



At a special meeting on May 13, 2024, the Federal Energy Regulatory Commission (FERC) issued two eagerly awaited final rules regarding transmission reform.

The first rule, Order No. 1920,[\[1\]](#) mandates changes to the regional and local transmission planning and cost allocation practices of all public utility transmission providers in the United States. Order No. 1920 requires transmission providers to conduct long-term regional transmission planning and consider multiple economic and reliability benefits in selecting projects but does not require transmission providers to obtain state support for cost allocation or restoring a broad conditional right of first refusal (ROFR) for incumbent utilities. Transmission providers must file compliance filings (1) within 10 months of the effective date of Order No. 1920, which will be 60 days after publication in the *Federal Register*, to revise their open access transmission tariffs (OATTs) to reflect the regional transmission planning requirements; and (2) within 12 months of Order No. 1920's effective

date, to revise their OATTs to demonstrate that they meet the interregional transmission coordination requirements adopted in the final rule.

The second rule, Order No. 1977,^[2] amends FERC's regulations governing applications for permits to site electric transmission facilities under Section 216 of the Federal Power Act, as amended by the Infrastructure Investment and Jobs Act (IIJA) of 2021. However, FERC declined to eliminate the existing policy of a one-year delay between the filing of the relevant state siting applications and the commencement of FERC's pre-filing process, which would have allowed simultaneous processing. Order No. 1977 is effective 60 days after publication in the *Federal Register*.

Order No. 1920 and Order No. 1977 reflect significant reforms to the process for transmission expansion planning, siting, and cost allocation and follow on the heels of Order No. 2023, which was issued last year and reforms the interconnection process. However, the success of these reforms in spurring development of regional and interregional transmission solutions will likely depend on the way the reforms are incorporated into individual compliance filings. Moreover, the FERC that will review those compliance filings will have a significantly different composition from the one that issued these rules—Commissioner Allison Clements' (who, with Chairman Willie Phillips, formed the majority voting for Order No. 1920) term expires at the end of June 2024, and three nominations for new commissioners are progressing through the Senate confirmation process. It remains to be seen how FERC, on a case-by-case basis, will implement these reforms and any material deviations in compliance filings.

Order No. 1920

Order No. 1920 reforms FERC's regional transmission planning and cost allocation requirements, building on Order Nos. 888, 890, and 1000.^[3] The rule was issued on a 2-1 vote, with Commissioner Mark Christie voicing strenuous dissent from several elements of the rule primarily related to state participation in the transmission planning process and cost allocation. At over 1300 pages long, Order No. 1920 includes multiple reforms, but certain notable changes to FERC's regional transmission planning and cost allocation processes include:

- Transmission providers must, among other things, plan ahead at least 20 years using the best available data to develop well-informed projections of long-term transmission needs and long-term regional transmission facilities to meet those needs. *Id.* at PP 40, 344. Transmission providers must reassess and revise this planning at least every five years. *Id.* at P 248.
- Transmission providers must incorporate specific categories of factors that affect long-term transmission needs into their planning:
 1. Federal, federally recognized tribal, state, and local laws and regulations affecting the resource mix and demand.
 2. Federal, federally recognized tribal, state, and local laws and regulations on decarbonization and electrification.
 3. State-approved integrated resource plans and expected supply obligations for load-serving entities.
 4. Trends in fuel costs and in the cost, performance, and availability of generation; electric storage resources; and building and transportation electrification technologies.
 5. Resource retirements.
 6. Generator interconnection requests and withdrawals.
 7. Utility and corporate commitments and federal, federally recognized tribal, state, and local policy goals that affect long-term transmission needs. *Id.* at P 409.
- Transmission providers must also measure and use seven enumerated economic and reliability benefits for the evaluation and selection of long-term regional transmission facilities:

1. Avoided or deferred reliability transmission facilities and aging infrastructure replacement.
 2. A benefit that can be characterized and measured as either reduced loss of load probability or reduced planning reserve margin.
 3. Production cost savings.
 4. Reduced transmission energy losses.
 5. Reduced congestion due to transmission outages.
 6. Mitigation of extreme weather events and unexpected system conditions.
 7. Capacity cost benefits from reduced peak energy losses. *Id.* at P 720.
- Transmission providers must include in their OATTs an evaluation process, including selection criteria, that they will use to identify and evaluate long-term regional transmission facilities for potential selection to address long-term transmission needs. *Id.* at P 911.
 - Transmission providers must file one or more *ex-ante* cost allocation methods that apply to selected long-term regional transmission facilities. *Id.* at P 1291. Transmission providers must also hold a six-month engagement period during which they must provide a forum for negotiation of a long-term regional transmission cost allocation method(s) and/or a state agreement process that enables meaningful participation by relevant state entities. *Id.* at P 1354. However, Order No. 1920 does not require transmission providers to adopt a state agreement process, wherein relevant state entities agree to such a state agreement process that would provide up to six months after selection for its participants to determine, and transmission providers to file, a cost allocation method for specific long-term regional transmission facilities. *Id.* at P 5.
 - Transmission providers must also include in their OATTs provisions to reevaluate previously selected long-term regional transmission facilities in certain circumstances. *Id.* at P 231. Transmission providers must also evaluate for potential selection in their existing Order No. 1000 regional transmission planning processes regional transmission facilities that will address certain identified interconnection-related transmission needs associated with certain interconnection-related network upgrades originally identified through the generator interconnection process. *Id.* at P 7.
 - Transmission providers in each transmission planning region must more fully consider the alternative transmission technologies of dynamic line ratings, advanced power flow control devices, advanced conductors, and transmission switching in long-term regional transmission planning and existing Order No. 1000 regional transmission planning and cost allocation processes. *Id.* at P 8. This requirement is intended to provide a boost for grid-enhancing technologies that may increase the transmission capability of existing facilities at a lower cost than building new transmission lines.
 - Transmission providers must adopt enhanced transparency requirements for local transmission planning processes and improve coordination between regional and local transmission planning with the aim of identifying potential opportunities to "right-size" replacement transmission facilities. *Id.* at P 10. This requirement addresses the frequently raised concern that too much transmission planning is happening at a local level within a single utility footprint, at the expense of regional or interregional options that may be more efficient or provide greater benefits.
 - The final rule declined to adopt a proposal to establish a conditional ROFR based on joint ownership. *Id.* at P 9. However, FERC established a ROFR for a right-sized replacement transmission facility that is selected to meet long-term transmission needs. This ROFR will apply to the transmission provider that included in its in-kind replacement estimate the existing transmission facility that the right-sized replacement transmission facility would replace and extends to any portion of the right-sized replacement facility located within that transmission provider's retail distribution service territory or footprint. *Id.* at P 1702.
 - The final rule also does not adopt a proposal to limit the availability of a construction work in progress (CWIP) incentive. *Id.* at P 1547.

In voting in favor of Order No. 1920, Chairman Phillips celebrated Order No. 1920's inclusion of provisions that protect the rights of states, and Commissioner Clements argued that the state input provided in Order No. 1920 gives states an appropriate seat at the table for regional transmission planning purposes. Commissioner Christie voted against Order No. 1920, dissenting on several grounds. He argued that the final rule made many fundamental changes to the proposed rule and that FERC should have issued a second notice of proposed rulemaking (NOPR) to satisfy due process.^[4] He also argued that Order No. 1920 transfers wealth from consumers to developers, that the rule serves political and corporate agendas, that the rule violates the major questions doctrine, that it guts the states' role with respect to the selection criteria, that it harms consumers by retaining CWIP incentives, and that the rule was overall about planning policy rather than planning transmission.^[5] He characterized the rule as a "shell game . . . to enable the costs of corporate and public policy-driven projects to be socialized across an entire multi-state region and thus shifted onto consumers in states that never agreed to bear such costs." *Id.* at P 9. It is likely that FERC will receive requests for rehearing and ultimately petitions for review to the appellate courts along these lines.

Order No. 1977

Unlike Order No. 1920, Order No. 1977 was issued with unanimous support from all three commissioners. Order No. 1977 amends FERC's "regulations governing applications for permits to site electric transmission facilities to ensure consistency with the IJIA's amendments to FPA Section 216, to modernize certain regulatory requirements, and to incorporate other updates and clarifications to provide for the efficient and timely review of permit applications."^[6] Notably, Order No. 1977 introduces an applicant code of conduct. *Id.* at P 73. The applicant may demonstrate it has made good faith efforts to engage with landowners early in the applicable planning process as required by Section 216(e)(1). *Id.* at PP 75–76. The applicant code of conduct includes record-keeping and information-sharing requirements for engagement with affected landowners, as well as general prohibitions against misconduct. *Id.* at PP 84, 204. The rule allows for alternative methods of demonstrating that an applicant meets the good faith efforts statutory standards. *Id.* at P 74.

Order No. 1977 updates and clarifies the environmental information required for existing applicant-prepared resource reports and includes three new resource reports in which applicants must provide information regarding a proposed project's impacts on air quality and environmental noise, on environmental justice communities, and on tribal resources. *Id.* at PP 307–308. Order No. 1977 also requires applicants to develop engagement plans that describe completed and planned outreach to environmental justice communities and tribes. *Id.* at P 163.

However, Order No. 1977 declines to adopt the NOPR proposal to eliminate the existing policy of a one-year delay between the filing of the relevant state siting applications and the commencement of FERC's pre-filing process, which would have allowed simultaneous processing. *Id.* at PP 53–54. Commissioner Christie was enthusiastic about restoring the provision that FERC's pre-filing process will not commence until one year after the state applications have been filed. Commissioner Clements hesitantly approved this provision over concerns that this decision will further delay the already long transmission planning process. Yet, she noted appreciation for the rule's provision for collaboration with the states.

Endnotes

[1] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 (May 13, 2024) (Order No. 1920).

[2] *Applications for Permits to Site Interstate Electric Transmission Facilities*, Order No. 1977, 187 FERC ¶ 61,609 (May 13, 2024) (Order No. 1977).

[3] Order No. 1920 at P 261.

[4] *Id.* at P 22 (Christie, Comm'r, dissenting).

[5] *Id.* at PP 4, 16, 17, 30, 72, 102.

[6] Order No. 1977 at P 1.

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