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Federal Energy Regulatory Commission Addresses Requests for Rehearing of Major Transmission Planning Rule

On November 21, the Federal Energy Regulatory Commission (the Commission) issued Order No. 1920-A, an Order on Rehearing and Clarification of Order No. 1920 in Docket No. RM21-17-001.^[1] Order No. 1920-A addresses the numerous arguments raised in requests for rehearing of Order No. 1920, which is a landmark transmission planning and cost allocation final rule issued by the Commission on May 13.^[2] There were 49 timely filed requests for rehearing and/or clarification of Order No. 1920, with multiple appeals filed in federal circuit courts across the country.^[3] In response, in Order No. 1920-A, the Commission largely upheld its findings and the requirements of Order No. 1920 and provided a lengthy legal analysis justifying its authority and decision-making. The Commission did set aside and clarify certain key features of Order No. 1920, especially regarding the role of the states in long-term regional transmission planning (LTRTP) and cost allocation. The changes and further justifications provided in Order 1920-A will strengthen support by the states and diminish the likelihood of success of any appeals seeking to undo Order No. 1920. Specifically, Order No. 1920-A:

- Enhances the role of the states, which was heavily criticized as insufficient in Order No. 1920. The Order:
 - Requires Transmission Providers to incorporate state input into future scenarios used in LTRTP.
 - Requires Transmission Providers to include in compliance filings the state(s)' proposal for transmission cost allocation, even if the Transmission Provider has a different proposal, and clarifies that in the compliance filing proceeding, both cost allocation proposals will be considered and determinations about them will be made based on the entire record.
 - Clarifies that, if Relevant State Entities request additional time to complete cost allocation discussions, the Engagement Period for doing so can be extended (which could also extend the Order No. 1920 compliance deadline).
 - Mandates that Transmission Providers consult with Relevant State Entities before amending their Long-Term Regional Transmission cost allocation method or state agreement process on file with the Commission.
 - Clarifies that while Transmission Providers must develop three Long-Term Scenarios as part of the LTRTP that meet the requirements of Order No. 1920, they may develop additional scenarios to provide Relevant State Entities with information for a cost allocation method or state agreement approach.
- Sets aside the requirement to incorporate corporate commitments from Factor Category Seven in each required Long-Term Scenario.^[4]
- Specifies that Transmission Providers are not required to use the set of seven required benefits to help inform their identification of Long-Term Transmission Needs.

- Modifies the timeline for the first LTRTP cycle and requires Transmission Providers to propose a date, no later than two years from the date on which compliance filings are due, to commence the first LTRTP cycle. In Order No. 1920, the requirement was one year.

The Commission's Order No. 1920 set forth major reforms to transmission planning and cost allocation, with a focus on long-term transmission planning (i.e., a minimum 20-year planning horizon) performed on a comprehensive regional basis. The reforms were predicated on the Commission's findings that, in the absence of LTRTP, transmission facilities would be developed in a less cost-effective or efficient manner, resulting in unjust, unreasonable, and unduly discriminatory or preferential rates, terms and conditions for transmission service.^[5]

To remedy this deficiency, Order No. 1920 required Transmission Providers to engage in LTRTP to identify Long-Term Transmission Needs and transmission facilities that meet such needs, to measure the benefits of those transmission facilities, and to evaluate those transmission facilities for potential selection in a regional transmission plan. Neither Order No. 1920 nor Order No. 1920-A require substantive outcomes or the building of any transmission facilities. Order No. 1920 adopted requirements for how Transmission Providers must conduct the LTRTP using Long-Term Scenarios and seven specific categories of factors to develop those scenarios. Further, Order No. 1920 required Transmission Providers to, among other things, provide for some level of state participation in the LTRTP scenario development as well as the cost allocation for transmission that is developed as a result of the process. Rehearing requests strongly objected to Order No. 1920 as not going far enough in giving the states the ability to influence both the planning and the cost allocation in the LTRTP. A strong focus in Order No. 1920-A is to address these criticisms and provide for a stronger role for the states.

While the Commission made some significant modifications to Order No. 1920 to accommodate requests from the states, Order No. 1920-A does not reflect a large departure from the LTRTP framework established as part of Order No. 1920. Order No. 1920-A also does not reverse course on the Commission's decisions in Order No. 1920 regarding local transmission planning transparency requirements and right-sizing replacement transmission. The Commission also affirms its decisions not to address in this proceeding some other important transmission-related topics, including rate treatment for construction work in progress and the federal right of first refusal in the development of transmission facilities. Finally, the Commission provided additional support regarding the legal basis for its authority to issue a rule as sweeping as Order No. 1920, an apparent attempt to strengthen the record for the pending appellate process.

Commissioner Christie, previously a strong opponent of Order No. 1920, issued a separate statement concurring, in part, with Order No. 1920-A, finding that the modifications to the final rule give states more effective tools to protect their customers and their own interests. Notably, Commissioner Christie expressed support for the several changes made in Order No. 1920-A that broaden the role of states in the compliance process. These changes grant states greater flexibility to contribute input and agree to key processes, including cost allocation proposals, state agreement processes and *ex ante* formulae development.

Day Pitney will provide a more detailed analysis of Order No. 1920-A and its potential impacts on stakeholders soon. [Day Pitney's energy and utilities advisories are available here.](#)

[1] Order No. 1920-A is available [here](#).

[2] Order No. 1920 is available [here](#).

[3] On August 8, the Judicial Panel on Multidistrict Litigation randomly selected the U.S. Court of Appeals for the Fourth Circuit as the venue in which to consolidate the petitions for review of Order No. 1920. *See Advanced Energy United, Inc., et al. v. FERC*, Fourth Circuit, Case No. 24-1785.

[4] The factor categories are those that Transmission Providers must incorporate into the development of Long-Term Scenarios. Factor Category 7 in Order No. 1920 was "utility and corporate commitments and federal, federally-recognized Tribal, state, and local policy goals that affect Long-Term Transmission Needs."

[5] Please see [Day Pitney Advisory on Order No. 1920](#).

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