inc.*, 189 FERC ¶ 61,128, at P 60 n.230 (2024)).

[493] SPP TOs Rehearing Request 22-23; *see also id.* at 7-8.

[494] *Id.* at 21-22 (citing Order No. 1920, 187 FERC ¶ 61,068 at PP 113-114; Order No. 1920-A, 189 FERC ¶ 61,126 at PP 34-124, 652).

[495] *Id.* at 23-24.

Regional Transmission Facilities in line with the measurement of benefits. Therefore, SPP TOs argue, the Commission was required to make additional factual findings, such as showing that Order No. 1920's transmission planning requirements would cause existing cost allocation methods to fail to meet the cost causation principle.[496]

151. SPP TOs assert that the holding in *South Carolina* that "'substantial evidence' is not limited to empirical evidence and may include generic factual predictions"[497] does not support the Commission's decision because "the Commission fails to show any support for 'generic factual predictions' related to supposed cost allocation deficiencies."[498] SPP TOs further contend that the Commission's discussion of the need for reform in Order Nos. 1920 and 1920-A does not support a finding under the first prong of FPA section 206 as to cost allocation, because the relevant material in the record addresses the need for improved transmission planning, not cost allocation.[499] In addition, SPP TOs argue that the Commission does not cite any record evidence that existing cost allocation methods fail to adequately consider the views of states, does not support the need for a dedicated process through which states have the opportunity to participate in regional

[496] *Id.*

[497] *South Carolina*, 762 F.3d at 65.

[498] SPP TOs Rehearing Request at 25 (discussing Order No. 1920, 187 FERC ¶ 61,068 at PP 113-114, and asserting that "[b]oth paragraphs merely state conclusions regarding the need for cost allocation reforms").

[499] *Id.* at 25-26 (discussing Order No. 1920-A, 189 FERC ¶ 61,126 at P 77, and associated record material, as well as Order No. 1920, 187 FERC ¶ 61,068 at PP 117, 121, 123).

cost allocation methods, and does not show that existing methods are insufficient to appropriately allocate costs in this context.[500]

3. Commission Determination

152. FPA section 313(a) provides that a party aggrieved by an order issued by the Commission "may apply for a rehearing within thirty days after the issuance of such order."[501] That provision further requires that "[t]he application for rehearing shall set forth specifically the ground or grounds upon which such application is based."[502] An aggrieved party is entitled to one opportunity to ask the Commission to reconsider a decision.[503] Arguments that are not made at the first opportunity cannot be made later unless there is reasonable ground for failure to do so.[504] Successive rehearing requests

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[500] *Id.* at 27-28 (citing Order No. 1920-A, 189 FERC ¶ 61,126 at P 83; Order No. 1920, 187 FERC ¶ 61,068 at P 126).

[501] 16 U.S.C. 825*l*(a); *see also* 18 CFR 385.713(b) (rehearing request must be filed not later than 30 days after issuance of a final decision or order).

[502] 16 U.S.C. 825*l*(a).

[503] *See Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1110 n.18 (D.C. Cir. 1989) ("[I]f a party does not raise an argument *that it could have raised* in its first petition for review of a Commission action, it cannot preserve that argument for judicial review simply by filing a second petition for rehearing from a subsequent Commission order which implicates the same action." (emphasis in original)); *Smith Lake Improvement & Stakeholders Ass'n*, 809 F.3d at 58 (holding that, when a Commission rehearing order does not alter an aspect of the underlying order, seeking further rehearing as to that unchanged aspect does not toll the 60-day period for requesting judicial review).

[504] *Columbia Gas Transmission Corp. v. FERC*, 477 F.3d 739, 741-42 (D.C. Cir. 2007); *Appalachian Power Co.*, 149 FERC ¶ 61,137, at P 8 (2014); *accord N.C. Utils. Comm'n v. FERC*, 741 F.3d 439, 449 (4th Cir. 2014).

are only proper when the order on rehearing modifies the result reached in the original order in a manner that gives rise to a "wholly new objection."[505]

153. Here, Indicated PJM TOs did not request rehearing of this aspect of Order No. 1920,[506] and SPP TOs did not request rehearing of Order No. 1920. Nor have Indicated PJM TOs or SPP TOs provided a reasonable ground for their failure to timely raise their objections to Order No. 1920's findings under the first prong of FPA section 206. Nevertheless, the concerns they raise regarding the Commission's findings under the first prong of FPA section 206 and sufficiency of evidence to support its exercise of authority in Order No. 1920[507] were thoroughly addressed in Order No. 1920-A,[508] which sustained Order No. 1920's outcome on this issue.[509] The

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[505] *Appalachian Power Co.*, 149 FERC ¶ 61,137 at P 8 (citing, *inter alia*, *S. Nat. Gas Co. v. FERC*, 877 F.2d 1066, 1073 (D.C. Cir. 1989)); *see also Smith Lake Improvement & Stakeholders Ass'n* , 809 F.3d at 58 (finding, in a case "where the result did not change on first rehearing and petitioner sought a second rehearing nonetheless," that "there can be no dispute that [precedent] precludes judicial review of an untimely petition").

[506] *See generally* Indicated PJM TOs June 12, 2024 Rehearing Request.

[507] Indicated PJM TOs Rehearing Request at 23-27; SPP TOs Rehearing Request at 21-28.

[508] *See* Order No. 1920-A, 189 FERC ¶ 61,126 at PP 70-71 (describing rehearing requests received from Designated Retail Regulators, Undersigned States, Arizona Commission, and Industrial Customers challenging the sufficiency under the first prong of FPA section 206 of the evidence relied upon by the Commission in Order No. 1920).

[509] *Id.* P 72 ("We continue to find that the Commission made adequate findings under the first prong of FPA section 206 and marshalled substantial evidence to support those findings. We are therefore not persuaded by rehearing parties' arguments to the contrary."). *See Appalachian Power Co*., 149 FERC ¶ 61,137 at P 10 n.18 ("An 'improved rationale' for the Commission's underlying decision ... does not support a

reasoning therein fully responds to the challenges on this issue raised here by the Indicated PJM TOs and SPP TOs.

154. Accordingly, we find that successive requests for rehearing of this determination in Order No. 1920 do not lie, and SPP TOs' arguments regarding the sufficiency of the Commission's findings in Order No. 1920,[510] as well as both Indicated PJM TOs' and SPP TOs' objections to the sufficiency of statements made in Order No. 1920-A that merely sustain Order No. 1920,[511] are rejected.[512]

IV. Document Availability

155. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the

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second request for rehearing." (citing *Erie Boulevard Hydropower, L.P.*, 118 FERC ¶ 61,196, at P 8 (2007))); *Smith Lake Improvement & Stakeholders Ass'n*, 809 F.3d at 56-57 ("We have made clear that a second rehearing petition must be filed if—and only if—the first rehearing order 'modifie[d] the results of the earlier one in a significant way.' We subsequently explained that means a change in the 'outcome,' not merely a change in reasoning." (internal citations omitted)).

[510] *See* SPP TOs Rehearing Request at 23-24 nn.64-65, 25 nn.68-70, 26-27 nn.77-79.

[511] *See* Indicated PJM TOs Rehearing Request at 24 nn.89-91, 25 n.94; SPP TOs Rehearing Request at 22-23 nn.58-60, 24-25 n.67, 25-26 nn.71-73, 26 nn.75-76, 27 nn.80-82. *See also* Indicated PJM TOs Rehearing Request at 5 ("*Order No. 1920-A* fails to make the finding required by the first prong and to establish a replacement rate under the second prong." (emphasis added)).

[512] *See NEXUS Gas Transmission, LLC*, 187 FERC ¶ 61,098, at P 13 (2024) (citing *Calpine Corp.*, 173 FERC ¶ 61,061, at P 144 (2020) (rejecting an argument as an impermissible request for rehearing of an order on rehearing)).

contents of this document via the Internet through the Commission's Home Page (http://www.ferc.gov).

156. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

157. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

V. Effective Date

158. The effective date of the document published on December 6, 2024 (89 FR 97,174), is confirmed: January 6, 2025.

By the Commission. Commissioner See is not participating.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

Appendix A: Abbreviated Names of Rehearing Petitioners

Abbreviation	Rehearing Party(ies)
Developers Advocating Transmission Advancements	Ameren Services Company; Eversource Energy; Exelon Corporation; ITC Holdings Corp., National Grid USA; Xcel Energy
EEI	Edison Electric Institute
Indicated PJM TOs	American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc.; the Dayton Power and Light Company; Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; Duquesne Light Company; East Kentucky Power Cooperative; Exelon Corporation on behalf of its affiliates Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Delmarva Power & Light Company, PECO Energy Company, and Potomac Electric Power Company; FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic

Abbreviation	Rehearing Party(ies)
	Interstate Transmission LLC, West Penn Power Company, Potomac Edison Company, Monongahela Power Company, Keystone Appalachian Transmission Company, and Trans-Allegheny Interstate Line Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities Inc.
MISO TOs	AEP Indiana Michigan Transmission Company; Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Lafayette Utilities System; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power, Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Abbreviation	Rehearing Party(ies)
NRECA	National Rural Electric Cooperative Association
SPP TOs	American Electric Power Service Corporation, on behalf of Southwestern Electric Power Company, Public Service Company of Oklahoma, AEP Oklahoma Transmission Company, Inc., and AEP Southwestern Transmission Company, Inc.; the Evergy Companies; and Xcel Energy Services Inc. on behalf of Southwestern Public Service Company
WestConnect CTOs	Colorado Springs Utilities; Imperial Irrigation District; Los Angeles Department of Water and Power; Platte River Power Authority; Sacramento Municipal Utility District; Salt River Project Agricultural Improvement and Power District; and the Transmission Agency of Northern California
WIRES	WIRES

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