

151 FERC ¶ 61,128  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

|   |             |  |
|---|-------------|--|
| Public Service Company of Colorado                | Docket Nos. | ER13-75-006<br>ER13-75-007<br>ER13-75-008<br>ER15-416-000                    |
| Tucson Electric Power Company                     |             | ER13-77-004<br>ER13-77-005<br>ER13-77-006<br>ER15-433-000                    |
| UNS Electric, Inc.                                |             | ER13-78-004<br>ER13-78-005<br>ER13-78-006<br>ER15-434-000                    |
| Public Service Company of New Mexico              |             | ER13-79-004<br>ER13-79-005<br>ER13-79-006<br>ER15-413-000                    |
| Arizona Public Service Company                    |             | ER13-82-004<br>ER13-82-005<br>ER13-82-006<br>ER15-411-000                    |
| El Paso Electric Company                          |             | ER13-91-004<br>ER13-91-005<br>ER15-426-000                                   |
| Black Hills Power, Inc.                           |             | ER13-96-004<br>ER13-96-005<br>ER15-431-000                                   |
| Black Hills Colorado Electric Utility Company, LP |             | ER13-97-004<br>ER13-97-005<br>ER15-430-000                                   |
| NV Energy, Inc.                                   |             | ER13-105-004<br>ER15-423-000<br>ER15-424-000<br>ER15-428-000<br>ER15-428-001 |
| Cheyenne Light, Fuel, & Power Company             |             | ER13-120-004   |

ER13-120-005  
ER15-432-000

ORDER ON REHEARING AND COMPLIANCE

(Issued May 14, 2015)

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1. On September 18, 2014, the Commission issued an order accepting, subject to modifications,<sup>1</sup> the second compliance filings of Arizona Public Service Company (Arizona Public Service Co.), Black Hills Power, Inc. (Black Hills Power),<sup>2</sup> Black Hills Colorado Electric Utility Company, LP (Black Hills Colorado), Cheyenne Light, Fuel, & Power Company (Cheyenne LF&P), El Paso Electric Company (El Paso Electric), NV Energy, Inc. (NV Energy),<sup>3</sup> Xcel Energy Services, Inc. (Xcel), on behalf of Public Service Company of Colorado, Public Service Company of New Mexico, Tucson Electric Power Company (Tucson Electric), and UNS Electric, Inc. (UNS Electric) (collectively, Filing Parties). The second compliance filings were made to comply with a March 22, 2013 order accepting, subject to modifications,<sup>4</sup> first compliance filings that Filing Parties made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.<sup>5</sup>

2. On October 14, 2014, Filing Parties submitted a request for rehearing or, in the alternative, a request for clarification of the Second Compliance Order, and for the same order, the American Wind Energy Association (AWEA) and LS Power Transmission, LLC and LSP Transmission Holdings, LLC (LS Power) filed a request for rehearing. On November 17, 2014, as amended on November 19, 2014, Filing Parties submitted, pursuant to section 206 of the Federal Power Act (FPA),<sup>6</sup> further revisions to their

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<sup>1</sup> *Public Serv. Co. of Colo.*, 148 FERC ¶ 61,213 (2014) (Second Compliance Order).

<sup>2</sup> Black Hills Power, Basin Electric Power Cooperative (Basin Electric), and Powder River Electric Cooperative (Powder River) jointly own a transmission system in South Dakota, Wyoming, and Nebraska. Black Hills Power, Basin Electric, and Powder River provide point-to-point and network integration transmission service under their Joint Open Access Transmission Tariff, for which Black Hills Power is the administrator.

<sup>3</sup> NV Energy is the public utility holding company owning Nevada Power Company and Sierra Pacific Power Company.

<sup>4</sup> *Public Serv. Co. of Colo.*, 142 FERC ¶ 61,206 (2013) (First Compliance Order).

<sup>5</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, and 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).

<sup>6</sup> 16 U.S.C. § 824e (2012).

respective Open Access Transmission Tariffs (OATTs) to comply with the Second Compliance Order.<sup>7</sup> Concurrently, in separate filings, Filing Parties submitted the WestConnect Planning Participation Agreement as a rate schedule of each public utility transmission provider.<sup>8</sup> In this order, we deny the requests for rehearing and

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<sup>7</sup> Filing Parties November 17, 2014 Tariff Filing (WestConnect Third Compliance Filings). Arizona Public Service Co., FERC Electric Tariff, Volume No. 2, Attachment E (2.0.0) (Arizona Public Service Co. OATT, Attachment E); Public Service Company of Colorado, Transmission Tariffs, R-PSCo (PSCo Transmission Planning Process) (0.3.2) (Public Service Company of Colorado OATT, Attachment R-PSCo); Tucson Electric, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (4.0.0) (Tucson Electric OATT, Attachment K); Public Service Company of New Mexico, PNM Open Access Transmission Tariff, Elec Tariff Vol No. 6, Open Access Transmission Tariff (S-57), (Attachment K) (1.0.1) (Public Service Company of New Mexico OATT, Attachment K); El Paso Electric Co., Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (4.2.0) (El Paso Electric Co. OATT, Attachment K); Black Hills Power, Joint Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (2.1.0) (Black Hills Power Joint OATT, Attachment K); Black Hills Colorado Electric Utility Company, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (4.1.0) (Black Hills Colorado OATT, Attachment K); Nevada Power Co., Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (0.2.0) (Nevada Power Co. OATT, Attachment K); Cheyenne LF&P, Fuel and Power Company, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (2.1.0) (Cheyenne LF&P OATT, Attachment K). Filing Parties' individual filings contain largely uniform transmittal letters and proposed OATT revisions; therefore, the Commission will cite to the transmittal letter and OATT of a single Filing Party, Arizona Public Service Co., when referencing Filing Parties' proposal. Where differences between or among the filings are addressed, the Commission will cite to individual Filing Party's filings as appropriate.

<sup>8</sup> On November 17, 2014, Arizona Public Service Company submitted the Planning Participation Agreement in Docket No. ER15-411-000, and is designated as the lead filer. All other Filing Parties submitted Certificates of Concurrence. Certificates of Concurrence were filed on November 17, 2014, by Public Service Company of New Mexico – Docket No. ER15-413-000, Public Service Company of Colorado – Docket No. ER15-416-000, Nevada Power Company – Docket No. ER15-423-000, Sierra Pacific Power Company – Docket No. ER15-424-000, El Paso Electric Company – Docket No. ER15-426-000, Black Hills Colorado Electric Utility Company – Docket No. ER15-430-000, Black Hills Power, Inc. – Docket No. ER15-431-000, Cheyenne Light, Fuel,

(continued ...)

conditionally accept Filing Parties' proposed OATT revisions and the Planning Participation Agreement, subject to further compliance filings, as discussed below.

## **I. Background**

3. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890<sup>9</sup> to require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its Open Access Transmission Tariff (OATT) to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

4. The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its OATT a method, or set of methods, for allocating the costs of new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. Order No. 1000 also required that each cost allocation method adhere to six cost allocation principles.

## **II. Notice of Filings and Responsive Pleadings**

5. Notice of Filing Parties' compliance filings and submission of the Planning Participation Agreement was published in the *Federal Register*, 79 Fed. Reg. 70,174 (2014), with interventions and protests due on or before December 8, 2014.

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and Power Company – Docket No. ER15-432-000, Tucson Electric Power Company – Docket No. ER15-433-000, and UNS Electric, Inc. – Docket No. ER15-434-000.

<sup>9</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

6. Notice of Filing Parties' amendment to their respective compliance filings was published in the *Federal Register*, 79 Fed. Reg. 70,860 (2014), with interventions and protests due on or before December 10, 2014.

7. On December 8, 2014, Los Angeles Department of Water and Power filed a motion to intervene on the compliance filings. On various dates, motions to intervene on the Planning Participation Agreement were filed by Tri-State Generation and Transmission Association, Inc., Basin Electric, Salt River Project Agricultural Improvement & Power District, Imperial Irrigation District, and Transmission Agency of Northern California.

8. On December 8, 2014, Southwest Transmission Cooperative, Inc.; Imperial Irrigation District and Los Angeles Department of Water and Power (collectively, Indicated Non-Public Utilities); and Basin Electric Power Cooperative, Colorado Springs Utilities, Platte River Power Authority, Sacramento Municipal Utility District, Transmission Agency of Northern California, Tri-State Generation and Transmission Association, Inc., and Western Area Power Administration (collectively, Non-Public Utilities) submitted comments on the compliance filings and the Planning Participation Agreement. Also on December 8, 2014, LS Power submitted a protest of the Planning Participation Agreement.

9. On December 17, 2014, Interwest Energy Alliance, Natural Resources Defense Council, Sierra Club, Sonoran Institute, Sustainable FERC Project, Western Resource Advocates, and Vote Solar Initiative (collectively, Public Interest Organizations) submitted comments on the Planning Participation Agreement.<sup>10</sup>

10. On December 22, 2014, Non-Public Utilities submitted an answer to LS Power's December 8, 2014 protest on the Planning Participation Agreement.

11. On December 23, 2014, LS Power filed comments out of time on the compliance filings.

12. On January 9, 2015, Filing Parties submitted an answer to Public Interest Organizations' December 17, 2014 comments. Also on January 9, 2015, Filing Parties submitted an answer to LS Power's December 23, 2014 protest.

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<sup>10</sup> Public Interest Organizations state that Interstate Renewable Energy Council, Islands Energy Coalition and Western Grid Group join in support of Public Interest Organizations' comments, but are not intervenors in these proceedings. Public Interest Organizations Comments at n.1.

### **III. Discussion**

#### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We also accept the late-filed comments by LS Power.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

15. As proposed, the WestConnect transmission planning region is defined by the transmission owners for whom regional transmission planning is being conducted, which includes public and non-public utility transmission providers. The service areas of the participating transmission provider members consist of all or portions of nine states: Arizona, California, Colorado, New Mexico, Nebraska, Nevada, South Dakota, Texas, and Wyoming.

16. Filing Parties explain that the purpose of the regional transmission planning process is to produce a regional transmission plan and provide a process for evaluating transmission projects submitted for cost allocation. The WestConnect Order No. 1000 transmission planning and cost allocation processes (WestConnect process) are organized and governed by the Planning Management Committee,<sup>11</sup> which is comprised of representatives from five membership sectors.<sup>12</sup> The Planning Management Committee is responsible for, among other things, administering the regional transmission planning

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<sup>11</sup> The Planning Management Committee provides an open forum where stakeholders can participate and obtain information regarding base cases, plans, and projects, and can provide input or express their needs as they relate to the transmission system.

<sup>12</sup> These membership sectors include: Transmission Owners with Load Serving Obligations; Transmission Customers; Independent Transmission Developers and Owners; State Regulatory Commissions; and Key Interest Groups.

process and approving a regional transmission plan that includes cost allocation determinations.<sup>13</sup>

17. The WestConnect process is conducted on a biennial basis and consists of eight quarters, culminating in a regional transmission plan. In coordination with its members, transmission owners, and other interested stakeholders, the Planning Management Committee develops the regional transmission plan.<sup>14</sup> During the first and second quarters of the transmission planning cycle, the WestConnect regional transmission planning process gathers and verifies base case information, including transmission owner plans and any identified transmission needs driven by public policy requirements. As part of this, the WestConnect process considers data submitted by customers, transmission developers, and transmission owners in the manner described in the public utility transmission providers' OATTs.<sup>15</sup> This information will be used to develop the base model by the end of the third quarter. During the fourth quarter of the WestConnect process, an independent analysis is conducted to identify regional needs.<sup>16</sup> During the fifth quarter, stakeholders may submit project ideas and transmission and non-transmission alternative projects for consideration and evaluation.<sup>17</sup>

18. During the fifth and sixth quarters of the WestConnect process, an evaluation of all qualified transmission projects and non-transmission alternatives takes place to identify the more efficient or cost-effective solutions to satisfy the region's needs. The seventh and eighth quarters are dedicated to developing recommendations for the final regional transmission plan, including cost allocation recommendations for transmission projects that more efficiently or cost-effectively meet the region's transmission needs.<sup>18</sup> Finally, the Planning Management Committee is charged with approving the final WestConnect regional transmission plan by the end of the eighth quarter.<sup>19</sup>

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<sup>13</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.A.

<sup>14</sup> *E.g.*, *id.*

<sup>15</sup> *E.g.*, *id.* § III.C.

<sup>16</sup> *E.g.*, *id.* § III.E.

<sup>17</sup> *E.g.*, *id.* § III.C.

<sup>18</sup> *E.g.*, *id.* § VII.B.

<sup>19</sup> *E.g.*, *id.* § III.C and Exhibit 2.

1. **Participation of Non-Public Utility Transmission Providers and Effect on Cost Allocation**

a. **Second Compliance Order**

19. In the Second Compliance Order, the Commission found that because Filing Parties' respective OATTs included a list of all public utility transmission providers that have enrolled in the transmission planning region, Filing Parties satisfied the scope requirement set forth in Order No. 1000, which states that the scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.<sup>20</sup> The Commission also accepted Filing Parties' proposed coordinating transmission owner framework allowing the regional transmission planning process to identify the transmission needs of non-public utility transmission providers that elect not to enroll, together with the transmission needs of enrolled transmission providers.<sup>21</sup> As proposed in their second compliance filings, the coordinating transmission owner framework allows non-public utility transmission providers to participate in the transmission planning region as: (1) stakeholders; (2) transmission providers that enroll in WestConnect in order to comply with the Order No. 1000 transmission planning and cost allocation requirements; or (3) transmission providers that elect to participate in the WestConnect regional transmission planning process without enrolling for Order No. 1000 cost allocation purposes, which Filing Parties referred to as "coordinating transmission owners."<sup>22</sup> In so doing, the Commission stated that Order No. 1000 did not foreclose the aspect of Filing Parties' proposal allowing the regional transmission planning process to identify the transmission needs of non-public utility transmission providers that elect not to enroll together with the transmission needs of enrolled transmission providers.

20. However, the Commission rejected Filing Parties' proposal whereby regional cost allocation would not apply to any transmission project that is shown through the regional study process to provide quantifiable benefits to any coordinating transmission owner or to any other transmission owner not enrolled in any transmission planning region, nor to

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<sup>20</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 52 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160).

<sup>21</sup> *Id.* P 55.

<sup>22</sup> *Id.* P 54 (citing, *e.g.*, Arizona Public Service Co. OATT, Attachment E, §§ III.A.2, III.B.5.a.).

any project that electrically interconnects with a coordinating transmission owner or a transmission owner not enrolled in any transmission planning region.<sup>23</sup> The Commission rejected this proposal on the basis that it would unduly restrict consideration of transmission facilities that might have regional benefits and are determined to be more efficient or cost-effective transmission solutions to regional transmission needs.<sup>24</sup>

21. Moreover, the Commission clarified that, given the unique circumstances in the WestConnect region with respect to the presence of public and non-public utility transmission providers in the region and history of joint planning in the transmission planning region, a non-public utility transmission provider that participates in the WestConnect transmission planning process as a coordinating transmission owner, and that is determined to be a beneficiary of a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation, may determine whether, consistent with its view of its statutory obligations, it will accept its share of the costs of that transmission facility.<sup>25</sup> Furthermore, the Commission required a process in order to ensure that a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation, and which would provide benefits to a coordinating transmission owner, may be considered for possible selection in a timely manner. Accordingly, the Commission directed Filing Parties to revise their respective OATTs to describe the process by which a coordinating transmission owner that is identified as a beneficiary of a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation will inform the enrolled transmission providers of whether the coordinating transmission owner will accept its share of the costs of that transmission project.<sup>26</sup>

**b. Requests for Rehearing or Clarification**

**i. Summary of Requests for Rehearing or Clarification**

22. Filing Parties seek rehearing of the Second Compliance Order concerning the Commission's directives to (1) delete any provision that will exclude from regional cost allocation any transmission project that is shown to provide quantifiable benefits to, or

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<sup>23</sup> *Id.* P 56.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* P 57.

<sup>26</sup> *Id.*

that electrically interconnect with, a coordinating transmission owner's transmission facilities;<sup>27</sup> and (2) add a process that allows transmission projects that are selected in the regional transmission plan for purposes of cost allocation, but that will not be funded by a benefiting coordinating transmission owner, to still be considered for mandatory cost allocation, provided that the transmission project otherwise satisfies the region's evaluation metrics.<sup>28</sup>

23. Filing Parties explain that, under the directives in the Second Compliance Order, if a coordinating transmission owner that is an identified beneficiary of a transmission project declines to accept its share of the transmission project's cost, the transmission project may still qualify for selection in the regional transmission plan for purposes of mandatory cost allocation.<sup>29</sup> Filing Parties assert that, in that scenario, the remaining costs will be borne by the other benefiting transmission owners.<sup>30</sup> Filing Parties argue that the coordinating transmission owner still benefits from the transmission project but does not have to pay, creating free-ridership, which is inconsistent with Order No. 1000.<sup>31</sup> Filing Parties explain that Order No. 1000 describes free-riders as "entities who do not bear cost responsibility for benefits they receive in their use of the transmission grid, specifically benefits they receive from new transmission facilities selected in a regional transmission plan for purposes of cost allocation."<sup>32</sup> Further, Filing Parties explain, in seeking to eliminate free riders, the Commission stated that "Order No. 1000 seeks to eliminate a form of subsidization, as free riders by definition are entities who are being subsidized by those who pay the costs of the benefits that free riders receive for nothing."<sup>33</sup>

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<sup>27</sup> Filing Parties Rehearing Request at 5 (Second Compliance Order, 148 FERC ¶ 61,213 at PP 56, 57).

<sup>28</sup> *Id.* at 8 (citing Second Compliance Order, 148 FERC ¶ 61,213 at P 56).

<sup>29</sup> *Id.* at 8-10.

<sup>30</sup> *Id.* at 9-10.

<sup>31</sup> *Id.* at 10.

<sup>32</sup> Filing Parties Rehearing Request at 10 (quoting Order No. 1000-A, 139 FERC ¶ 61,132 at P 576).

<sup>33</sup> *Id.* at 10 (quoting Order No. 1000-A, 139 FERC ¶ 61,132 at P 578).

24. In addition, Filing Parties argue that the Commission's directives will result in the WestConnect transmission planning region violating cost allocation principles and, as a result, become subject to litigation.<sup>34</sup> Filing Parties explain that the cost causation principles require that costs are "allocated to those who cause the costs to be incurred and reap the resulting benefits"<sup>35</sup> and that while the allocation need not be made with "exacting precision," the calculation must provide for the assignment of costs "at least roughly commensurate" with the benefits received.<sup>36</sup> Filing Parties argue that a coordinating transmission owner that declines cost allocation will not pay costs in an amount that is "roughly commensurate" with the benefits that it receives, which is inconsistent with the cost causation principle.<sup>37</sup>

25. Filing Parties also assert that the coordinating transmission owner proposal in the second compliance filing attempted to reconcile two conflicting legal principles, the restrictions on the Commission's jurisdiction over non-public utilities and the FPA's cost causation principle. Filing Parties argue that the Commission's directives in the Second Compliance Order respects the Commission's jurisdictional reach at the expense of eliminating the region's adherence to the FPA's cost causation principle.<sup>38</sup> Moreover, they argue that the Commission's directive may result in improper subsidization because non-public utility transmission providers would be shifting project costs shown to benefit them to public utility transmission providers in the region and their wholesale and retail customers.<sup>39</sup>

26. Further, Filing Parties argue that the Commission should withdraw its directive requiring further evaluation of a transmission project selected in the regional transmission plan for purposes of cost allocation after a coordinating transmission owner declines cost allocation for that transmission project. Filing Parties assert that this directive represents an unexplained, new policy of imposing mandatory cost allocation on some, but not all,

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<sup>34</sup> *Id.* at 11 and 15.

<sup>35</sup> *Id.* at 12 (citing *Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007)).

<sup>36</sup> *Id.* (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7<sup>th</sup> Cir. 2009)).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 12-13.

<sup>39</sup> Filing Parties Rehearing Request at 15 (quoting Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 599 (2004) and Order No. 1000-A, 139 FERC ¶ 61,132 at P 527).

beneficiaries of a transmission project, without allowing for a notice and comment period as required by the Administrative Procedure Act.<sup>40</sup> In place of this directive, Filing Parties request that the Commission grant rehearing and permit Filing Parties to exclude from mandatory cost allocation regional transmission projects that provide quantifiable benefits to a coordinating transmission owner who rejects the allocation of costs for that transmission project.<sup>41</sup> In the alternative, Filing Parties request clarification on whether the Commission will permit them to move forward with a process that allows all non-public utility transmission providers, not only coordinating transmission owners, to determine whether they will accept cost allocation, consistent with their statutory obligations.<sup>42</sup> Under this process, Filing Parties explain, if a non-public utility transmission provider that benefits from a transmission project in the regional transmission plan declines cost allocation, that transmission project will not be eligible for mandatory cost allocation.<sup>43</sup> Filing Parties assert that this process protects the WestConnect region from free riders that are not only coordinating transmission owners, but who are also members of the other planning sectors.

27. AWEA and LS Power assert that the Commission erred by not conditioning its acceptance of the WestConnect transmission planning region on whether the requisite amount of non-public utility transmission providers join the region. AWEA and LS Power assert that the requirements for a planning region require the region to be integrated, which in turn requires that the requisite amount of non-public utility transmission providers enroll, making them subject to mandatory cost allocation.<sup>44</sup> Because the WestConnect process allows non-public utility transmission providers to participate as a coordinating transmission owner, which is not subject to mandatory cost allocation, rather than as enrolled members, some non-public utility transmission providers may not be considered in the determination of whether the region is contiguous.<sup>45</sup> To support this interpretation of the regional requirements, AWEA and LS Power point out that in the Commission's order addressing the Southeastern Regional

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<sup>40</sup> *Id.* at 11.

<sup>41</sup> *Id.* at 15.

<sup>42</sup> *Id.* at 16.

<sup>43</sup> Filing Parties Rehearing Request at 17-18.

<sup>44</sup> AWEA and LS Power Rehearing Request at 2-3.

<sup>45</sup> *Id.* at 6-7.

Transmission Planning Region's compliance filing, the Commission specifically conditioned acceptance of its "expanded region" on the extent to which non-public and public utility transmission providers enroll in the region.<sup>46</sup>

**ii. Commission Determination**

28. We deny Filing Parties' request for rehearing of the Commission directive requiring them to delete the OATT provision that categorically eliminates a transmission project from consideration for regional cost allocation when that transmission project interconnects with or provides quantifiable benefits to a coordinating transmission owner's facilities. We find that the Commission's directive is not at odds with preventing free-ridership to the extent required by Order No. 1000, and that granting Filing Parties' request for rehearing would impermissibly allow the Commission's acceptance of their efforts to facilitate participation of non-public utility transmission providers to undermine the Commission's broader goal to identify more efficient or cost-effective solutions to regional transmission needs.

29. Order No. 1000 seeks to eliminate free ridership associated with new transmission investment by requiring each public utility transmission provider to have in its OATT a method, or set of methods, for allocating the costs of any new transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>47</sup> As the Commission explained in the Second Compliance Order, "[a]lthough non-public utility transmission providers [are] not similarly required to enroll in an Order No. 1000-compliant regional transmission planning process...non-public utility transmission providers may nonetheless elect to participate in a regional transmission planning process under Order No. 1000."<sup>48</sup> Accordingly, the Commission addressed means by which a

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<sup>46</sup> *Id.* at 4-5 (citing *Louisville Gas and Electric Company and Kentucky Utilities, et al.*, 144 FERC ¶ 61,054 at P 30 (2013)).

<sup>47</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 305 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 558, 690.) (explaining the cost allocation requirement); *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 562 ("Given the nature of transmission operations, it is possible that an entity that uses part of the transmission grid will obtain benefits from transmission facility enlargements and improvements in another part of that grid regardless of whether they pay for those benefits. This is the essence of the 'free rider' problem the Commission is seeking to address through its cost allocation reforms.").

<sup>48</sup> *Id.* P 53.

non-public utility transmission provider might choose to participate, including enrolling in a region<sup>49</sup> or participating as a stakeholder.<sup>50</sup> Order No. 1000-A affirmed that, if a non-public utility transmission provider makes the choice to enroll in a region, then that transmission provider would be subject to the regional and interregional cost allocation methods for that region.<sup>51</sup> While this may create the potential for free ridership if a non-public utility transmission provider elects to not enroll in a region and benefits from a transmission project selected in the regional transmission plan for purposes of cost allocation, that potential exists because the transmission project has benefits for entities that are not required to enroll, and have not enrolled, in the region.

30. Order No. 1000 did not seek to eliminate all instances of free ridership. For example, in Cost Allocation Principle 4, the Commission declined to permit a transmission planning region where a new transmission facility is located to allocate costs of the facility unilaterally to a neighboring region that benefits from it. The Commission acknowledged that some beneficiaries of transmission facilities escape cost responsibility because they are not located in the same transmission planning region as the transmission facility.<sup>52</sup> The Commission explained that Order No. 1000 sought to link transmission planning and cost allocation, such that allowing a region to allocate costs to entities outside of the region that may not be capable of being full participants in the region's transmission planning process could undermine that link.<sup>53</sup> The Commission explained that "to account [for] the relationship between the Commission's cost allocation reforms

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<sup>49</sup> To provide clarity regarding how a transmission provider may enroll in a transmission planning region, and to ensure that the scope of the region is clear, Order No. 1000 also required that "public utility transmission providers in each transmission planning region have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region," and that "each public utility transmission provider (or regional transmission planning entity acting for all of the public utility transmission providers in its transmission planning region) [] include in its OATT a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region." Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>50</sup> *Id.* P 275.

<sup>51</sup> *Id.*

<sup>52</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 708.

<sup>53</sup> *See id.* P 709.

and the other reforms contained in Order No. 1000 reforms,” a number of factors must be balanced to “ensure that the [aforementioned] reforms achieve the goal of improved planning and cost allocation for transmission in interstate commerce.”<sup>54</sup> The Court of Appeals for the District of Columbia (D.C. Circuit), finding that the Commission has authority to implement reforms on an incremental basis and that the Commission is not required to “ensure full or perfect cost causation,” expressly affirmed the Commission’s adoption of Cost Allocation Principle 4, notwithstanding that it may lead to some beneficiaries escaping cost responsibility.<sup>55</sup>

31. Contrary to Filing Parties’ arguments, the Commission has sought a similar balance in the unique circumstances presented here. The Commission has accepted Filing Parties’ proposal to plan for non-public utility transmission providers, as coordinating transmission owners, without requiring that those non-public utility transmission providers enroll in the WestConnect transmission planning region and, thus, be subject to binding cost allocation. The Commission explained that doing so “will increase transparency, support the building of a record with respect to transmission planning, and allow regional transmission planning to be conducted inclusive of non-public utility transmission providers, so as to expand opportunities for identifying and proposing more efficient or cost-effective regional transmission projects.”<sup>56</sup> Allowing a non-public utility transmission provider to determine, consistent with its statutes, whether to accept the cost allocation may further expand open, transparent planning. By not enrolling, the non-public utility transmission providers are not full members of the WestConnect transmission planning region and, therefore, cannot be involuntarily allocated the costs of new transmission facilities that are selected in the regional transmission plan for purposes of cost allocation. While this situation may create the potential for free ridership, as it does when any entity not enrolled in the transmission planning region benefits from a new transmission facility, it is not inconsistent with Order No. 1000.

32. Furthermore, we find that granting Filing Parties’ rehearing request would impermissibly limit the scope of transmission facilities that may be considered for selection in the regional transmission plan for purposes of cost allocation. Given the significant level of interconnection between the public utility and non-public utility transmission providers’ systems, excluding from consideration for regional cost

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<sup>54</sup> *Id.* P 707.

<sup>55</sup> *S. Car. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 88 (D.C. Cir. 2014).

<sup>56</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 55.

allocation any transmission facility that either benefits or interconnects with an unenrolled non-public utility transmission provider would likely disqualify a significant number of transmission projects that provide meaningful regional benefits to enrolled transmission providers. While the Commission accepted Filing Parties' efforts to facilitate non-public utility transmission provider participation in the WestConnect regional transmission planning process, that acceptance does not mean that Filing Parties may compromise or otherwise undermine their own obligations to comply with Order No. 1000 through the implementation of those efforts. We encourage Filing Parties to proactively work with unenrolled non-public utility transmission providers – with whom Filing Parties have repeatedly explained they have a long and productive history of collaborative transmission development<sup>57</sup> – to accept their respective shares of costs for regional transmission projects, which will further minimize the likelihood of any free rider concerns.

33. We deny rehearing of the Commission's directive requiring Filing Parties to use its evaluation metrics to consider transmission projects identified as more efficient or cost-effective in the regional transmission plan when a benefiting coordinating transmission owner declines cost allocation. We reject Filing Parties' assertion that by allowing a coordinating transmission owner to benefit from a transmission project without accepting cost allocation, our directive contravenes the cost causation principle. Order No. 1000 does not require a non-public utility transmission provider to enroll in a transmission planning region even though unenrolled non-public utility transmission providers may benefit from a regional transmission project.<sup>58</sup> Accordingly, whether Filing Parties allocate transmission project costs to beneficiaries in a manner that is consistent with cost causation principles does not turn on what costs are allocated to an unenrolled non-public utility transmission provider.

34. Further, we reject Filing Parties' argument that the Commission's directive represents a new policy because it requires that a transmission project selected in the regional transmission plan be considered for binding cost allocation even when a non-

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<sup>57</sup> Filing Parties' October 11, 2012 Compliance Filing at 4; Filing Parties' April 22, 2013 Request for Rehearing of First Compliance Order at 23.

<sup>58</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 629 (“Finally, if a non-public utility transmission provider makes the choice to become part of the transmission planning region and it is determined by the transmission planning process to be a beneficiary of certain transmission facilities selected in the regional transmission plan for purposes of cost allocation, that non-public utility transmission provider is responsible for the costs associated with such benefits.”).

public utility transmission provider declines cost allocation for that transmission project.<sup>59</sup> Order No. 1000 provides that a transmission project identified in the regional transmission plan as the more efficient or cost-effective transmission solution for the region must be evaluated for potential selection in the regional transmission plan for purposes of cost allocation.<sup>60</sup> This requirement applies even when a coordinating transmission owner declines cost allocation because, as explained in Second Compliance Order, Order No. 1000 does not require non-public utility transmission providers to enroll in the transmission planning region,<sup>61</sup> or for the transmission planning region to plan for the transmission needs of a non-public utility transmission provider,<sup>62</sup> under certain circumstances. Given, however, the unique circumstances in the WestConnect transmission planning region,<sup>63</sup> we directed Filing Parties to modify their cost allocation process to allow a coordinating transmission owner that benefits from a transmission project selected in the regional transmission plan for purposes of cost allocation to inform

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<sup>59</sup> *See id.* P 66 (“Transmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region’s Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation *because they are more efficient or cost-effective solutions to regional transmission needs.*”) (emphasis added); *see also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 335 (“We require that each public utility transmission provider must participate in a regional transmission planning process that makes each transmission facility selected in the regional transmission plan for purposes of regional cost allocation eligible for such cost allocation. In other words, *eligibility for regional cost allocation is tied to the transmission facility’s selection in the regional transmission plan for purposes of cost allocation* and not to a specific sponsor.”) (emphasis added).

<sup>60</sup> *Id.* P 66.

<sup>61</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 53. Order No. 1000-A, 139 FERC ¶ 61,132 at P 279.

<sup>62</sup> *Id.* P 54. Order No. 1000-A, 139 FERC ¶ 61,132 at P 276.

<sup>63</sup> *Id.* P 55 (citing Filing Parties Rehearing Request at 20-21 (stating that without the participation of the non-public transmission providers, “it would be very difficult for any of the jurisdictional transmission owners in WestConnect to participate in joint planning, as in many cases those entities are completely separate from one another by non-jurisdictional transmission owners.”))

the WestConnect region as to whether accepting that transmission project's costs is consistent with its statutory obligations.<sup>64</sup>

35. Also, we deny AWEA and LS Power's request for rehearing of the Commission's acceptance of the scope of the WestConnect region, and their request that that acceptance be conditioned upon enrollment of a requisite number of non-public utility transmission providers. We disagree with AWEA and LS Power's assertion that a region is not integrated unless the enrolled members together form a contiguous interconnection of transmission facilities. Order No. 1000 does not condition the integrated nature of a region on whether non-public utility transmission providers enroll in the region for purposes of cost allocation. Instead, Order No. 1000 requires that a transmission planning region "is one in which *public* utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate in for purposes of regional transmission planning and development of single regional transmission plan."<sup>65</sup> Further, in regards to the scope of the transmission region, Order No. 1000 states that the "scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resources issues affecting individual regions."<sup>66</sup> We affirm that the WestConnect region, consisting of the transmission providers that have formally enrolled in the region, meets Order No. 1000's scope requirements.

36. Moreover, in the First Compliance Order, the Commission found that the WestConnect footprint would satisfy the scope requirements set forth in Order No. 1000, but stated that Filing Parties must first formally enroll in the transmission planning region.<sup>67</sup> On compliance, Filing Parties enrolled, satisfying the last requirement necessary for the transmission planning region to comply with Order No. 1000.<sup>68</sup>

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<sup>64</sup> *Id.* P 57 (emphasis added).

<sup>65</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160.

<sup>66</sup> *Id.*

<sup>67</sup> First Compliance Order, 142 FERC ¶ 61,206 at P 25.

<sup>68</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 52.

**c. Compliance**

**i. Third Compliance Filings**

37. In response to the Commission's directives, Filing Parties have removed the tariff provisions that would categorically eliminate from regional cost allocation all transmission facilities that interconnect with, or provide quantifiable benefits to, a coordinating transmission owner or any other entity not enrolled in the WestConnect transmission planning region.<sup>69</sup> In its place, and to comply with the Commission's directive to include a process that allows a coordinating transmission owner to state whether it will accept the cost allocation for a transmission project, Filing Parties propose a process for coordinating transmission owners to explain whether they will accept or decline the regional cost allocation if they are identified as a project beneficiary together with a procedure to vote on whether to implement the project.

38. Under Filing Parties' proposal, the Cost Allocation Subcommittee first will submit, for review and comment, the results of its project benefit/cost analysis and determination of beneficiaries to the Planning Management Committee Chair and to the identified beneficiaries.<sup>70</sup> The Planning Management Committee will make available sufficient information to allow its members a reasonable opportunity to provide comments on the benefit/cost analysis and beneficiary determination.<sup>71</sup> The Planning Management Committee will then review all comments and make a determination on the benefit/cost analysis and beneficiary determination.<sup>72</sup> Next, upon Planning Management Committee approval,<sup>73</sup> the project benefit/cost analysis and beneficiary determination will be posted on the WestConnect website.<sup>74</sup>

39. The approved benefit/cost analysis and beneficiary determination will form the basis for identified beneficiaries to vote on proposed transmission facilities for which

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<sup>69</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.

<sup>70</sup> *E.g.*, *id.* § III.E.6.

<sup>71</sup> *E.g.*, *id.*

<sup>72</sup> *E.g.*, *id.*

<sup>73</sup> All actions of the Planning Management Committee will be made by satisfying the voting requirements stated in the OATT. *E.g.*, *id.* § III.B.5.

<sup>74</sup> *E.g.*, *id.* § III.E.6.

they are identified beneficiaries.<sup>75</sup> Enrolled transmission providers and coordinating transmission owners who are identified beneficiaries may vote on whether they are in favor of implementing the transmission project.<sup>76</sup> The voting share of each beneficiary is weighted in accordance with its total share of project benefits.<sup>77</sup> The proposal further provides that the costs of a proposed transmission project will be allocated only if 80 percent or more of the actual votes cast on a beneficiary-weighted basis are cast in favor of implementing the project.<sup>78</sup>

40. A beneficiary voting “no” is required to provide substantive reasons for its decision.<sup>79</sup> Specifically, within 30 days of the date the vote is taken, it must submit to the Planning Management Committee a detailed written explanation of the substantive reasons underlying the decision, including, where appropriate: (1) which additional benefit metrics, either identified in the OATT or otherwise, were used; (2) the actual quantification of such benefit metrics or factors; (3) a quantification and explanation of the net benefit or net cost of the transmission project to the beneficiary; and (4) data supporting the metrics and other factors used.<sup>80</sup> Such explanations may also include other factors such as uncertainties, and/or alternative scenarios and other qualitative factors considered, including state public policy goals.<sup>81</sup>

41. The Planning Management Committee will post this information on the WestConnect website, including: (1) a list of the identified beneficiaries; (2) the results of the benefit/cost analysis; and (3) where a transmission project is not approved, whether any transmission developer has provided any formal indication to the Planning Management Committee as to the future development of the project.<sup>82</sup>

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<sup>75</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.6.

<sup>76</sup> *E.g.*, *id.* § III.E.6(a).

<sup>77</sup> *E.g.*, *id.* § III.E.6(a)(i).

<sup>78</sup> *E.g.*, *id.* § III.E.6(a)(ii).

<sup>79</sup> *E.g.*, *id.* § III.E.6(a)(iii).

<sup>80</sup> *E.g.*, *id.*

<sup>81</sup> *E.g.*, *id.* § III.E.6(a)(iii).

<sup>82</sup> *E.g.*, *id.*

42. If the proposed transmission project meets or exceeds the 80 percent required vote, the project moves forward and each coordinating transmission owner beneficiary, including those voting “no,” must indicate whether it accepts the cost allocation for the project.<sup>83</sup> Specifically, a coordinating transmission owner, in its sole discretion, may elect to accept a cost allocation for each separate transmission facility for which it is identified as a beneficiary, but only if it notifies the Planning Management Committee Chair in writing of its decision to accept any such cost allocation within 60 calendar days after the voting results are posted by the Planning Management Committee.<sup>84</sup> However, the Planning Management Committee has the discretion to extend the 60-day period when additional time is necessary for an identified beneficiary to complete its internal review before deciding to accept the cost allocation.<sup>85</sup> In addition, a coordinating transmission owner giving notice that it elects to accept a cost allocation for a transmission facility may rescind that notice at any time prior to the end of the 60-day period, or such extended period.<sup>86</sup> In contrast, a coordinating transmission owner that does not accept the cost allocation for a transmission facility will not be subject to cost allocation for that transmission facility.<sup>87</sup>

43. Next, the Cost Allocation Subcommittee will adjust, as necessary, its project benefit/cost analysis and beneficiary identification for any transmission project that continues to meet the region’s criteria for regional cost allocation.<sup>88</sup> Specifically, for reliability transmission projects, for any coordinating transmission owner beneficiary that does not accept the cost allocation for a transmission project, the Cost Allocation Subcommittee will remove the coordinating transmission owner’s transmission needs that were included within the identification of the region’s transmission needs (i.e., needs for which the regional project would have avoided an alternative reliability transmission project in such coordinating transmission owner’s local transmission plan) as a regional

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<sup>83</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.6(a)(iv).

<sup>84</sup> *E.g.*, *id.* § III.E.6(a)(iv)(1).

<sup>85</sup> *E.g.*, *id.*

<sup>86</sup> *E.g.*, *id.* § III.E.6(a)(iv)(2).

<sup>87</sup> *E.g.*, *id.* § III.E.6(a)(iv)(3). The information will be made available in accordance with the confidential information rules under the OATTs. *E.g.*, *id.* § III.E.6(a).

<sup>88</sup> *E.g.*, *id.* § III.E.6(b)-(d).

transmission need for purposes of justifying the transmission project's approval as a transmission project eligible for inclusion in the regional transmission plan for purposes of cost allocation.<sup>89</sup> Likewise, for public policy requirements transmission projects, for any coordinating transmission owner beneficiary that does not accept the cost allocation for a transmission project, the Cost Allocation Subcommittee will remove the coordinating transmission owner's transmission needs that were included within the identification of the region's transmission needs (i.e., needs for which the regional transmission project would have avoided an alternative public policy requirements transmission project in such coordinating transmission owner's local transmission plan, including the entity's resource needs necessary to comply with public policy requirements) as a regional transmission need for purposes of justifying the project's approval as a project eligible for inclusion in the regional transmission plan for purposes of cost allocation.<sup>90</sup> Finally, for economic transmission projects, for any coordinating transmission owner beneficiary that does not accept the cost allocation for a transmission project, the Cost Allocation Subcommittee will remove the coordinating transmission owner's benefits that were included within the identification of the regional transmission project's economic benefits as a regional transmission benefit for purposes of justifying the project's approval as a project eligible for inclusion in the regional transmission plan for purposes of cost allocation.<sup>91</sup> This will include the value of any economic benefits determined through the regional transmission plan to accrue to such coordinating transmission owner.

44. Furthermore, Filing Parties propose that any regional transmission project that continues to meet the region's benefit/cost and other criteria for regional cost allocation will remain eligible for selection in the regional transmission plan for purposes of cost allocation, provided that, after the share of project costs declined by any coordinating transmission owner(s) is allocated to the remaining beneficiaries, each remaining beneficiary experiences a cost increase equal to or less than 10 percent of its prior cost

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<sup>89</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.6(b).

<sup>90</sup> *E.g.*, *id.* § III.E.6(c).

<sup>91</sup> *E.g.*, *id.* § III.E.6(d).

allocation.<sup>92</sup> Upon completion of this process, the Planning Management Committee will vote to approve the regional transmission plan.<sup>93</sup>

45. Filing Parties also proposed two additional factors in the Cost Allocation section in considering whether a transmission project is eligible for regional cost allocation and assessing the project's costs against its benefits. Specifically, they propose to add that:

- Consideration should be given to the free rider issue as appropriate. The methodology shall be fair and equitable.
- Existing OATT customers shall not be made to unduly subsidize the cost of benefits to [Coordinating Transmission Owner] beneficiaries that do not accept a regional cost allocation under [the Approval of the WestConnect Regional Transmission Plan section]. The [Planning Management Committee] may select for purposes of cost allocation a regional transmission project where [Coordinating Transmission Owner] beneficiary elections in [the Approval of the WestConnect Regional Transmission Plan section] do not result in significant cost shifts onto existing OATT customers of Public Utility beneficiaries.<sup>[94]</sup>

46. Moreover, Filing Parties propose to revise their respective OATTs to state that coordinating transmission owners are eligible to vote on the regional cost allocation

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<sup>92</sup> *E.g., id.* § III.E.6(e).

<sup>93</sup> *E.g., id.* § III.E.6(f). The Commission previously approved Filing Parties' proposal to document, as part of the regional transmission plan, why transmission projects were either included or not included in the regional transmission plan and describe the manner in which the applicable regional cost allocation method was applied to each project. *Id.*

<sup>94</sup> *E.g., id.* § VII.B.

decisions of the Planning Management Committee.<sup>95</sup> Specifically, Filing Parties propose the following revision:

Each entity within a membership sector is entitled to one vote on items presented for decision, ~~except that transmission owners in the Transmission Owners with Load Serving Obligations sector that are not enrolled in the WestConnect Planning Region are not eligible to vote on the regional cost allocation decisions of the PMC.~~<sup>[96]</sup>

47. Filing Parties state that this newly proposed approach is necessary, given that the Commission rejected Filing Parties' proposed method of avoiding free ridership (i.e., categorically excluding from regional cost allocation all transmission facilities that interconnect with, or provide quantifiable benefits to, a coordinating transmission owner or any other entity not enrolled in the region).<sup>97</sup> Filing Parties also explain that their proposal borrows heavily from the New York Independent System Operator (NYISO) region's approach, which could most readily accommodate the inclusion of an opt-in component for non-public coordinating transmission owners, in accordance with the directives in the Second Compliance Order. Filing Parties state that in accepting the NYISO approach, the Commission acknowledged that "a regional cost allocation method for one type of regional transmission facility or for all regional transmission facilities may include voting requirements for identified beneficiaries to vote on proposed transmission facilities."<sup>98</sup> They also note that the Commission found that an 80 percent beneficiary vote provides a useful check to ensure that a transmission project has net benefits, by requiring that most of those whom NYISO expects to benefit from a project agree that they will actually benefit, explaining that, "[s]ince this is the group of parties that will bear the costs of the project if it goes forward, this group has a particularly strong incentive to ensure that NYISO's estimate of benefits is accurate," and stating that "at the same time, market participants remain free to individually or jointly develop projects that have not received supermajority support at their own cost."<sup>99</sup>

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<sup>95</sup> *E.g.*, *id.* § III.B.5.

<sup>96</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.B.5(b).

<sup>97</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 3.

<sup>98</sup> *E.g.*, *id.* at 4.

<sup>99</sup> *Id.* (citing *New York Indep. Sys. Operator*, 143 FERC ¶ 61,059 at PP 245-246 (2013)).

48. Lastly, Filing Parties have revised their respective OATTs to clarify that costs will be allocated to identified beneficiaries by removing the word “enrolled” in provisions discussing the beneficiaries or transmission owners to whom costs will be allocated.<sup>100</sup> For example, Filing Parties propose to revise their OATTs as follows: “the total cost allocated to the relevant ~~enrolled~~ transmission owner’s retail distribution service territory or footprint.”<sup>101</sup> Filing Parties note that deletion of the word “enrolled” is part of the overall implementation of the Commission’s directive regarding the creation of a new process that includes coordinating transmission owner acceptance of regional cost allocation determinations.<sup>102</sup>

## ii. Protests/Comments

49. Non-Public Utilities state that they support Filing Parties’ cost allocation tariff changes that were made to comply with the Commission’s Second Compliance Order. Specifically, Non-Public Utilities support the proposed “opt-in” procedure for coordinating transmission owners, including the fact that the decision whether to opt-in is left within their “sole discretion.” Non-Public Utilities assert that the proposal helps ensure the predictability of the transmission planning process because it requires coordinating transmission owners to decide whether to opt-in within a reasonable time, thus informing the decision-making of other affected parties.<sup>103</sup>

50. In addition, Non-Public Utilities support the provision that limits cost shifts from coordinating transmission owners to the remaining project beneficiaries. According to Non-Public Utilities, if one or more coordinating transmission owners identified as project beneficiaries of a transmission project submitted for cost allocation elect to opt-out, the costs to remaining participants will not increase by more than ten percent above the level they would have paid with full subscription to the project by all identified beneficiaries.<sup>104</sup> Non-Public Utilities argue that, collectively, these provisions encourage non-public utility transmission provider participation while also providing necessary predictability to public utility transmission providers that they will not have to bear

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<sup>100</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, §§ VII.B, VII.B.1, VII.B.2, VII.B.5.

<sup>101</sup> *E.g.*, *id.* §§ VII.B, VII.B.1, VII.B.2, VII.B.5.

<sup>102</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at n.14.

<sup>103</sup> Non-Public Utilities December 8, 2014 Comments at 3-4.

<sup>104</sup> *Id.* at 4-5.

substantial additional project costs should a significant number of coordinating transmission owners decline cost allocation.

51. Non-Public Utilities, however, argue that two technical corrections should be made to the relevant tariff language included in the compliance filings. According to Non-Public Utilities, they have been authorized to state that Filing Parties do not object to the requested changes. The first proposed technical correction involves a statement that “the Planning Management Committee will vote to approve the Regional Plan.” Non-Public Utilities point out that this wording is different from the Planning Participation Agreement, which provides that “the [Planning Management Committee] will vote on whether to accept the proposed plan.” Non-Public Utilities argue that the Planning Participation Agreement language is more accurate than the tariff language, since the tariff language creates the implication that the Planning Management Committee must vote to approve the plan. Accordingly, Non-Public Utilities argue that Filing Parties’ OATTs should be modified to replace “to approve” with “on whether to accept.”<sup>105</sup>

52. The second proposed technical correction involves a statement that “[t]he [Planning Management Committee] may select for purposes of cost allocation a regional transmission project where [coordinating transmission owner] beneficiary elections [] do not result in significant cost shifts onto existing OATT customers of Public Utility beneficiaries.” Non-Public Utilities object to the fact that the above passage focuses exclusively on the impact on jurisdictional public utilities. Non-Public Utilities argue that coordinating transmission owners that elect to accept cost allocation for a transmission project have the same concerns about cost shifts resulting from other coordinating transmission owners opting out of cost allocation. Therefore, Non-Public Utilities argue that the reference to “Public Utility beneficiaries” should be replaced with “Enrolled Transmission Owners and Coordinating Transmission Owners who have elected to accept cost allocation for the project.”<sup>106</sup>

### **iii. Commission Determination**

53. We find that Filing Parties comply with the requirement to remove the proposal to categorically eliminate from regional cost allocation all transmission facilities that

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<sup>105</sup> *Id.* at 5.

<sup>106</sup> *Id.* at 5-6.

interconnect with, or provide quantifiable benefits to, a coordinating transmission owner or any other entity not enrolled in the WestConnect transmission planning region.<sup>107</sup>

54. Also, Filing Parties have made revisions throughout their respective OATTs to clarify that the costs of transmission projects that are selected in the regional transmission plan for purposes of cost allocation may be allocated to those entities determined in the regional transmission plan to be beneficiaries, without regard to whether those entities are enrolled in the transmission planning region or a coordinating transmission owner.<sup>108</sup> We find that these revisions comply with the Second Compliance Order because they allow for the costs of transmission projects selected in the regional transmission plan for purposes of cost allocation to be allocated to any transmission providers that are identified as beneficiaries in the WestConnect regional transmission planning process, regardless of whether the beneficiaries are public and non-public utility transmission providers enrolled in the transmission planning region or coordinating transmission owners that accepted the cost allocation.

55. We also find that Filing Parties' proposal partially complies with the Commission's directive requiring them to describe a process by which a coordinating transmission owner that is identified as a beneficiary of a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation will inform the enrolled transmission providers of whether the coordinating transmission owner will accept its share of the costs of that transmission facility. Specifically, we find that the provision allowing a coordinating transmission owner to "[notify] the [Planning Management Committee] in writing of its decision to accept any such cost allocation within [60] calendar days after the voting results are posted by the Planning Management Committee" complies with the Commission's directives.<sup>109</sup> In addition, we find that Filing Parties' proposal to remove a benefiting coordinating transmission owner's transmission needs from consideration to determine whether the transmission project continues to meet the region's criteria for regional cost allocation when that coordinating transmission owner declines cost allocation is reasonable and consistent with Order No. 1000. Generally, Order No. 1000 does not require the regional transmission planning

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<sup>107</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.

<sup>108</sup> *E.g.*, *id.* §§ VII.B, VII.B1, VII.B.2, VII.B.3.

<sup>109</sup> *E.g.*, *id.* § III.E.6(a)(iv).

process “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.”<sup>110</sup>

56. In contrast, we find that the 80 percent voting component of the proposal, which provides that all beneficiaries of a proposed regional transmission project will vote on whether to proceed with a regional transmission project,<sup>111</sup> is beyond the scope of the applicable Commission directive in the Second Compliance Order.<sup>112</sup> The Commission sought to facilitate cost allocation for coordinating transmission owners by balancing the region’s ability to implement transmission projects that have regional benefits with the participation of non-public utility transmission providers, consistent with Filing Parties’ proposal to plan for the transmission needs of non-public utility transmission providers that do not enroll in the region, but that elect to participate as coordinating transmission owners. The directive achieves this balance by requiring Filing Parties to establish a framework that will allow a coordinating transmission owner that benefits from a project in the regional transmission plan to accept the cost allocation for that project, and to the extent that it does not and the project does not provide regional benefits such that it satisfies the region’s cost allocation requirements, the WestConnect transmission planning process may decline to allow cost allocation for that project. While aspects of Filing Parties’ other proposed revisions meet the directive,<sup>113</sup> the 80 percent voting component does not, as it allows all beneficiaries to vote on whether to proceed with a regional transmission project, and therefore on whether they will share in the costs of the project, rather than describing how a coordinating transmission owner that is identified as a beneficiary of a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation will inform the enrolled transmission providers of

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<sup>110</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 276.

<sup>111</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.6(a)(i)-(iii).

<sup>112</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 57.

<sup>113</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.6(a)(iv)(1)-(3)(allowing coordinating transmission owner to accept cost allocation); Arizona Public Service Co. OATT, Attachment E, § III.E.6(b)-(d)(requiring the transmission planning process to remove from the project’s justification the transmission needs of a coordinating transmission owner that declines cost allocation); Arizona Public Service Co. OATT, Attachment E, § III.E.6(a)(ii)(determining if a project still satisfies the region’s criteria for cost allocation even though a coordinating transmission owner, whose transmission needs are excluded from justifying a project, declines cost allocation).

whether it will accept its share of the costs of that transmission facility, consistent with the Second Compliance Order. Therefore, we direct Filing Parties to remove from their respective OATTs the provisions related to requiring 80 percent of identified beneficiaries to vote on whether a regional transmission project is eligible for binding cost allocation.

57. We also reject Filing Parties' new proposal to make a transmission project ineligible to be selected in the regional transmission plan for purposes of cost allocation if, in the event that a coordinating transmission owner declines the cost allocation for a transmission project, the cost shift to remaining beneficiaries would exceed 10 percent of their prior cost allocation. This proposal is inconsistent with the Second Compliance Order, because the proposal might lead to the transmission planning process rejecting regional cost allocation for a proposed transmission solution that continues to be a more efficient or cost-effective solution for the remaining beneficiaries compared to other alternatives even after a cost shift. Further, Filing Parties' proposal ignores that in re-running the cost allocation method if, a coordinating transmission owner does not accept the cost allocation, the transmission planning process removes the benefits of those coordinating transmission owners that do not accept the cost allocation; thus, the cost allocation determinations that result after the re-run are commensurate with the estimated benefits considered. As noted in the Second Compliance Order, the just and reasonable evaluation determines "the extent a transmission project otherwise satisfies the region's evaluation metric."<sup>114</sup> The "evaluation metric" is the WestConnect region's cost allocation method for evaluating whether transmission projects that are identified as the more efficient or cost-effective solution to meet economic, reliability, and public policy related transmission needs are eligible for cost allocation. Thus, it is the region's cost allocation method, rather than the proposed cost shift cap, that Filing Parties were directed to use as a means for determining whether a transmission project identified as the more efficient or cost-effective transmission solution is eligible for binding cost allocation.<sup>115</sup>

58. While the Commission has held that using minimum threshold requirements for determining whether a proposed transmission facility is eligible to be selected in the regional transmission plan for purposes of cost allocation may be a reasonable way to

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<sup>114</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 56.

<sup>115</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 559 ("We conclude that these regional transmission cost allocation requirements are necessary to ensure that rates, terms and conditions of jurisdictional service are just and reasonable and not unduly discriminatory or preferential.").

identify transmission facilities that likely have regional benefits,<sup>116</sup> the cost shift cap does not achieve this objective. Instead, the cost shift cap may eliminate from consideration a transmission project that has substantial regional benefits, solely on the basis that the costs allocated to the public utility transmission providers and to the coordinating transmission owners that have accepted cost allocation for the transmission project increase due to one or more coordinating transmission owners' decisions not to accept cost allocation. Accordingly, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to remove the cost shift cap aspect of their proposal from their respective OATTs.

59. Lastly, we reject Filing Parties proposal to add the following two statements to their OATTs: (1) "consideration should be given to the free rider issue as appropriate..." and (2) "[e]xisting OATT customers shall not be made to unduly subsidize the cost of benefits" to coordinating transmission owners, and therefore, the Planning Management Committee "may select...a regional transmission project where beneficiary elections...do not result in significant costs shifts onto existing OATT customers of Public Utility beneficiaries."<sup>117</sup> We reject these statements for the same reasons that we reject the cost shift cap. Accordingly, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to remove these statements from their respective OATTs.

60. In regards to one of the Non-Public Utilities' proposed corrections to the language describing how the Planning Management Committee will approve the regional transmission plan, we agree that the language from the Planning Participation Agreement is more accurate than the corresponding language in the proposed tariffs. Therefore, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to clarify this provision in their respective OATTs.

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<sup>116</sup> *E.g.*, *Duke Energy Carolinas, LLC*, 144 FERC ¶ 61,054, at P 76 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,241, at P 118 (2014).

<sup>117</sup> *E.g.*, *Arizona Public Service Co. OATT*, Attachment E, § VII.B. Because we reject this provision, we do not need to address Non-Public Utilities' request to revise this provision to replace "Public Utility beneficiaries" with "Enrolled Transmission Owners and Coordinating Transmission Owners who have elected to accept cost allocation for the project."

## 2. Unenrollment Provisions

### a. Second Compliance Order

61. In the Second Compliance Order, the Commission declined to require Filing Parties to revise their OATTs to incorporate a proposal by non-public utility transmission providers to clarify an enrolled non-public utility transmission provider's right to withdraw from the WestConnect transmission planning region rather than accept an allocation of costs pursuant to the regional transmission planning process. In so doing, the Commission stated that Order No. 1000 did not require public utility transmission providers to establish withdrawal provisions for non-public utility transmission providers. However, the Commission recognized that Filing Parties and non-public utility transmission providers intended to file withdrawal provisions in their next compliance filings. The Commission noted that it would review and provide opportunity for comment at the time of such filing.<sup>118</sup>

### b. Third Compliance Filing

62. Filing Parties propose to revise their respective OATTs to clarify specific rights of non-public utility transmission providers with respect to binding cost allocation. To that end, Filing Parties propose to revise their respective OATTs to state that Order No. 1000 cost allocation methods “are binding on identified beneficiaries in the WestConnect Planning Region, without prejudice to the following rights and obligations: [including] the right of a non-public utility that is enrolled in the Transmission Owners with Load Serving Obligations sector to unenroll with respect to a planning cycle..., and the right of a [coordinating transmission owner], at its sole discretion, to decide whether to accept a regional cost allocation... .”<sup>119</sup>

63. Filing Parties propose a process to unenroll. Specifically, an enrolled non-public utility transmission provider that is a member of the Transmission Owners with Load Serving Obligations sector may elect to unenroll for a transmission planning cycle, but only if it notifies the Planning Management Committee chair in writing of its decision to unenroll within sixty calendar days following the date the regional transmission plan for that transmission planning cycle is approved by the Planning Management Committee.<sup>120</sup>

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<sup>118</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 58.

<sup>119</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.11(a).

<sup>120</sup> *E.g.*, *id.* § VII.B.11(b). Filing Parties' respective OATTs clarify that the right to “unenroll” is available only to non-public utility transmission providers, and that this is

(continued ...)

Under the proposal, the non-public utility transmission provider that has unenrolled will not be subject to Order No. 1000 cost allocation for any of the transmission projects for which it receives an Order No. 1000 cost allocation in the regional transmission plan for the first time during that transmission planning cycle.<sup>121</sup> Further, once a non-public utility transmission provider unenrolls, it may not re-enroll during the same transmission planning cycle, or in the subsequent transmission planning cycle, without the unanimous consent of the Planning Management Committee.<sup>122</sup>

64. In addition, the non-public utility transmission provider who unenrolls will become a coordinating transmission owner member of the Transmission Owners with Load Serving Obligations sector and will remain a coordinating transmission owner for the transmission planning cycle following the one in which it unenrolled. Thereafter, the unenrolling non-public utility transmission provider may transfer to any other sector for which it qualifies.<sup>123</sup>

65. The provision also clarifies that under the proposal, any non-public utility transmission provider who unenrolls will continue to be subject to Order No. 1000 cost allocation for its share of previously identified costs for transmission projects approved by the Planning Management Committee in prior transmission planning cycles, subject to reevaluation provisions specified in the OATTs.<sup>124</sup> For such Order No. 1000 cost allocation to continue, the non-public utility transmission provider who unenrolls must have been identified as a beneficiary for cost allocation purposes in a prior transmission planning cycle and must have been, and remained, enrolled in the Transmission Owner with Load Serving Obligations sector with respect to that transmission planning cycle.<sup>125</sup>

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different from the right to “withdraw” (or exit) the WestConnect transmission planning region, which is a right of all transmission owners. The provisions further note that exiting the region is addressed in section III.A.2.b and is to be governed by the Planning Participation Agreement. *E.g., id.* § VII.B.11(c). The proposed withdrawal provisions are discussed below in Planning Participation Agreement section.

<sup>121</sup> *E.g., id.* § VII.B.11(b).

<sup>122</sup> *E.g., id.* § VII.B.11(b).

<sup>123</sup> *E.g., id.* § VII.B.11(b).

<sup>124</sup> *E.g., id.*

<sup>125</sup> *E.g., id.* § VII.B.11(b).

66. Moreover, the unenrollment of a non-public utility transmission provider removes a transmission project's eligibility for Order No. 1000 cost allocation with respect to those projects (1) that have been selected for inclusion in the regional transmission plan for purposes of Order No. 1000 cost allocation *for the first time* in the current transmission planning cycle, and (2) for which the unenrolled non-public utility transmission provider receives an Order No. 1000 cost allocation in that regional transmission plan.<sup>126</sup> The revised OATTs also specify that the decision of a non-public utility transmission provider to unenroll has no effect on the eligibility for Order No. 1000 cost allocation of any transmission project that (1) does not meet the two aforementioned criteria, or (2) that was initially selected for inclusion in the regional transmission plan for purposes of cost allocation in a prior transmission planning cycle.<sup>127</sup>

**c. Protests/Comments**

67. LS Power argues that the Commission should reject Filing Parties' proposal to allow enrolled non-public utility transmission providers to unenroll *after* the regional transmission plan is approved by the Planning Management Committee.<sup>128</sup> LS Power notes that under the WestConnect transmission planning process the cost allocation for any particular transmission project will be known in October of the second year of the two-year process, well before the end of the second year when the Planning Management Committee votes on the regional transmission plan. Thus, LS Power states that stakeholders will have an understanding of the cost allocation impact before the Planning Management Committee votes on the regional transmission plan, and therefore argues that it is not appropriate to unenroll after the Planning Management Committee votes on the selection of transmission projects in the regional transmission plan. LS Power argues that allowing withdrawal after the regional transmission plan has been adopted, following a lengthy planning process, will cause disruption to the WestConnect regional transmission planning process.<sup>129</sup>

68. LS Power argues that the Commission should also reject the corresponding revisions stating that a non-public utility transmission provider that is enrolled in the

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<sup>126</sup> *E.g., id.* § III.E.7 (emphasis added).

<sup>127</sup> *E.g., id.*

<sup>128</sup> LS Power Protest on Compliance Filings at 2-3; LS Power Protest on Planning Participation Agreement at 7.

<sup>129</sup> LS Power Protest on Compliance Filings at 2-3.

Transmission Owners with Load Serving Obligations sector has a right to unenroll with respect to a transmission planning cycle,<sup>130</sup> and reject the new tariff provisions addressing a transmission project's eligibility for cost allocation when a non-public utility transmission provider unenrolls. LS Power argues that, under Filing Parties' proposal, if a non-public utility unenrolls within 60 days of Planning Management Committee's approval of the regional transmission plan, a new evaluation must be conducted, wasting time and resources.<sup>131</sup> LS Power argues that the Commission should at minimum require any decision by a non-public utility transmission provider to unenroll as soon as practical in the transmission planning cycle.<sup>132</sup>

**d. Answers**

69. Filing Parties contend that the process proposed to unenroll is an appropriate accommodation of the rights of non-public utility transmission providers who may voluntarily choose to enroll in the WestConnect region, and asserts that the WestConnect regional transmission planning process benefits from the enrollment of non-public utility transmission providers. Filing Parties explain that the non-public utility transmission providers enrolled in the region can only reasonably make a decision to unenroll based upon the final allocation of costs in the WestConnect regional transmission plan, which occurs when the plan is approved. Thus, they argue, it is appropriate to permit non-public utility transmission providers to decide whether to exercise their right to unenroll.<sup>133</sup>

70. Non-Public Utilities argue that LS Power has failed to take into consideration the Commission's statement in Order No. 1000-A that:

“To accommodate the participation of non-public utility transmission providers, the relevant tariffs or agreements governing the regional transmission planning process could establish the terms and conditions of orderly withdrawal for non-public utility transmission providers that are unable to

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<sup>130</sup> *Id.* at 2-3 (in reference to Filing Parties' OATTs, *e.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.11(b)).

<sup>131</sup> *Id.* at 3-4.

<sup>132</sup> *Id.*

<sup>133</sup> Filing Parties January 9, 2015 Answer at 4.

accept the allocation of costs pursuant to a regional or interregional cost allocation method.”<sup>134</sup>

71. Non-Public Utilities assert that the provisions of the Planning Participation Agreement preserve the rights of non-public utility transmission providers who have elected to join as enrolled transmission owners to unenroll. Non-Public Utilities also state that these provisions are consistent with the Commission’s order and that it is not practicable for a non-public utility transmission provider to determine that it is unable to accept the allocation of costs until it knows what costs have been allocated. Non-Public Utilities contend that, therefore, the Planning Participation Agreement’s provision for non-public utility transmission providers to unenroll for any given transmission planning cycle up to 60 days after the regional transmission plan is approved by the Planning Management Committee is consistent with Order No. 1000-A.

72. Filing Parties and Non-Public Utilities further state that a decision to unenroll is not permitted on a project-by-project basis, but instead must be exercised with respect to the process culminating in a regional transmission plan. Therefore, they contend, a regional transmission plan must first exist in order to trigger the exercise of a right to unenroll from that plan.<sup>135</sup>

**e. Commission Determination**

73. We reject Filing Parties’ proposal to allow an enrolled non-public utility transmission provider to unenroll, and become a coordinating transmission owner, after the regional transmission plan is approved. We find that Filing Parties’ proposal to provide enrolled non-public utility transmission providers with an option to convert to a coordinating transmission owner during the transmission planning cycle will create uncertainty as to which entities are enrolled and thus will ultimately be bound by the cost allocation method for transmission projects selected in the regional transmission plan for purposes of cost allocation. Furthermore, we find that the proposed unenrollment provision is unnecessary for Filing Parties to comply with the Commission's directive in the Second Compliance Order, as the WestConnect transmission planning region’s coordinating transmission owner framework accommodates the participation of non-public utility transmission providers that are unable to accept the allocation of costs pursuant to a regional cost allocation method<sup>136</sup> by allowing coordinating transmission

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<sup>134</sup> Non-Public Utilities Answer at 6-7.

<sup>135</sup> Filing Parties January 9, 2015 Answer at 4; Non-Public Utilities Answer at 6.

<sup>136</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at n.734.

owners to participate and determine whether they are able or unable to accept the allocation of costs pursuant to a regional cost allocation method. Accordingly, we reject Filing Parties' proposal to allow an enrolled non-public utility transmission provider to unenroll after the regional transmission plan is approved, and direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to remove the proposed sections allowing an enrolled non-public utility transmission provider to unenroll after the regional transmission plan is approved,<sup>137</sup> and the proposed associated provisions that would remove a transmission project's eligibility for regional cost allocation due to such unenrollment.<sup>138</sup>

### **3. Proposed Governance Structure**

#### **a. Second Compliance Order**

74. In the Second Compliance Order, the Commission found that Filing Parties' proposed OATT revisions regarding the WestConnect regional transmission planning process governance structure complied with the compliance directive in the First Compliance Order.<sup>139</sup> However, Filing Parties also indicated that discussions were ongoing with respect to the ability of non-public utility transmission providers to enroll in a sector other than the Transmission Owners with Load Serving Obligations sector.

#### **b. Third Compliance Filing**

75. Filing Parties propose to update their respective OATTs to permit non-public utility transmission providers to join any Planning Management Committee membership sector for which they qualify.<sup>140</sup> Filing Parties propose to revise their OATTs to state that "[o]nly transmission owners that have load serving obligations individually or through their members may join the Transmission Owners with Load Serving Obligations membership sector."<sup>141</sup> The same section further provides that except for public utility transmission providers that are required to comply with Order No. 1000, any entity may join any membership sector for which it qualifies, but may only participate in one

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<sup>137</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.11(b)-(c).

<sup>138</sup> *E.g.*, *id.* § III.E.7.

<sup>139</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 142.

<sup>140</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.B.5.

<sup>141</sup> *E.g.*, *id.*

membership sector at a time.<sup>142</sup> In addition, if a non-public utility transmission provider is qualified to join the Transmission Owners with Load Serving Obligations sector as well as one or more other sectors, and the non-public utility transmission provider elects to join a sector other than the Transmission Owners with Load Serving Obligations sector, the Planning Management Committee will not perform the function of regional transmission planning for that entity.<sup>143</sup> Similarly, the OATTs clarify that if a member of the Transmission Owners with Load Serving Obligations sector owns transmission facilities located in another transmission planning region, the Planning Management Committee will not perform the regional transmission planning for facilities located in another transmission planning region.<sup>144</sup>

**c. Commission Determination**

76. We find that Filing Parties' proposed revisions comply with Order No. 1000. We find it reasonable to allow non-public utility transmission providers to join a sector other than the Transmission Owners with Load Serving Obligations sector because the proposal allows non-public utility transmission providers to participate in the regional transmission planning process, even if they do not join as a transmission owner. We also find it reasonable that, if the non-public utility transmission provider joins a sector other than the Transmission Owners with Load Serving Obligations sector, the Planning Management Committee will not perform the function of regional transmission planning on behalf of that entity as a transmission provider. Order No. 1000 does not require transmission providers in a transmission planning region to conduct transmission planning for non-enrolled non-public utility transmission providers.<sup>145</sup> Filing Parties' proposed revisions are consistent with Order No. 1000 and we, therefore, accept these aspects of Filing Parties' revised OATTs.

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<sup>142</sup> *E.g., id.*

<sup>143</sup> *E.g., id.*

<sup>144</sup> *E.g., id.*

<sup>145</sup> We note that Order No. 1000 also does not preclude the enrolled public utility transmission providers in a transmission planning region from conducting transmission planning for non-enrolled non-public utility transmission providers if the enrolled public utility transmission providers elect to do so. Second Compliance Order, 148 FERC ¶ 61,213 at P 55.

#### **4. Planning Participation Agreement**

##### **a. Second Compliance Order**

77. In the Second Compliance Order, the Commission agreed with protestors that, given the provisions that Filing Parties wish to include in the Planning Participation Agreement and their significance to the WestConnect regional transmission planning process, Filing Parties must file the agreement for Commission review.<sup>146</sup> These issues included dispute resolution; provisions addressing timely and orderly withdrawal and conditions of reenrollment; and the requirement for project proponents or transmission developers to sign the Planning Participation Agreement.<sup>147</sup>

##### **b. Third Compliance Filing**

78. Filing Parties state that the WestConnect Planning Participation Agreement was developed through a lengthy and transparent stakeholder process that was open to all interested parties.<sup>148</sup> Filing Parties state that the agreement replicates certain language from Filing Parties' respective OATTs to memorialize the rules, regulations, and requirements of the WestConnect regional transmission planning process as accepted by the Commission because WestConnect is a participation organization comprised of its members, including non-public utility transmission providers.<sup>149</sup>

79. The Planning Participation Agreement contains definitions for the defined terms used therein,<sup>150</sup> and provides that the existing WestConnect Project Agreement for Subregional Transmission Planning will be suspended while the region transitions into the WestConnect regional transmission planning process.<sup>151</sup> The Planning Participation

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<sup>146</sup> *Id.* P 158.

<sup>147</sup> *Id.* P 159.

<sup>148</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter, Overview of the WestConnect Planning Participation Agreement.

<sup>149</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter, Overview of the WestConnect Planning Participation Agreement.

<sup>150</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement § 3.

<sup>151</sup> *Id.* § 4.

Agreement also provides that the Subregional Transmission Planning Agreement may be terminated at a later date.<sup>152</sup>

80. The proposed Planning Participation Agreement includes the terms and conditions for enrollment in the WestConnect regional transmission planning process and becoming a member of the Planning Management Committee.<sup>153</sup> The proposed Planning Participation Agreement explains the process by which non-public utility transmission providers that are enrolled in the WestConnect transmission planning region may unenroll with respect to a transmission planning cycle at their own discretion.<sup>154</sup> Filing Parties note that this language mirrors the OATT language proposed by Filing Parties discussed above.<sup>155</sup>

81. Under the proposed Planning Participation Agreement, any member may withdraw from participating in the agreement if it provides 180 days' prior notice to the chair of the Planning Management Committee.<sup>156</sup> Members providing notice on or after July 1 must pay their membership dues for the current year and the following calendar year. Members providing notice prior to July 1 are only liable for dues for the remainder of the current year.<sup>157</sup> Further, the proposed Planning Participation Agreement states that the members of the Transmission Owners with Load Serving Obligations sector may, by majority vote, terminate the Planning Participation Agreement if the Commission makes significant modifications to the requirements of Order No. 1000 or if a court vacates,

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<sup>152</sup> *Id.*

<sup>153</sup> *Id.* § 5.

<sup>154</sup> *Id.* § 5.4.

<sup>155</sup> *E.g.*, Arizona Public Service Co., Transmittal Letter, Overview of the WestConnect Planning Participation Agreement, at § 5.4. The unenrollment provisions proposed in the Planning Participation Agreement are similar to the unenrollment provisions proposed in Filing Parties' respective OATTs and, therefore, are discussed in the Unenrollment Provisions section above.

<sup>156</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement § 5.6.

<sup>157</sup> *Id.*

reverses, or remands any significant part of the Commission's orders on WestConnect Order No. 1000 regional transmission planning.<sup>158</sup>

82. The proposed Planning Participation Agreement addresses the qualifications for membership in the membership sectors and the rules for maintaining active membership status in the Planning Management Committee.<sup>159</sup> Specifically, the proposed Planning Participation Agreement states that in order to maintain that active member status, the member must attend at least three Planning Management Committee meetings within each rolling 12-month period and must be current with respect to payment of dues. Members who become inactive may not participate in Planning Management Committee voting, except as necessary to fulfill their obligations for funding the transmission planning process. Further, any member that is inactive for two consecutive years will be deemed to have withdrawn from the proposed Planning Participation Agreement. Under the proposed Planning Participation Agreement, Filing Parties propose to assess annual membership dues as follows:

- Transmission Customers sector members pay \$5,000 per year.
- Independent Transmission Developers and Owners sector members pay \$5,000 per year.
- State Regulatory Commission sector members do not pay dues.
- Key Interest Group sector members also pay \$5,000 per year. However, members of this sector that are state energy offices or state consumer representatives are not required to pay dues. Further, members of this sector that are non-government organizations (i.e., they hold appropriate IRS tax exemptions) pay lower dues on a sliding scale based upon on their annual operating budgets.<sup>160</sup>

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<sup>158</sup> *Id.* § 5.7.

<sup>159</sup> *Id.* § 6.

<sup>160</sup> For example, annual operating budgets and the corresponding dues per year are as follows: (1) over \$15 million - \$3,250 in dues, (2) between \$8,000,001 and \$15 million – \$1,200 in dues, (3) between \$4,000,001 and \$8 million – \$650 in dues, (4) between \$2,000,001 and \$4 million – \$325 in dues and (5) \$2 million or less – not responsible for paying any dues.

83. Transmission Owners with Load Serving Obligation sector members pay any remaining costs to carry out the WestConnect regional transmission planning process, with each member's share of the total dues based upon its load ratio share of the total combined load of each sector member in the region.<sup>161</sup>

84. Additionally, the proposed Planning Participation Agreement describes the rules for the governance of the WestConnect regional transmission planning process, including the appointment of representatives to the Planning Management Committee and the process for participating in Planning Management Subcommittees, and reiterates the rules stated in Filing Parties' respective OATTs for voting in the Planning Management Committee.<sup>162</sup> Further, the Planning Participation Agreement states that access to confidential information will be subject to a non-disclosure agreement.<sup>163</sup>

85. The proposed Planning Participation Agreement contains dispute resolution rules used to address disputes between members of the Planning Management Committee, between a member and the Planning Management Committee, and between the Planning Management Committee and third-party/non-members within the scope of the Planning Participation Agreement.<sup>164</sup> With respect to disputes between Planning Management Committee members, notice is provided by the disputing member to the Legal Subcommittee Chair, who then provides notice to the Planning Management Committee member representatives. The Legal Subcommittee then facilitates informal negotiations. If the dispute is not resolved, the Legal Subcommittee Chair makes a recommendation to the Planning Management Committee. Once referred to the Planning Management Committee, the Planning Management Committee's resolution is determined through normal voting procedures. If the disputing member continues to have concerns with the Planning Management Committee's decision, it may invoke the provisions governing disputes between a member and the Planning Management Committee.<sup>165</sup>

86. With respect to disputes between a member and the Planning Management Committee, if the dispute cannot be resolved informally, under the proposed Planning

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<sup>161</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement § 6.4.

<sup>162</sup> *Id.* § 8.

<sup>163</sup> *Id.* § 9.

<sup>164</sup> *Id.* § 10.

<sup>165</sup> *Id.* § 10.1.

Participation Agreement, the Legal Subcommittee refers the dispute to the Planning Management Committee, which uses its normal voting procedures to resolve the dispute. If the disputing member continues to have concerns with the Planning Management Committee's decision, it may bring the dispute in another forum with jurisdiction. Further, the proposed Planning Participation Agreement includes a provision that, to the extent permitted by law, each member waives any and all rights to a trial by jury and agrees not to request such trial. However, this waiver does not apply to the extent the United States Department of Justice is representing a federal agency in any such legal proceeding. Also, any disputing member may request binding arbitration, which requires the unanimous consent of Planning Management Committee members and would be conducted under the arbitration procedures in the Planning Participation Agreement.<sup>166</sup> Regarding claims brought by non-members, the Planning Participation Agreement explains that those disputes are submitted to the Legal Subcommittee to review and make a recommendation to the Planning Management Committee.<sup>167</sup>

87. Additionally, the proposed Planning Participation Agreement explains the sharing of costs incurred by the Planning Management Committee in defending itself or any of its members from claims by another Planning Management Committee member arising from the Planning Management Committee's actions or other actions taken within the scope of the Planning Participation Agreement.<sup>168</sup> The same cost sharing provisions apply to claims by non-members of the Planning Management Committee.<sup>169</sup> The Planning Participation Agreement provides that the expenses incurred by the Planning Management Committee in conducting dispute resolution and settling any claims by members and non-members include, but are not limited to, the legal defense costs on outside counsel and consultants, arbitration expenses, and settlement costs. Those costs will be split as follows between the member sectors, and among the members in each sector: (1) the Transmission Owners with Load Serving Obligations member sector, which includes public and non-public utility transmission providers for whom the Planning Management Committee is performing the function of regional transmission planning, will bear 66 percent of all such costs and those costs will be split equally among the members of this sector; and (2) the remaining 34 percent will be split between the other membership sectors, except for the State Regulatory Commission membership

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<sup>166</sup> *Id.* § 10.2.

<sup>167</sup> *Id.* § 10.3.

<sup>168</sup> *Id.* § 10.2.2.

<sup>169</sup> *Id.* §10.3.2.

sector, which will not receive any costs. For the 34 percent of expenses assigned to the Independent Transmission Developer or Owner sector, the Transmission Customer sector, and the Key Interest Group sector, those costs will be shared among the sectors equally, and then within each sector, the expenses will be divided equally among the members of that sector.<sup>170</sup>

88. Filing Parties' Planning Participation Agreement addresses the limitation on liability between members, explaining that the rights and obligations created under the Planning Participation Agreement are solely between members and that specific performance is the sole available remedy.<sup>171</sup> The Planning Participation Agreement also discusses several miscellaneous issues, such as, among other things, how amendments to the agreement must be made by the Planning Management Committee and how a member may assign its rights under the agreement to a successor.<sup>172</sup>

89. The Planning Participation Agreement covers participation by federal entities, noting that, in the event of a conflict between specific provisions in the Planning Participation Agreement involving a federal governmental entity member, the provisions in the Planning Participating Agreement shall control. Finally, the Planning Participation Agreement states that the payment of dues by a federal member is subject to appropriations by Congress and that such members have no liability for the failure of Congress to make sufficient appropriations.<sup>173</sup>

**i. Applicability of Planning Participation Agreement**

**(a) Protests/Comments**

90. LS Power asserts that the Planning Participation Agreement does not make it clear that it is a mechanism used to participate in the regional transmission planning process

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<sup>170</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement §§ 10.2.2 and 10.3.2. *E.g.*, Arizona Public Service Co. Transmittal Letter at 9.

<sup>171</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement § 11.

<sup>172</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement § 12.

<sup>173</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement § 13.

defined in Filing Parties' OATTs, not a replacement for those OATTs. LS Power asserts that this is inconsistent with the Commission's directive to "include the Planning Participation Agreement as part of their respective OATTs."<sup>174</sup> For example, LS Power notes that the Planning Participation Agreement states that it "sets forth the rights and obligations of the parties to this agreement to carry out the WestConnect Regional Planning Process developed pursuant to ... Order No. 1000 ...."<sup>175</sup> Furthermore, LS Power argues that although the WestConnect regional transmission planning process is set forth in Filing Parties' respective OATTs, the Planning Participation Agreement hardly references or defers to those OATTs.<sup>176</sup>

91. LS Power states further that section 7 (WestConnect Regional Planning Process) of the Planning Participation Agreement merely states that the "WestConnect Regional Planning Process is conducted pursuant to a biennial planning cycle which is more fully described in the [business practice manual]."<sup>177</sup> LS Power argues that the provision should either be eliminated or simply note that the WestConnect regional transmission planning process is set forth in the respective OATTs. Alternatively, LS Power argues that if the provision recounts any part of the process that is defined in the OATTs, it should specifically note that the Planning Participation Agreement is just a summary and that the provisions of the OATT control.<sup>178</sup>

92. Moreover, LS Power argues that the section 8 (Governance of WestConnect Regional Planning Process) should be removed from the Planning Participation Agreement and moved to Filing Parties' respective OATTs.<sup>179</sup> LS Power states that this section includes provisions on the Planning Management Committee, including its structure and responsibilities, and that these aspects of the governance structure belong in Filing Parties' OATTs.<sup>180</sup>

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<sup>174</sup> LS Power Protest on Planning Participation Agreement at 3-4.

<sup>175</sup> *Id.* at 4 (citing the Planning Participation Agreement, § 1.4).

<sup>176</sup> *Id.* at 5.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 6.

<sup>179</sup> *Id.*

<sup>180</sup> LS Power Protest on Planning Participation Agreement at 6.

93. LS Power also states that section 12.14 (Governing Law) provides that the Planning Participation Agreement “shall be governed by and construed in accordance with the laws of the State of Arizona...”<sup>181</sup> LS Power argues that this provision should be revised to state that the Planning Participation Agreement shall be governed by and construed in accordance with the Federal Power Act and, to the extent applicable, the laws of the State of Arizona.<sup>182</sup> LS Power argues that the Planning Participation Agreement, as a Commission jurisdictional rate schedule, should reference the Commission’s overriding jurisdictional interest and therefore should be referenced in the proposed provision.<sup>183</sup>

94. LS Power expresses concern about section 12.15 (Conflicts), which addresses conflicts between the Planning Participation Agreement and any policies, procedures, and governing or guiding documents developed by the Planning Management Committee, and provides that the Planning Participation Agreement shall prevail under such conflicts. LS Power argues that, instead, the provision should state that in the event of any conflict between the Planning Participation Agreement and the OATTs, or Planning Management Committee documents and the OATTs, the OATTs prevail.<sup>184</sup> LS Power states that the Commission policy is that contracts must follow OATT provisions unless there is a specific filing of a “non-conforming” provision of the agreement. Therefore, it argues that the provision should confirm that the OATT prevails as it pertains to the regional transmission planning process and cost allocation.<sup>185</sup> Likewise, LS Power argues that section 13.1 (Participation by the Government of the United States) states that “[i]n the event of a conflict between specific provisions of this Agreement and any other agreement to which the Federal Member is a party, the specific provisions of this Agreement shall control.” LS Power argues that this section should be clear that the OATTs prevail should there be a dispute.<sup>186</sup>

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<sup>181</sup> *Id.* at 8.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 8-9.

<sup>185</sup> *Id.*

<sup>186</sup> LS Power Protest on Planning Participation Agreement at 9.

95. LS Power further argues that the second and third sentences of section 12.15 (Conflicts) suggest that the Planning Participation Agreement is subject to the jurisdiction of other agencies or states, and, therefore, should be deleted.<sup>187</sup>

96. LS Power argues that sections 5.6 (Withdrawal of a Member) and 5.7 (Termination of Agreements by Transmission Owners with Load Serving Obligations) should be revised to make a public utility transmission provider member's withdrawal or termination of the Planning Participation Agreement contingent on Commission approval.<sup>188</sup> LS Power states that public utility transmission provider participation is critical to maintaining the WestConnect transmission planning region and that their participation in a region is mandated by Order No. 1000.<sup>189</sup>

97. Public Interest Organizations states that section 5.2 (Membership of Non-Public Utilities) currently does not have a timeframe for membership approval. Public Interest Organizations assert that it would be beneficial to all members to include a specified timeframe for approval because this would help ensure timely enrollment and participation of members representing different sectors. Public Interest Organizations suggest appending to this section, *e.g.*, “[a] decision on membership approval will be made within 30 days of membership application.”<sup>190</sup>

**(b) Answers**

98. Non-Public Utilities state that the Commission should reject LS Power's assertions that the Planning Participation Agreement should be modified to move some provisions to the OATTs and to provide that the Planning Participation Agreement is subordinate to the OATTs. Non-Public Utilities explain that the Planning Participation Agreement is a vehicle through which all participating transmission providers in the WestConnect region – including non-public utility transmission providers that do not have Order No. 1000 compliance OATTs – will join contractually for the purpose of regional transmission planning.<sup>191</sup>

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<sup>187</sup> *Id.* at 9.

<sup>188</sup> *Id.* at 7-8.

<sup>189</sup> *Id.*

<sup>190</sup> Public Interest Organizations Comments at 5.

<sup>191</sup> Non-Public Utilities Answer at 3.

99. Non-Public Utilities contend that the Commission should not find that any conflict between the Planning Participation Agreement and the transmission providers' OATT must be resolved in favor of the OATT. Non-Public Utilities state that the contractual nature of the Planning Participation Agreement is a vital portion of the legal protections that the Non-Public Utilities need as they enter into the WestConnect regional transmission planning process. Non-Public Utilities explain that the Planning Participation Agreement provides that no modification of the agreement may be binding on a member until that member executes the modified Planning Participation Agreement. Non-Public Utilities further explain that in contrast, the OATTs may be modified unilaterally by any of the public utility transmission providers or by the Commission. Non-Public Utilities state that such a result will abrogate the agreement on which they and other members have relied upon in electing to participate in the WestConnect regional transmission planning process. Non-Public Utilities state the Commission's confirmation that the Planning Participation Agreement provisions will remain in effect regardless of whether changes to the OATT are made in the future is necessary because it will provide certainty to Non-Public Utilities that the terms under which they agree to participate in the WestConnect regional transmission planning process will not be modified in ways not permitted under the Planning Participation Agreement and without their consent.<sup>192</sup>

100. Moreover, Non-Public Utilities state that there is no need to modify the Planning Participation Agreement to clarify the Commission's jurisdiction over it. Non-Public Utilities state that it is unquestionable that the Planning Participation Agreement is subject to the jurisdiction of the Commission, since it has been filed as a Commission rate schedule under section 205 of the Federal Power Act. They further note that in a situation in which parties to a contract are located in more than one state, it is common for the agreement to specify which state's laws should be used to interpret the contract and that such "choice of law" provisions do not confer jurisdiction on the state whose laws will be used to interpret the contract, and it is not uncommon for a state or Federal court in one state to interpret a contract based on the law of another state.<sup>193</sup>

101. Non-Public Utilities argue that, contrary to LS Power's assertion, section 12.5 (Conflicts) does not provide that regulatory authorities other than the Commission may have exclusive jurisdiction over the Planning Participation Agreement; rather it acknowledges that other regulatory authorities or governing bodies may have jurisdiction over some of the parties, who may direct modification to the Planning Participation

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<sup>192</sup> *Id.* at 4-5.

<sup>193</sup> *Id.* at 7.

Agreement. Non-Public Utilities explain that this is certainly so with respect to the Non-Public Utilities, which are not subject to the Commission's authority under section 205 of the Federal Power Act, and who may find that authorities with jurisdiction over them direct them to seek modifications to the Planning Participation Agreement.<sup>194</sup> Non-Public Utilities additionally state section 12.5 (Conflicts) also provides that if that authority directs a modification of the Planning Participation Agreement, the provision on Amendments in the Planning Participation Agreement will apply. Non-Public Utilities state that the provision on Amendments provide for notice, discussion and votes on proposed amendments to the Planning Participation Agreement and is not inconsistent with the Commission's jurisdiction, and has not been objected by LS Power. Further Non-Public Utilities state that since the Planning Participation Agreement is a Commission-filed rate schedule, any amendment that is approved by the Planning Management Committee must be filed with the Commission, and Filing Parties must demonstrate that the amendment is just and reasonable.<sup>195</sup>

**(c) Commission Determination**

102. We find that it is clear that the regional transmission planning process is administered under the terms and conditions in Filing Parties' OATTs and that the Planning Participation Agreement is the vehicle by which all participating transmission providers in the WestConnect transmission planning region contractually agree to participate in the transmission planning region. However, we agree with LS Power that section 7 (WestConnect Regional Planning Process) of the Planning Participation Agreement, which states that the "WestConnect Regional Planning Process is conducted pursuant to a biennial planning cycle which is more fully described in the [business practice manual]," should reference the regional transmission planning process is set forth in Filing Parties' respective OATTs. Accordingly, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to revise section 7 of the Planning Participation Agreement to state that the WestConnect regional transmission planning process is conducted pursuant to a biennial planning cycle, which is more fully described in Filing Parties' respective OATTs, as supplemented by the business practice manual.

103. Furthermore, we find that the Filing Parties' OATTs and the Planning Participation Agreement are consistent and that the regional transmission planning process provides that Filing Parties are responsible for ensuring they continue to be

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<sup>194</sup> Non-Public Utilities Answer at 8.

<sup>195</sup> *Id.* at 8-9.

consistent. We reject Non-Public Utilities' argument that maintaining consistent provisions between the Planning Participation Agreement and the Filing Parties' OATTs will compromise their contractual protections under the agreement or that Filing Parties may unilaterally change the OATT provisions governing the regional transmission planning process. Not all changes to Filing Parties' OATTs will require corresponding changes to the Planning Participation Agreement. However, to the extent that a conflict exists, the OATT provisions must prevail, as these provisions establish the WestConnect region's Order No. 1000 compliant regional transmission planning process. Further, contrary to the Non-Public Utilities' assertions, Filing Parties may not unilaterally change a Commission-approved tariff, as such changes would need to be filed with the Commission for acceptance and WestConnect stakeholders, including Non-Public Utilities, may intervene in such filings.

104. Moreover, we find that LS Power misinterprets a component of section 12.15. Specifically, LS Power argues that section 12.15 provides that the terms of the Planning Participation Agreement prevail if a provision within the agreement is in conflict with Filing Parties' respective OATTs. However, this interpretation is inaccurate, as section 12.15 states that the Planning Participation Agreement prevails over "any policies, procedures, governing or guiding documents developed by the PMC and its committees and working groups,"<sup>196</sup> not Filing Parties' OATTs.

105. Further, with respect to LS Power's request that Filing Parties be directed to move the governance structure provisions in the Planning Participation Agreement to Filing Parties' respective OATTs, we disagree that any additional details regarding governance of the WestConnect regional transmission planning process are necessary in the OATTs. The Commission previously found the proposed structure compliant with Order No. 1000.<sup>197</sup> Moreover, the governance structure reflected in the Planning Participation Agreement is already included in the OATTs, including the membership sectors, the voting structure, and the primary responsibilities of WestConnect committees and subcommittees.

106. With respect to LS Power's assertion that section 12.14 (Governing Law) should be modified to explicitly state that the Federal Power Act governs the Planning Participation Agreement, we note that section 12.14 provides that the Planning Participation Agreement "shall be governed by, and construed in accordance with, the

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<sup>196</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement § 12.15.

<sup>197</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 142.

laws of the State of Arizona, *except to the extent preempted by federal law*, and without regard to the state of Arizona's conflicts of law principles."<sup>198</sup> We find that this provision does not adequately clarify when either the Commission or a state authority has jurisdiction over the Planning Participation Agreement. We clarify that to the extent a provision in the Planning Participation Agreement is under the Commission's jurisdiction, that provision must be exclusively governed and interpreted in accordance with the Commission's orders.<sup>199</sup> All other provisions that are outside of the Commission's jurisdiction may be governed and interpreted in accordance with a state's laws,<sup>200</sup> and designating the laws of a specific state, such as the State of Arizona, is appropriate. Accordingly, we direct the Filing Parties to submit, within 30 days of the date of this order, further compliance filings to reflect this clarification in section 12.14 of the Planning Participation Agreement.

107. Also, we find that LS Power misinterprets the portion of section 12.15 that states that "[i]f any such modifications directed by competent authorities with jurisdiction over any one or more of the Parties conflicts with the current version of this Agreement, the Parties will seek to amend the agreement pursuant to Section 12.4."<sup>201</sup> Under

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<sup>198</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement § 12.14 (emphasis added).

<sup>199</sup> See, e.g., *N.Y. Indep. Sys. Operator Inc.*, 109 FERC ¶ 61,372, at P 19 (2004) (directing changes to make clear that only disputes within the New York Public Service Commission's jurisdiction may be subject to judicial review in the New York state courts because matters within the Commission's jurisdiction under the Federal Power Act may only be appealed to a Circuit Court of Appeals of the United States); and *N.Y. Indep. Sys. Operator Inc.*, 111 FERC ¶ 61,182, at PP 21-23 and n.18 (2005) (accepting language that clarifies that the New York state judicial review provisions apply only in disputes that fall solely within the state agency's jurisdiction and language that underscores the Commission's role in adjudicating disputes that fall within its exclusive jurisdiction and makes clear that a joint or concurrent hearing may be available in cases where federal and state jurisdictions overlap). See also *N.Y. Indep. Sys. Operator Inc.*, 148 FERC ¶ 61,044, at P 78 (2014) (rejecting requests in an Order No. 1000 regional compliance filing proceeding to remove the tariff provision stating that the New York State Commission has exclusive jurisdiction to review certain disputes concerning the New York Independent System Operator's transmission-planning decisions).

<sup>200</sup> *Id.*

<sup>201</sup> Arizona Public Service Co., Rate Schedule No. 274, WestConnect Planning Participation Agreement § 12.15.

section 12.4 (Amendments) a party can seek to modify the agreement by following the voting provisions outlined in section 8.5 (Procedures for Decisions). Accordingly, we disagree with LS Power's claim that, under section 12.15, the Planning Participation Agreement is subject to the jurisdiction of other agencies or states.

108. Next, we turn to LS Power's request that sections 5.6 (Withdrawal of a Member) and 5.7 (Termination of Agreements by Transmission Owners with Load Serving Obligations) should be revised to make a public utility transmission provider member's withdrawal or termination of the Planning Participation Agreement contingent on Commission approval. With respect to section 5.6 (Withdrawal of a Member), we find that a change is unnecessary. Order No. 1000 requires that public utility transmission providers include as part of their OATTs a list of parties that are enrolled in the transmission planning region; thus, when an enrolled member withdraws from the region, Filing Parties are required to seek approval from the Commission, as changes to their respective OATTs are subject to the Commission's approval. Conversely, we reject Filing Parties' proposal in section 5.7 (Termination of Agreements by Transmission Owners with Load Serving Obligations) providing that the members of the Transmission Owners with Load Serving Obligations sector may, by majority vote, terminate the Planning Participation Agreement if the Commission makes significant modifications to the requirements of Order No. 1000 or if a court vacates, reverses, or remands any significant part of the Commission's orders on WestConnect Order No. 1000 regional transmission planning. Certain elements of the Planning Participation Agreement are necessary to uphold the WestConnect transmission planning process' compliance with Order No. 1000, which is why the Commission directed Filing Parties to file it in the first place.<sup>202</sup> Specifically, Filing Parties' OATTs provide that entities seeking to (1) propose a transmission project for selection in the regional transmission plan for purposes of cost allocation,<sup>203</sup> or (2) be a transmission developer eligible to use the regional cost allocation method,<sup>204</sup> must sign the Planning Participation Agreement and be active members of the Planning Management Committee. Thus, if the Transmission Owners with Load Serving Obligations sector votes to terminate the Planning Participation Agreement, it would eliminate substantive elements of the regional transmission planning process. Accordingly, we direct Filing Parties to submit, within 30 days of the date of this order, further compliance filings to remove this proposal.

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<sup>202</sup> Second Compliance Order, 148 FERC ¶ 61,213 at PP 158-159.

<sup>203</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.5.

<sup>204</sup> *E.g.*, *id.* §§ III.D.2(m), III.D.3(b), and III.D.3.(c).

109. Finally, we agree with Public Interest Organizations that in order to ensure timely enrollment, Filing Parties should include a timeframe for membership approval in section 5.2 (Membership of Non-Public Utilities). We find that a timeframe for membership approval is necessary to provide prospective Planning Management Committee members with timely notification of the role that they will be able to play in the regional transmission planning process. Accordingly, we direct Filing Parties to submit, within 30 days of the date of this order, further compliance filings to add language to the Planning Participation Agreement to include a timeframe for the Planning Management Committee to make a decision on membership approvals.

**ii. Dispute Resolution**

**(a) Protests/ Comments**

110. Indicated Non-Public Utilities oppose the requirement in section 10.2.1 that WestConnect members waive in advance any right to a trial by jury with respect to litigation arising out of, under, or in connection with a Planning Management Committee decision or that is otherwise within the scope of the Planning Participation Agreement. Indicated Non-Public Utilities assert that doing so is an unreasonable and unjust restriction on a party's individual discretion to exercise its litigation options after disputes arise.<sup>205</sup> Indicated Non-Public Utilities argue that contractual clauses that require pre-dispute jury waivers are not enforceable under California law. They argue that the advance jury waiver requirement unreasonably limits parties' choice in how best to pursue or defend litigation after a dispute has arisen. Indicated Non-Public Utilities further state that striking this provision will ensure that each WestConnect member retains its discretion to choose whether or not to waive trial by jury after the facts of a potential dispute are known. Therefore, Indicated Non-Public Utilities request that the Commission direct Filing Parties to remove the advance jury waiver from section 10.2.1 of the proposed Planning Participation Agreement.<sup>206</sup>

111. Indicated Non-Public Utilities argue that Filing Parties' proposal in sections 10.2.2 and 10.3.2 of the Planning Participation Agreement to exempt members of the State Regulatory Commissions sector from the cost sharing provisions is inequitable and preferential.<sup>207</sup> Indicated Non-Public Utilities state that it is inequitable to allow state

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<sup>205</sup> Indicated Non-Public Utilities Comments and Request for Clarification on Compliance Filings at 3-5.

<sup>206</sup> *Id.* at 4-5.

<sup>207</sup> *Id.* at 5-6.

regulatory commissions to have voting rights without assuming any responsibility for the associated risks of being decision-makers, while at the same time requiring other non-public utility transmission provider members of WestConnect to pay for the costs.<sup>208</sup>

112. Indicated Non-Public Utilities state that Filing Parties attempt to justify their proposal to exempt member of the State Regulatory Commissions sector from cost-sharing obligations with general assertions regarding the need to incentivize Planning Management Committee membership and address the concern raised by the certain state regulatory commissions in this proceeding. However, Indicated Non-Public Utilities argue that these statements do not justify the preferential treatment afforded to the state regulatory commission membership sector which results in a shift of costs to non-public utilities. Moreover, they assert that the cost-sharing provisions of the proposed Planning Participation Agreement provide similar disincentives to state regulatory commissions and non-public utility transmission providers from participating as voting members of WestConnect. They assert that some non-public utilities, such as Imperial Irrigation District, are state agencies or entities created by state legislature for specific purposes and have expressed concerns about any payment of the Planning Management Committee legal defense costs, especially when Indicated Non-Public Utilities will be required to pay a greater share of the costs for subsidizing Filing Parties' State Regulatory Commissions voting memberships. Indicated Non-Public Utilities contend that the proposed provisions are preferential as they exempt one type of member from cost-sharing obligations, which increases the financial risks of non-public utilities that choose to participate either as enrolled transmission owners or coordinating transmission owners in the transmission owners with load serving obligations member sector.<sup>209</sup>

113. Indicated Non-Public Utilities state that Order No. 1000 allows public utilities to propose a mechanism for state regulatory commissions to recover costs associated with their participation in the transmission planning process by rolling those costs into the public utilities' rates.<sup>210</sup> Notwithstanding, the proposed Planning Participation Agreement instead shifts the financial risks that should be borne by ratepayers of the

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<sup>208</sup> *Id.*

<sup>209</sup> Indicated Non-Public Utilities Comments and Request for Clarification on Compliance Filings at 7.

<sup>210</sup> *Id.* at 9 (citing *Midwest Independent Transmission System Operator, Inc. et. al.*, 142 FERC ¶ 61,215 (2013)).

investor owned utilities regulated by the State Commissions to ratepayers of non-public utilities.<sup>211</sup>

114. Indicated Non-Public Utilities request that the Commission direct Filing Parties to either remove the exemption they granted to their state regulatory commissions with respect to the sharing of legal defense costs, or restructure their proposal to include those costs in their own rates rather than shifting the costs to other non-public utilities who are members of the Transmission Owners with Load Serving Obligations Sector.<sup>212</sup>

115. Similarly, Public Interest Organizations request to be exempted from the liability of expense sharing provisions arising from legal disputes in the Planning Participation Agreement brought on by Committee members or non-members.<sup>213</sup> Public Interest Organizations assert that these provisions present a barrier to them signing the Planning Participation Agreement and consequently participating in the Committee because of the potential risk of unlimited financial liability.<sup>214</sup> Public Interest Organizations argue that it is equitable to exempt them from sharing in legal dispute expenses arising from Planning Management Committee decisions.<sup>215</sup> They argue that, unlike the public utility transmission providers, Public Interest Organizations cannot profit from the Planning Management Committee decisions or recover legal expenses through rate base, and, thus, have no way of mitigating potentially unlimited financial liability.<sup>216</sup> Next, Public Interest Organizations further assert that Planning Management Committee decisions that could incur financial liability are made after a vote and the voting structure is set up to be weighted in favor of the transmission owners, such that they have an effective veto over Planning Management Committee actions they do not support.<sup>217</sup> Thus, they argue that under the current scheme, Public Interest Organizations bear a disproportionate liability risk in relation to their decision-making power.<sup>218</sup> Public Interest Organizations further

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<sup>211</sup> *Id.* at 9-10.

<sup>212</sup> *Id.* at 10.

<sup>213</sup> Public Interest Organizations Comments at 3.

<sup>214</sup> *Id.* at 3.

<sup>215</sup> *Id.* at 3-4.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

note that the exemption can be accomplished without prolonging the negotiation process or affecting other parts of the Planning Participation Agreement by simply excluding Key Interest Group sector members who are non-governmental organizations.<sup>219</sup>

116. Moreover, Indicated Non-Public Utilities and Southwest Transmission Cooperative request clarification as they are unclear on the meaning of the word “equally” in sections 10.2.2 and 10.2.3 of the Planning Participation Agreement, which states that “[for] the 66 percent of expenses assigned to the [Transmission Owners with Load Serving Obligations] Member Sector, the expenses will be shared *equally* among the Members in the sector.”<sup>220</sup> Indicated Non-Public Utilities state that these provisions could be consistently interpreted, for example, as allocating costs based on the load ratios already used by WestConnect to share other costs pursuant to section 6.4.5 of the Planning Participation Agreement.<sup>221</sup> Southwest Transmission Cooperative likewise seeks clarification that the allocation of any state regulatory commission legal defense costs under the Planning Participation Agreement should be allocated in the same manner as set forth in section 6.4.5 of Planning Participation Agreement.<sup>222</sup>

**(b) Answers**

117. Filing Parties note that the sharing of legal costs has been an issue of much debate within the region. Filing Parties explain that in an effort to secure consensus with the Legal and Negotiating Committee in time to meet their compliance filing deadline, Filing Parties offered as a last-minute concession to accept a double share of legal defense costs, from a one-third share to a two-thirds share.<sup>223</sup> Filing Parties explain that they expected this to bring closure to an issue that was debated for many months, so that the parties could mutually support, or not oppose, an arrangement under which state regulatory commissions would be exempt from such costs, and also to bring down the percentage

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<sup>219</sup> *Id.* at 4-5.

<sup>220</sup> Indicated Non-Public Utilities Comments and Request for Clarification on Compliance Filings at 10 and Southwest Transmission Cooperative Comments on Compliance Filings at 6 in reference to Sections 10.2.2 and 10.3.2 (emphasis added).

<sup>221</sup> Indicated Non-Public Utilities Comments and Request for Clarification on Compliance Filings at 10.

<sup>222</sup> Southwest Transmission Cooperative Comments on Compliance Filings at 6.

<sup>223</sup> Filing Parties January 9, 2015 Answer to Public Interest Organizations Comments at 2-3.

share to be apportioned among the sectors of the Planning Management Committee other than the Transmission Owners with Load Serving Obligations sector.<sup>224</sup> Filing Parties assert that this would leave only an approximately 11 percent allocation each to the following three sectors: Transmission Customers, Independent Transmission Developers and Owners, and Key Interest Groups.<sup>225</sup> Additionally, Filing Parties note that at the time this concession was added to the Planning Participation Agreement, it was Filing Parties' understanding that the Natural Resources Defense Council, who filed with the Public Interest Organizations, supported the resolution that was struck. Notwithstanding, Natural Resources Defense Council now appears to oppose the resolution, and seeks a finding from the Commission that their share should be set at zero regardless of their right to participate in the decision-making process.<sup>226</sup>

118. Filing Parties ask that as the Commission evaluates comments made by both Public Interest Organizations and Indicated Non-Public Utilities, it take into consideration that a two-thirds share of the legal costs was a concession by Filing Parties. Filing Parties state that they continue to believe that their original position, that the Transmission Owners with Load Serving Obligations sector of the Planning Management Committee would accept a one-third share of legal costs incurred by the Planning Management Committee, reflects fundamental fairness.<sup>227</sup> They argue that the WestConnect transmission planning region is unique among the nation's transmission planning regions in its governance structure because it permits entities other than transmission entities to cast affirmative votes on matters brought before the Planning Management Committee in performing the function of regional transmission planning.<sup>228</sup> Thus, they argue that with the Planning Management Committee's governance structure requiring the affirmative vote of at least three sectors for the Planning Management Committee to act, it is reasonable and appropriate for the Transmission Owners with Load Serving Obligations sector to shoulder only a one-third share of the costs incurred to defend the actions of the Planning Management Committee.<sup>229</sup> Thus, they argue that it

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<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at 3.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.* at 3-4.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

is fair that entities who choose to become members of the Planning Management Committee should be expected, in return, to share in the costs of defending the Planning Management Committee. They further state that all entities have the option to participate in the regional transmission planning process as stakeholders and, thus, they do not have to be a voting member of the Planning Management Committee in order to have their voices heard.<sup>230</sup> Nevertheless, they state that with respect to how the remaining two-thirds should be apportioned among other sectors, Filing Parties will respect the Commission's decision in this regard, whatever it may be.<sup>231</sup>

119. Moreover, Filing Parties respond to the requests for clarification on the Planning Participation Agreement's reference to the *equal* apportionment of legal costs for members within an individual sector, specifically the Transmission Owners with Load Serving Obligations sector. Filing Parties state that the Planning Participation Agreement's reference to *pro rata* means *pro rata* based on the number of members within the sector. It does not contemplate anything other than dividing the sector's share of legal cost responsibility equally among the members of the sector, because all votes within an individual sector have equal weight.<sup>232</sup>

**(c) Commission Determination**

120. We find that Filing Parties' proposed provisions governing the sharing of legal costs to defend the Planning Management Committee are just and reasonable. The WestConnect transmission planning region permits entities other than transmission entities to cast affirmative votes on matters brought before the Planning Management Committee, and those votes might impact the results of the regional transmission plan. We find it reasonable that such voting rights should bear a comparable level of responsibility. Alternatively, as Filing Parties note, any entity may participate in the regional transmission planning process as a stakeholder (without voting rights) and have its voice heard. Accordingly, we deny Public Interest Organizations' request to direct Filing Parties to exempt Public Interest Organizations from the liability of expense sharing provisions arising from legal disputes.

121. Further, we will not require Filing Parties to remove the exemption granted to the State Regulatory Commissions sector. Importantly, Filing Parties are already shouldering

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<sup>230</sup> *Id.* at 4-5.

<sup>231</sup> *Id.* at 3-4.

<sup>232</sup> Filing Parties January 9, 2015 Answer to Public Interest Organizations Comments at 3-4, n. 2.

the bulk of the legal costs in the event that they are required. As Filing Parties state, this was a concession made so that their state regulatory commissions would be exempt from such costs. We find this proposal to be reasonable. Moreover, we disagree with Indicated Non-Public Utilities' arguments that it is inequitable to allow state regulatory commissions to have an exemption from sharing in the legal costs and grant them voting rights, while at the same time requiring non-public utility transmission provider members to pay for the legal costs. In making this argument, Indicated Non-Public Utilities are not considering that the WestConnect transmission planning region is conducting transmission planning on behalf of those same non-public utility transmission providers. Thus, we find that it is equitable that since the WestConnect transmission planning region is conducting transmission planning on behalf of the non-public utility transmission providers, those non-public utility transmission providers should bear some responsibility in defending the Planning Management Committee. On the other hand, as discussed above, Filing Parties are shouldering the bulk of the legal costs on behalf of their state regulatory commissions. Accordingly, we will not require Filing Parties to remove the exemption granted to the State Regulatory Commissions sector.<sup>233</sup>

122. Next, we turn to Filing Parties' proposal that WestConnect members be required to waive their right to pursue a dispute in a trial by jury if that dispute arises out of, under, or in connection with a Planning Management Commission decision or the scope of the Planning Participation Agreement. We reject Filing Parties' proposal as it is inconsistent with the Commission's policy that precludes a jurisdictional utility from requiring a party to waive its right to a trial by jury when the waiver is a condition for that party to obtain basic service that the jurisdictional utility is obligated to provide pursuant to a Commission Order.<sup>234</sup> While becoming a member of the WestConnect transmission planning region is not a service, signing the Planning Participation Agreement is the only means by which a party may enroll in the transmission planning region, and for public utility transmission providers, such participation is mandated under Order No. 1000. The Commission, however, has previously accepted an optional waiver of jury trial, provided that both parties mutually agree to the waiver.<sup>235</sup> Accordingly, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to remove the provision requiring WestConnect members to waive

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<sup>233</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 296.

<sup>234</sup> *Northern Natural Gas Company*, 142 FERC ¶ 61,145, at P 13 (2013). *Kern River Gas Transmission Company*, 141 FERC ¶ 61,024, at P 8 (2012).

<sup>235</sup> *Kern River Gas Transmission Company*, 141 FERC ¶ 61,024, at P 8 (2012).

their right to pursue a dispute in a trial by jury or, alternatively, revise the provision to apply only when both parties mutually agree to the waiver.

123. Finally, we agree with protesters that sections 10.2.2 and 10.2.3 of the Planning Participation Agreement should be clarified to avoid any confusion. Currently, those sections state that “[for] the 66 percent of expenses assigned to the [Transmission Owners with Load Serving Obligations] Member Sector, the expenses will be shared *equally* among the Members in the sector.” In their answer, Filing Parties clarify that this means that the costs will be shared *pro rata* based on the number of members within the sector. Accordingly, to avoid confusion, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to revise their OATTs to make the necessary clarification.

**5. Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation**

**a. Second Compliance Order**

124. In the Second Compliance Order, the Commission found that Filing Parties’ filings partially complied with the directives regarding eligibility for cost allocation for transmission facilities. The Commission found that Filing Parties’ proposal did not provide a process for eligible transmission developers to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>236</sup> Specifically, the Commission found that Filing Parties did not comply with the directive from the First Compliance Order to “include a process in their OATTs for determining *which transmission developer* is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.”<sup>237</sup> Accordingly, the Commission directed Filing Parties to include such a process in their OATTs.<sup>238</sup> In addition, the Commission stated that Filing Parties’ revised OATTs should address the process for determining which transmission developer will have the right to use the regional cost allocation method for an

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<sup>236</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 297.

<sup>237</sup> *Id.* P 299 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 268 (emphasis added)).

<sup>238</sup> *Id.* P 299.

unsponsored transmission project selected in the regional transmission plan for purposes of cost allocation if the transmission project remains unsponsored.<sup>239</sup>

**b. Third Compliance Filing**

125. Filing Parties propose to revise their OATTs to include a process for selecting an eligible transmission developer for transmission projects (both sponsored and unsponsored) that the Planning Management Committee selects in the regional transmission plan for purposes of cost allocation. The respective OATTs state that the Planning Management Committee will select a transmission developer, provided that the selection under its process “does not violate applicable law where the transmission facility is to be built that otherwise prescribes the entity that shall develop and build the project.”<sup>240</sup> Filing Parties propose that any transmission developer that, pursuant to applicable law for the location where the transmission facilities are to be built, shall or chooses to develop and build the transmission project selected in the regional transmission plan for purposes of cost allocation must submit a project development schedule within the timeframe directed by the Business Practice Manual, not to exceed the time period for request for proposals responses.<sup>241</sup>

126. In circumstances where applicable law does not prescribe the transmission developer, Filing Parties propose to revise their OATTs to provide that the Planning Management Committee will, upon posting the transmission projects selected in the regional transmission plan for purposes of cost allocation, issue a request for information to all eligible transmission developers (i.e., transmission developers that have met the transmission developer qualification criteria) soliciting their interest in developing the regional transmission projects. Filing Parties’ revised OATTs state that the Planning Management Committee will post on the WestConnect website the list of all interested transmission developers who responded with an expression of interest in developing the transmission projects, and will provide each such transmission developer a request for proposals for the identified transmission projects, with a specified date of return for all proposals. Filing Parties propose to revise their OATTs to state that each transmission developer (or partnership or joint venture of transmission developers) must then submit information demonstrating its ability to finance, own, and construct the transmission

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<sup>239</sup> *Id.* P 300.

<sup>240</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.9.

<sup>241</sup> *E.g.*, *id.*

project consistent with the guidelines for doing so set forth in the WestConnect Business Practices Manual.<sup>242</sup>

127. Filing Parties propose to revise their OATTs to state that the evaluation will be at the direction of the Planning Management Committee and will involve representatives of the beneficiaries of the proposed transmission projects. Filing Parties' revised OATTs further state that the evaluation will include, but will not be limited to, an assessment of the following evidence and criteria:

- General qualifications of the transmission developer;
- Evidence of financing/financial creditworthiness, including
  - financing plan (sources debt and equity), including construction financing and long-term financing,
  - ability to finance restoration/forced outages,
  - credit ratings, and
  - financial statements;
- Safety program and experience;
- Transmission project description, including
  - detailed proposed transmission project description and route,
  - design parameters,
  - design life of equipment and facilities, and
  - description of alternative transmission project variations;
- Development of transmission project, including
  - experience with and current capabilities and plan for obtaining state and local licenses, permits, and approvals,
  - experience with and current capabilities and plan for obtaining any federal licenses and permits,
  - experience with and expertise and plan for obtaining rights-of-way,
  - development schedule, and
  - development budget;
- Construction, including
  - experience with and current capabilities and plan for transmission project construction,
  - third party contractors,
  - procurement plan,
  - project management (cost and schedule control),
  - construction schedule, and

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<sup>242</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.9.

- construction budget (including all construction and period costs);
- Operations, including
  - experience with and current capabilities and plan for transmission project operation,
  - experience with and current capabilities and plan for NERC compliance,
  - security program and plan,
  - storm/outage response plan, and
  - reliability of facilities already in operation;
- Maintenance capabilities and plans for transmission project maintenance (including staffing, equipment, crew training, and facilities);
- Transmission project cost to beneficiaries, including
  - total transmission project cost (development, construction, financing, and other non-operations and maintenance costs),
  - operation and maintenance costs, including evaluation of electrical losses,
  - revenue requirement, including proposed cost of equity, Commission incentives, proposed cost of debt, and total revenue requirement calculation, and
  - present value cost of transmission project to beneficiaries.<sup>243</sup>

128. Filing Parties propose to revise their OATTs to state that the Planning Management Committee will notify the transmission developers of its determination as to which transmission developer it selected to develop the transmission project responsive to the request for proposals.<sup>244</sup> Filing Parties' revised OATTs provide that the selected transmission developer must submit a project development schedule. Filing Parties also propose to revise their OATTs to state that, if the Planning Management Committee determines that a sponsored or unsponsored transmission project fails to secure a transmission developer through this process, then the Planning Management Committee will remove the transmission project from the regional transmission plan.<sup>245</sup>

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<sup>243</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.9.

<sup>244</sup> *E.g.*, *id.*

<sup>245</sup> *E.g.*, *id.* § VII.B.9.

**c. Protests/Comments**

129. LS Power contends that the Commission should reject Filing Parties' proposed provision that would exclude a transmission developer from developing a transmission project selected in the regional transmission plan for purposes of cost allocation if the Planning Management Committee concludes that selecting the transmission developer would violate applicable law where the transmission facility is to be built that otherwise prescribes the entity that shall develop and build the transmission project. LS Power argues that it is inappropriate for Filing Parties to add this new provision when the Commission did not direct them to do so in the Second Compliance Order.<sup>246</sup> LS Power asserts that Filing Parties have not established that the Planning Management Committee has the requisite expertise to make the determination as to the applicable law where the transmission facility is to be built. LS Power further argues that neither the Planning Management Committee nor the Commission (if the Planning Management Committee decision is challenged) is the appropriate entity to determine applicable law where that law is a state law and not a Commission tariff. LS Power states that Filing Parties have not identified a single law which they claim prescribes the entity that shall develop and build a particular transmission project, and that such laws either do not currently exist or Filing Parties are unable to identify them. In either case, it argues, Filing Parties' OATTs should not automatically defer to such laws were they to arise in the future.<sup>247</sup>

**d. Answers**

130. Filing Parties contend that the references to state law in their transmission developer selection process are consistent with the Commission's precedent and serve only to ensure that the transmission developer selected to develop a transmission project selected in the regional transmission plan for purposes of cost allocation is legally eligible to develop that project.<sup>248</sup> Filing Parties argue that the Commission has already concluded that the transmission developer selection process may take into consideration any state laws imposing a right of first refusal.<sup>249</sup> Specifically, Filing Parties state that in

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<sup>246</sup> LS Power Protest on Compliance Filings at 4-5.

<sup>247</sup> *Id.*

<sup>248</sup> Filing Parties January 9, 2015 Answer at 4-6.

<sup>249</sup> *Id.* at 5-6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127, at P 149 (2014), *South Carolina Electric & Gas Co.*, 147 FERC ¶ 61,126, at PP 127-28 (2014); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at PP 132-33 (2014), and; *Southwest Power Pool, Inc.*, 149 FERC ¶ 61,048 at PP 185-89 (2014)).

prior compliance orders, the Commission concluded that transmission planning regions should not be prohibited “from recognizing state and local laws and regulations as a threshold issue,” stating that “some such laws or regulations may independently prohibit a nonincumbent transmission developer from developing a particular transmission project in a particular state, even if the nonincumbent transmission developer would otherwise be designated to develop the transmission project under [the] regional transmission planning process.”<sup>250</sup> Filing Parties contend that the Commission found that failing to account for the application of such laws would be counterproductive and inefficient because it would lead to a waste of time and effort in the evaluation of potential transmission developers, thereby potentially delaying the construction of needed facilities.<sup>251</sup> Filing Parties state that they are developing a competitive transmission developer selection process for the first time in the instant filings, and that they have proposed the same limited state law reference that the Commission approved in other transmission planning regions.<sup>252</sup>

131. Moreover, Filing Parties argue that LS Power’s assertion that the Planning Management Committee lacks the requisite expertise to determine whether state laws mandate the selection of a particular transmission developer is misplaced. Filing Parties state that the application of a state law, such as a right of first refusal, is no different than any other legal requirement that is binding on the WestConnect regional transmission planning process. Filing Parties argue that the Commission should reject LS Power’s attempt to force the Planning Management Committee to intentionally disregard any applicable laws, including any state right of first refusal.<sup>253</sup>

**e. Commission Determination**

132. We find that Filing Parties’ proposed revisions partially comply with the directive in the Second Compliance Order to include a process in their OATTs for determining which transmission developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost

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<sup>250</sup> *Id.* at 5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 at P 149).

<sup>251</sup> *Id.* at 5-6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 at P 150).

<sup>252</sup> *Id.* at 6.

<sup>253</sup> *Id.*

allocation.<sup>254</sup> Filing Parties' proposal provides that the Planning Management Committee will select a transmission project developer for transmission projects (both sponsored and unsponsored) that are selected in the regional transmission plan for purposes of cost allocation, provided that the selection of the transmission developer under its process "does not violate applicable law where the transmission facility is to be built that otherwise prescribes the entity that shall develop and build the project."<sup>255</sup> Under the proposed process, if it is consistent with applicable law to select a transmission project developer for transmission projects that are selected in the regional transmission plan for purposes of cost allocation, Filing Parties will solicit interest from all transmission developers that have met the qualification criteria to be eligible transmission developers and issue a request for proposals. Next, the Planning Management Committee, together with the identified beneficiaries for each transmission project, will evaluate the responses to the request for proposals in accordance with the proposed evaluation criteria and select a transmission developer (or developers) for each transmission project. The proposed criteria for evaluating transmission developers' responses to the Planning Management Committee's request for proposals are transparent and not unduly discriminatory and apply to all qualified prospective transmission developers, whether incumbent or nonincumbent. Therefore, we find that Filing Parties' proposed process for selecting a transmission developer complies with the Second Compliance Order, subject to the revisions directed below.

133. We disagree with LS Power's assertion that it is inappropriate for Filing Parties to include a provision that recognizes applicable laws because it was not an explicit part of the directive in the Second Compliance Order. As Filing Parties explain, Filing Parties have proposed for the first time a process for selecting a transmission developer eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. Indeed, the Second Compliance Order found that Filing Parties did not include such a process, and, therefore, directed Filing Parties to develop a process.<sup>256</sup> Filing Parties have done so here.

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<sup>254</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 299.

<sup>255</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.9. Laws prescribing the entity that shall develop and build a transmission project do not impact the transmission project's eligibility for regional cost allocation or the manner in which the transmission project's costs are allocated under the regional transmission planning process.

<sup>256</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 299.

134. Moreover, we find that, as a threshold matter, it is appropriate for the regional transmission planning process to recognize state or local laws in selecting a transmission developer for transmission projects that are selected in the regional transmission plan for purposes of cost allocation. Order No. 1000's focus is on federal right of first refusal provisions in Commission-jurisdictional tariffs, and Order No. 1000 does not require removal from Commission-jurisdictional tariffs or agreements references to state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.<sup>257</sup> We find that the provision stating that the Planning Management Committee will select a transmission project developer for transmission projects that are selected in the regional transmission plan for purposes of cost allocation, provided that the selection under its process "does not violate applicable law where the transmission facility is to be built that otherwise prescribes the entity that shall develop and build the project,"<sup>258</sup> merely acknowledges state and local laws and does not create a federal right of first refusal. Nothing has changed the Commission's view that Order No. 1000's requirement to remove federal rights of first refusal is in the public interest, and we continue to require the elimination of federal rights of first refusal from Commission-jurisdictional tariffs or agreements. Nevertheless, Order No. 1000 was not intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities.<sup>259</sup> Therefore, Order No. 1000 "does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements."<sup>260</sup>

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<sup>257</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 313, 253, 377 & n.231.

<sup>258</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.9.

<sup>259</sup> *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 253 n.231, 319 (finding that "[n]othing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities. This Final Rule does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements..." and "...our reforms are not intended to alter an incumbent transmission provider's use and control of its existing rights-of-way... The retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way.").

<sup>260</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 253 & n.231, 319; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 427.

135. Regarding LS Power's argument that neither the Planning Management Committee nor the Commission is the appropriate entity to determine applicable law, we acknowledge that while Filing Parties will be responsible for the final planning decisions, we expect the states will provide input regarding their state or local laws. As the Commission stated in Order No. 1000-A, "our expectation is that state regulators should play a strong role and that public utility transmission providers will consult closely with state regulators to ensure that their respective transmission planning processes are consistent with state requirements."<sup>261</sup> We anticipate that Filing Parties will work closely with the states throughout the transmission planning process and that Filing Parties' procedures will provide transparency regarding any state or local laws they use in their decision-making process.

136. However, we find that Filing Parties' proposed selection of transmission developers is not transparent, as it does not culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission developer was selected or not selected.<sup>262</sup> We acknowledge that the Planning Management Committee will provide an explanation for stakeholders to understand why a particular transmission *project* was selected or not selected in the regional transmission plan for purposes of cost allocation; however, Filing Parties' OATTs do not require the Planning Management Committee to explain to stakeholders why a particular transmission developer was selected, or the reasons that a transmission project failed to secure a transmission developer.<sup>263</sup> Accordingly, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to revise their OATTs to include an additional step in the process to explain to the interested transmission developers and other stakeholders the Planning Management Committee's determination in selecting a particular transmission developer for a specific transmission project. The information provided must be sufficiently detailed for the transmission developers and stakeholders to understand (1) the reasons why a particular transmission developer was selected or not selected as eligible to use the regional cost allocation

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<sup>261</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 338.

<sup>262</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

<sup>263</sup> The proposal provides that, if the Planning Management Committee determines that a sponsored or unsponsored transmission project fails to secure a transmission developer through the transmission developer selection process, then the Planning Management Committee will remove the transmission project from the regional transmission plan. *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.9.

method for a transmission facility selected in the regional transmission plan for purposes of cost allocation, and, if applicable, (2) the reasons why a transmission project failed to secure a transmission developer through the selection of a transmission developer for transmission projects process. Such information should be provided to stakeholders within a reasonable timeframe.

## **6. Cost Allocation**

137. With respect to transmission projects that produce multiple types of benefits (e.g., reliability, economic, and public policy benefits), the Commission stated in the Second Compliance Order, that it was not clear what Filing Parties meant by the “cost allocation threshold” in their proposal that, if a transmission project cannot pass the “cost allocation threshold” for any one of the three benefit categories, the Planning Management Committee may consider the sum of benefits from each category. Accordingly, the Commission directed Filing Parties to clarify the term “cost allocation threshold”.<sup>264</sup>

### **a. Third Compliance Filing**

138. Filing Parties have revised their respective OATTs to clarify the term “cost allocation threshold” with respect to transmission projects that produce multiple types of benefits. Filing Parties’ proposed revisions clarify that for regional transmission projects driven by reliability needs or public policy requirements, the quantified benefits of the transmission project to each identified beneficiary must be greater, by a margin of 1.25 to 1, than the resulting costs that would be allocated to the identified beneficiary in accordance with the regional cost allocation method. Similarly, Filing Parties’ proposed revisions clarify that for regional transmission projects driven by economic considerations, the quantified benefits of the transmission project to each identified beneficiary must be greater than the transmission project’s cost to each beneficiary under each reasonable scenario evaluated and must yield an average ratio of at least 1.25 to 1 under all reasonable scenarios evaluated.<sup>265</sup> Filing Parties’ revised OATTs explain that if a regional transmission project is determined to provide more than one type of benefit, but does not meet the cost allocation threshold for any single benefit category, the Planning Management Committee may consider the sum of benefits from each benefit category to determine whether the regional transmission project provides total benefits to each beneficiary such that it meets or exceeds the 1.25 to 1 benefit to cost ratio. The

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<sup>264</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 363.

<sup>265</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.4.

revised OATTs also provide an example of how this would work in practice. Moreover, the revised OATTs state that for those regional transmission projects that satisfy the cost allocation threshold, the Planning Management Committee then will continue its evaluation process by considering whether the regional transmission project meets the region's identified reliability, economic, and public policy requirements-driven transmission needs more efficiently or cost-effectively than solutions identified by individual transmission providers in their local transmission planning processes.<sup>266</sup>

**b. Commission Determination**

139. We find that Filing Parties' clarification of the term "cost allocation threshold" with respect to transmission projects that have multiple types of benefits partially complies with the Second Compliance Order. Filing Parties' revised OATTs clarify that regional transmission projects that are driven by economic considerations or that provide more than one type of benefit (i.e., reliability, economic, or public policy requirement-related) must meet or exceed a 1.25 benefit to cost ratio. These proposed clarifying revisions comply with the Commission's directive in the Second Compliance Order and are consistent with Order No. 1000's Regional Cost Allocation Principle 3, which specifies that if adopted, a benefit to cost threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.<sup>267</sup> However, for certain transmission projects, Filing Parties' revisions as proposed inadvertently restrict the transmission projects that are eligible for selection in the regional transmission plan for purposes of cost allocation to those with a benefit to cost ratio of 1.25 exactly, rather than 1.25 *or more*.<sup>268</sup> Accordingly, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings that revise their OATTs to state that the quantified benefits to each beneficiary of a regional transmission project driven by reliability needs or public policy requirements must be greater, by a margin of 1.25 to 1 *or more*, than the project's costs.

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<sup>266</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.4.

<sup>267</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

<sup>268</sup> Specifically, in two instances the proposed revisions state the quantified benefits to each beneficiary of a regional transmission project driven by reliability needs or public policy requirements "must be greater, by a margin of 1.25 to 1." *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.4.

## 7. Other Compliance Directives

140. In the Second Compliance Order, the Commission directed Black Hills Power to clarify whether Basin Electric and Powder River are enrolled in the WestConnect transmission planning region, and, if they are not enrolled, to explain how, given the joint OATT, Black Hills Power will allocate costs among the three parties pursuant to the regional cost allocation method, and which party or parties will be responsible for implementing the OATT provisions governing the regional transmission planning process.<sup>269</sup> In response, Black Hills Power clarifies that Basin Electric and Powder River are not enrolled non-public utility transmission providers in the WestConnect transmission planning region.<sup>270</sup> Accordingly, Black Hills Power modified its OATT to clarify that it will administer the responsibilities related to the regional transmission planning process,<sup>271</sup> and, if Basin Electric or Powder River become coordinating transmission owners and elect not to accept a cost allocation, the procedures related to a coordinating transmission owner's rights to reject cost allocations shall apply.<sup>272</sup> Further, Black Hills Power proposes to revise its OATT to state that accepted costs allocated to Black Hills Power, Basin Electric and Powder River will be included in each entity's portion of the revenue requirement pursuant to the joint OATT.<sup>273</sup>

141. In the Second Compliance Order, the Commission directed Filing Parties to include in their respective OATTs either a standard non-disclosure agreement or, alternatively, the location on the WestConnect website where the non-disclosure agreement can be found.<sup>274</sup> Filing Parties propose to update their respective OATTs to include a now-functioning hyperlink, or to identify with greater specificity where the document appears on the WestConnect website.<sup>275</sup>

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<sup>269</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 59.

<sup>270</sup> Black Hills November 17, 2014 Compliance Filing at 4.

<sup>271</sup> Black Hills Power Joint OATT, Attachment K, § I.

<sup>272</sup> *Id.* § VII.B.

<sup>273</sup> *Id.* § VII.B.

<sup>274</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 80.

<sup>275</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.8.

142. With respect to the information exchange principle, the Commission, in the Second Compliance Order, directed Filing Parties to revise their respective OATTs to include more guidance for stakeholders on the timing and notice for submission of information and input throughout the regional transmission planning process.<sup>276</sup> Filing Parties have revised their respective OATTs to provide additional detail related to the timing and notice for submission of information and to add a new exhibit which includes a timeline of the WestConnect regional transmission planning process. The new exhibit provides the following general timeframe:

- Quarter 1: study plan development, including the base transmission plan collection window and scenario submittal window;
- Quarters 2 and 3: model development;
- Quarter 4: identification of regional transmission needs;
- Quarter 5: definition of regional alternatives, including the submission period for regional projects to address identified regional transmission needs;
- Quarters 5 and 6: evaluation and identification of alternatives;
- Quarter 7: cost allocation; and
- Quarter 8: finalizing the regional transmission plan.<sup>277</sup>

143. With respect to the comparability principle, in the Second Compliance Order, the Commission accepted Filing Parties' proposal to charge a \$25,000 deposit for studies, subject to a true-up based on the actual study costs, to all developers that submit a transmission project or non-transmission alternative proposal, regardless of whether the developer is seeking regional cost allocation.<sup>278</sup> However, the Commission directed Filing Parties to revise their respective OATTs to (1) refund to the project sponsor the difference between the deposit and the study costs, including interest, (2) clarify that each project sponsor will be provided a description of the costs to which the deposit will be

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<sup>276</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 83.

<sup>277</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C and Exhibit 2.

<sup>278</sup> Second Compliance Order, 148 FERC ¶ 61,213 at PP 98-100.

applied, how those costs will be calculated, and an accounting of the actual costs, and (3) state that any disputes regarding the accounting for specific deposits will be addressed under the transmission planning dispute resolution procedures.<sup>279</sup> In response, Filing Parties revised their respective OATTs to clarify that the true-up for any deposit to support relevant study work will include interest on the difference between the deposit and the actual cost, with such interest calculated in accordance with section 35.19(a)(2) of the Commission's regulations. The revised OATTs also provide that, within 30 days after completion of the study, WestConnect will provide to each project sponsor a description of the costs to which the deposit was applied, including how the costs were calculated, and an accounting of the costs. Finally, Filing Parties propose to revise their OATTs to state that dispute resolution will be addressed under the transmission planning dispute resolution procedures.<sup>280</sup>

144. Next, with respect to dispute resolution, in the Second Compliance Order, the Commission directed Filing Parties to remove provisions requiring a Planning Management Committee member to first seek to resolve a dispute among Planning Management Committee members under the dispute resolution provisions of the Planning Participation Agreement before referring a matter to the Commission for resolution, stating that such requirement would significantly limit a party's rights to file a section 206 complaint with respect to transmission planning disputes.<sup>281</sup> Filing Parties have removed this provision as well as a statement that "[a]ll disputes, whether they arise under this [transmission planning process] or between members of the [Planning Management Committee], must be initiated no later than thirty (30) calendar days from the date on which the conduct that gives rise to the dispute occurs."<sup>282</sup> Further, Filing Parties have retained the provision that expressly states that the availability of the dispute resolution procedures does not eliminate a disputing Planning Management Committee member's right to refer to the Commission for resolution any procedural or substantive matter within the jurisdiction of the Commission.<sup>283</sup>

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<sup>279</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 100.

<sup>280</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.5.

<sup>281</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 109.

<sup>282</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 8.

<sup>283</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § V.

145. In the Second Compliance Order, the Commission directed Filing Parties to remove a provision stating that the Planning Management Committee will conduct studies to identify and meet regional transmission needs only within the means permitted by Planning Management Committee funds.<sup>284</sup> Filing Parties have deleted this provision.<sup>285</sup>

146. In addition, in the Second Compliance Order, the Commission directed Filing Parties to revise their respective OATTs to identify when in the regional transmission planning process the Planning Management Committee will perform the regional reliability assessment and, if necessary, identify transmission projects to resolve any violations that impact more than one transmission owner.<sup>286</sup> Filing Parties have revised their OATTs to state that the Planning Management Committee will perform the regional reliability assessment and, if necessary, identify a regional transmission need for transmission projects to resolve any violations that impact more than one transmission owner in the fourth quarter of the transmission planning cycle.<sup>287</sup>

147. Similarly, with respect to economic transmission projects, the Commission directed Filing Parties to revise their respective OATTs to identify when in the regional transmission planning process the Planning Management Committee will perform its production cost modeling analysis and identify economic transmission projects.<sup>288</sup> Filing Parties propose to revise their OATTs to state that the Planning Management Committee will develop the production cost modeling analysis in the second and third quarters of the transmission planning cycle and identify economic transmission projects in the sixth quarter and parts of the fifth and seventh quarters of the transmission planning cycle.<sup>289</sup>

148. In addition, for transmission projects addressing transmission needs driven by public policy requirements, the Commission directed Filing Parties to explain in their OATTs: (1) how the Planning Management Committee will assess whether there are

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<sup>284</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 131.

<sup>285</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 7.

<sup>286</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 132.

<sup>287</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.2.

<sup>288</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 133.

<sup>289</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.3.

more efficient or cost-effective regional transmission solutions to meet identified regional transmission needs driven by public policy requirements; and (2) when during the WestConnect regional transmission planning process the Planning Management Committee will conduct the assessment to identify such solutions.<sup>290</sup> Filing Parties propose to revise their OATTs to state that the Planning Management Committee will perform, in the sixth quarter and parts of the fifth and seventh quarters of the transmission planning cycle, its public policy requirements analysis to help identify if a transmission solution is necessary to meet an enacted public policy.<sup>291</sup> Filing Parties' revised OATTs state that the Planning Management Committee will identify whether a more efficient or cost-effective regional transmission solution exists based upon several different considerations, including whether the project is necessary and capable of meeting transmission needs driven by public policy requirements, while also (1) efficiently resolving any criteria violations identified by studies pursuant to any relevant North American Electric Reliability Corporation (NERC) Transmission Planning Reliability Standards for regional reliability transmission projects or Western Electricity Coordinating Council (WECC) Transmission Planning Reliability Standards or WECC criteria, as applicable, that could impact more than one transmission owner as a result of a public policy requirement, or (2) producing economic benefits as shown through detailed production cost simulations that will appropriately consider the impact of transmission projects on production cost, system congestion, and the value of decreased reserve sharing requirements.<sup>292</sup>

149. In the Second Compliance Order, the Commission directed Filing Parties to modify their respective OATTs to clarify that merchant transmission developers are not required to include: (1) an explanation of how their project is a more efficient or cost-effective solution compared to regional transmission needs; (2) estimated project cost and a description of basis for that cost; (3) a \$25,000 deposit to support the cost of relevant study work, subject to true-up (up or down) based upon the actual cost of the studies; and (4) the requirements concerning impacts on other regions.<sup>293</sup> Filing Parties propose to

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<sup>290</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 134.

<sup>291</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.4.

<sup>292</sup> *E.g.*, *id.* § III.E.4(b).

<sup>293</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 164.

revise the information requirements for proposed transmission projects to exempt merchant transmission developers from the aforementioned submission requirements.<sup>294</sup>

150. In the Second Compliance Order, the Commission required Filing Parties to submit the Planning Participation Agreement or revise their OATTs to include the amount of membership dues that each member must pay to remain in good standing or, alternatively, submit the formula used to determine such dues to be paid to the WestConnect transmission planning region.<sup>295</sup> Filing Parties have revised their OATTs to state that information regarding membership dues can be found in the Planning Participation Agreement and have filed the Planning Participation Agreement.<sup>296</sup>

151. In the Second Compliance Order, the Commission also directed compliance revisions with respect to the qualification criteria applied to entities seeking to be transmission developers eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. First, the Commission directed Filing Parties to remove from their OATTs the proposed qualification criterion requiring that a prospective transmission developer demonstrate its ability, or plans to develop the ability, to comply with applicable local, state, and federal permitting requirements.<sup>297</sup> Filing Parties propose to remove this requirement.<sup>298</sup>

152. Next, the Commission directed Filing Parties to clarify that a prospective transmission developer does not need to have existing control center operations capabilities at the time it seeks to be eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation, but instead must demonstrate only that it has the ability to undertake such operations.<sup>299</sup> Filing Parties propose to revise their OATTs to state that a prospective

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<sup>294</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.5.

<sup>295</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 240.

<sup>296</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.A.2(a). Because the proposed membership dues were filed as part of the Planning Participation Agreement, this issue is addressed in the Planning Participation Agreement section above.

<sup>297</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 245.

<sup>298</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 12.

<sup>299</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 243.

transmission developer must demonstrate that it has the ability to undertake control center operations capabilities, including reservations, scheduling, and outage coordination.<sup>300</sup>

153. Additionally, in the Second Compliance Order, the Commission required Filing Parties to revise their OATTs to clarify that a prospective transmission developer will not be required to have a maintenance or operations entity under contract at the time it seeks to be eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>301</sup> Filing Parties' revised OATTs clarify that a prospective transmission developer will not be required to have an operations<sup>302</sup> or maintenance<sup>303</sup> entity under contract at the time it seeks to be eligible to use the regional cost allocation method.

154. Finally, the Commission rejected the requirement that a prospective transmission developer intending to rely on a non-affiliated third-party to develop a transmission facility selected in the regional transmission plan for purposes of cost allocation must obtain affidavits from the entity stating its willingness to perform the tasks identified by the transmission developer, and directed Filing Parties to remove the requirement on compliance. However, the Commission noted, it is likely insufficient for a transmission developer to only submit a list of contractors with which it could contract to perform the tasks identified by the transmission developer if selected and nothing more.<sup>304</sup> Filing Parties propose to remove this requirement.<sup>305</sup> In place of this requirement, Filing Parties propose to revise their OATTs to state that a prospective transmission developer intending to rely on a non-affiliated third-party to develop a transmission facility "must provide in attestation form an identification of its preferred third-party contractor(s) and indicate when it plans to enter into a definitive agreement with its third-party contractor(s)."<sup>306</sup>

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<sup>300</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.D.2(i).

<sup>301</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 246.

<sup>302</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.D.2(i).

<sup>303</sup> *E.g.*, *id.* § III.D.2(j).

<sup>304</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 247.

<sup>305</sup> *E.g.*, Arizona Public Service Co. Transmittal Letter at 12.

<sup>306</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.D.2(k).

155. In the Second Compliance Order, the Commission directed Filing Parties to revise their respective OATTs to clarify that Filing Parties will provide, subject to appropriate confidentiality and CEII restrictions, the information available to Filing Parties that a potential transmission developer needs to perform the transmission system impact study and to identify the costs associated with any upgrades required to mitigate adverse impacts.<sup>307</sup> Filing Parties added clarifying language stating that the Planning Management Committee “will provide, subject to appropriate confidentiality and CEII restrictions, the information in the possession of the [Planning Management Committee] that an applicant needs to perform the transmission system impact study and to identify the costs associated with any upgrades required to mitigate adverse impacts.”<sup>308</sup> The Commission also directed Filing Parties to remove from their respective OATTs the provision allowing the Planning Management Committee to deny a prospective transmission developer’s request that the transmission system impact study be performed as part of the regional transmission planning process if the request cannot be performed within the transmission planning cycle.<sup>309</sup> Filing Parties have deleted the statement that the Planning Management Committee will approve study requests depending upon whether the request “can be performed within the planning cycle timeframe.”<sup>310</sup>

156. In the Second Compliance Order, the Commission found that Filing Parties’ proposal concerning the reevaluation of the regional transmission plan complied with the directives in the First Compliance Order, but directed Filing Parties to consistently use the phrase “more efficient *or* cost-effective” in the examples explaining when transmission projects might be subject to reevaluation.<sup>311</sup> Filing Parties have revised their respective OATTs to uniformly use the phrase “more efficient *or* cost-effective.”<sup>312</sup>

157. In the Second Compliance Order, the Commission found generally reasonable Filing Parties’ proposed OATT provisions stating that governing governmental authorities are the only entities empowered to confer upon the transmission developer any right to (1) construct, own, and/or operate a transmission project and (2) collect costs

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<sup>307</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 254.

<sup>308</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.5.

<sup>309</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 255.

<sup>310</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.C.5.

<sup>311</sup> Second Compliance Order, 148 FERC ¶ 61,213 at PP 282, 283.

<sup>312</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.E.1.

associated with the construction, ownership, and/or operation of a transmission project, or provide transmission services on the transmission facilities constructed, owned, and/or operated. However, the Commission directed Filing Parties to revise their respective OATTs to replace “governing governmental authorities” with “applicable governing governmental authorities.”<sup>313</sup> Filing Parties have revised their respective OATTs to replace “governing governmental authorities” with “applicable governing governmental authorities.”<sup>314</sup>

158. In the Second Compliance Order, the Commission directed Filing Parties to revise their respective OATTs to remove the provisions in the No Obligation to Construct section providing that nothing in the regional transmission planning process, Business Practice Manual, or Planning Participation Agreement, or any cost allocation shall “... (3) obligate any entity to implement or effectuate, or commit to implement or effectuate, any cost allocation, [or] (4) obligate any entity to pay, or commit to pay, costs of any project or proposed project in accordance with any cost allocation...”<sup>315</sup> Filing Parties have removed this language from their OATTs.<sup>316</sup>

159. In the First Compliance Order, the Commission noted that Filing Parties proposed numerous changes to their respective local transmission planning processes that were unrelated to compliance with Order No. 1000 requirements to modify the local transmission planning process to incorporate procedures for planning for transmission needs driven by public policy requirements. The Commission, therefore, directed Filing Parties to identify and justify those changes that they believe are properly within the scope of Order No. 1000’s compliance requirements, and to eliminate from their OATTs those revisions that are outside the scope of Order No. 1000’s compliance requirements.<sup>317</sup> In the Second Compliance Order, the Commission found that NV Energy had not provided any explanation of the changes to its local transmission planning process that it proposes to retain, other than those changes required to comply with Order No. 1000’s directives regarding transmission needs driven by public policy

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<sup>313</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 302.

<sup>314</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § III.D.1.

<sup>315</sup> Second Compliance Order, 148 FERC ¶ 61,213 at PP 359-360.

<sup>316</sup> *E.g.*, Arizona Public Service Co. OATT, Attachment E, § VII.B.10.

<sup>317</sup> Second Compliance Order, 148 FERC ¶ 61,213 at P 390 (citing First Compliance Order, 142 FERC ¶ 61,206 at P 353).

requirements in the local transmission planning process. Accordingly, the Commission directed NV Energy to submit a further compliance filing to identify and justify those changes that NV Energy believes are properly within the scope of Order No. 1000's compliance requirements.<sup>318</sup> In response, NV Energy states that it submitted changes to its local transmission planning process to (1) relocate local cost allocation provisions that the Commission had previously approved;<sup>319</sup> (2) confirm that non-transmission alternatives, as approved by the Public Utilities Commission of Nevada or other appropriate governmental authority, will be considered in local transmission planning studies and the transmission plan needs assessment;<sup>320</sup> (3) eliminate references to subregional transmission planning processes that have been integrated into the regional transmission planning process;<sup>321</sup> (4) adjust the timing of stakeholder submissions to allow for coordination with regional transmission planning activities;<sup>322</sup> (5) clarify that reliability planning studies will be coordinated with the appropriate balancing authorities areas in accordance with WECC and NERC standards;<sup>323</sup> (6) provide that all non-local (i.e., regional or interregional) economic study requests will be forwarded to WestConnect and the WECC Transmission Expansion Planning Policy Committee as appropriate;<sup>324</sup> (7) state that WestConnect will perform regional economic studies pursuant to the regional transmission planning process;<sup>325</sup> (8) provide that under the WestConnect regional transmission planning process, a successor organization may take over compilation of base case data from WECC;<sup>326</sup> (9) insert the word "local" where appropriate;<sup>327</sup> (10) make minor changes to promote clarity, accuracy and readability

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<sup>318</sup> *Id.* P 398.

<sup>319</sup> Nevada Power Co. OATT, Attachment K, § II.F.

<sup>320</sup> *Id.* §§ II.A.2 and II.A.3.ii.

<sup>321</sup> NV Energy Transmittal Letter at 19-20; Nevada Power Co. OATT, Attachment K, § III.

<sup>322</sup> Nevada Power Co. OATT, Attachment K, § II.B.2.i.ii.

<sup>323</sup> *Id.* § II.A.2.a.

<sup>324</sup> *Id.* § II.A.4.c.

<sup>325</sup> *Id.* § II.A.4.d.ii.

<sup>326</sup> *Id.* § II.A.4.e.ii.

<sup>327</sup> NV Energy Transmittal Letter at 20.

within the context of the substantive changes made to comply with Order No. 1000;<sup>328</sup> and (11) replace all references to “NV Energy, Inc. Operating Companies” with “NV Energy” to reflect the merger of its operating companies into a single jurisdictional utility.<sup>329</sup>

160. We find that Filing Parties’ proposals, described above, comply with the directives of the Second Compliance Order.

The Commission orders:

(A) The requests for rehearing and clarification are hereby denied, as discussed in the body of this order.

(B) Filing Parties’ respective compliance filings are hereby accepted, effective January 1, 2015, subject to further compliance filings, as discussed in the body of this order.

(C) Filing Parties are hereby directed to submit, within 30 days of the date of issuance of this order, further compliance filings, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>328</sup> *Id.* at 21.

<sup>329</sup> *Id.*