

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Public Service Company of Colorado	)	Docket No. ER13-75-001
	)	Docket No. ER13-75-003
	)	Docket No. ER13-75-005
Tucson Electric Power Company	)	Docket No. ER13-77-001
	)	Docket No. ER13-77-002
	)	Docket No. ER13-77-003
UNS Electric, Inc.	)	Docket No. ER13-78-001
	)	Docket No. ER13-78-002
	)	Docket No. ER13-78-003
Public Service Company of New Mexico	)	Docket No. ER13-79-001
	)	Docket No. ER13-79-002
	)	Docket No. ER13-79-003
Arizona Public Service Company	)	Docket No. ER13-82-001
	)	Docket No. ER13-82-002
	)	Docket No. ER13-82-003
El Paso Electric Company	)	Docket No. ER13-91-001
	)	Docket No. ER13-91-002
	)	Docket No. ER13-91-003
Black Hills Power, Inc.	)	Docket No. ER13-96-001
	)	Docket No. ER13-96-002
	)	Docket No. ER13-96-003
Black Hills Colorado Electric Utility Company	)	Docket No. ER13-97-001
	)	Docket No. ER13-97-002
	)	Docket No. ER13-97-003
NV Energy, Inc.	)	Docket No. ER13-105-001
	)	Docket No. ER13-105-002
	)	Docket No. ER13-105-003
Cheyenne Light, Fuel and Power Company	)	Docket No. ER13-120-001
	)	Docket No. ER13-120-002
	)	Docket No. ER13-120-003

**REQUEST FOR REHEARING,
OR IN THE ALTERNATIVE REQUEST FOR CLARIFICATION,
OF THE WESTCONNECT PUBLIC UTILITY TRANSMISSION PROVIDERS**

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**REQUEST FOR REHEARING,
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Pursuant to Section 313 of the Federal Power Act, 16 U.S.C. § 8251 (“FPA” or “Act”), and Rule 713 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2014), the jurisdictional transmission owning members of the WestConnect Order No. 1000 planning region—Arizona Public Service Company; Black Hills Power, Inc.: Black Hills Colorado Electric Utility Company, LP; Cheyenne Light, Fuel and Power Company; El Paso Electric Company; Sierra Pacific Power Company, d/b/a NV Energy and Nevada Power Company, d/b/a NV Energy; Public Service Company of Colorado; Public Service Company of New Mexico; Tucson Electric Power Company; and UNS Electric, Inc., (collectively, the “Jurisdictional Utilities” or “Filing Parties”)—hereby submit this Request for Rehearing and Clarification of the Order On Compliance Filings issued September 18, 2014¹ in the above-captioned proceedings. The September Order addressed the filings made by the Jurisdictional Utilities on September 20, 2013 in compliance with Order No. 1000² (“September 2013 Compliance Filing”). The Filing Parties seek rehearing, or in the alternative clarification, of the September Order, which directed the removal of one paragraph of tariff language proposed in the September 2013 Compliance Filing, even though the proposed tariff language was developed in consultation with the affected non-jurisdictional utilities. The Filing Parties simply seek to preserve the carefully crafted solution, or in the alternative seek Commission clarification

¹ *Public Serv. Co. of Colo.*, 148 FERC ¶ 61,213 (2014) (“September Order”).

² *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*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. South Carolina Pub. Serv. Auth. v. FERC*, No. 12-1232, 2014 WL 3973116 (D.C. Cir. Aug. 15, 2014).

regarding submission of an alternative mechanism in the further compliance filing required by the September Order.

SPECIFICATIONS OF ERROR

The Commission erred in directing the removal of the eligibility criteria under which projects shown to produce quantifiable benefits to entities not enrolled in the region were ineligible for Order No. 1000 cost allocation. There are many reasons why this directive is in error:

1. This directive is an unexplained change from the requirements of Order No. 1000 because it seeks to remove the criteria imposed *for the very purpose of complying with Order No. 1000's directive to prevent free ridership*.
2. This directive violates the cost causation principle that “costs are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.”
3. This directive violates the FPA because it does not produce just and reasonable rates for interstate transmission services, and, therefore, does not satisfy the ratemaking requirements of Sections 205 and 206 of the Act.

STATEMENT OF ISSUES

- A. Whether the Commission acted in an arbitrary and capricious manner, 5 U.S.C. § 706(2)(A), by eliminating cost allocation eligibility criteria that served the purpose of protecting against free ridership, which directive marks a substantial unexplained change from the requirements of Order No. 1000?

Yes. *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 41-42 (1983) (“*State Farm*”); *see also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 355-56 (1989) (an agency’s new position only receives deference from the courts if “there appears to have been good reason for the change”). An agency must provide a reasoned explanation for its decision-making. *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985); *State Farm*, 463 U.S. at 48-49; *Exxon Co. U.S.A. v. FERC*, 182 F.3d 30, 42 (D.C. Cir. 1999).

The Commission’s action also violates the Administrative Procedure Act because the change was made without prior notice and an opportunity for comment. 5 U.S.C. Chapter 5; *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974); *Action on Smoking and Health v. Civil Aeronautics Board*, 713 F.2d 795, 798-801 (D.C. Cir. 1983). *See also Am. Fed’n of Gov’t Employees v. NLRB*, 777 F.2d 751, 759 (D.C. Cir. 1985).

- B. Whether the Commission acted contrary to law, 5 U.S.C. § 706(2)(C), by mandating cost allocations inconsistent with the cost causation principle in circumstances where an

unenrolled transmission owner beneficiary within the WestConnect region would receive benefits from a proposed project but rejects its share of the costs of the transmission facility.

Yes. Costs “are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.” *Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007) (“*Nat’l Ass’n of Regulatory Util. Comm’rs*”). Those allocations of costs must be “at least roughly commensurate” with the benefits received. *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009).

C. Whether the Commission acted contrary to law, 5 U.S.C. § 706(2)(C), and in violation of the FPA in directing the removal of eligibility criteria that served to protect against free ridership?

Yes. The Commission’s directive violates the cost causation principle that “costs are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.” *Nat’l Ass’n of Regulatory Util. Comm’rs* at 1285. It also violates the FPA by removing cost allocation eligibility criteria that served the important purpose of producing just and reasonable ratemaking under Sections 205 and 206 of the Act. 16 U.S.C. § 824d-e.

ARGUMENT

The Filing Parties respectfully request rehearing of the September Order with respect to the following:

In its September Order in these proceedings, the Commission directed the removal of the categorical exclusion from potential eligibility for Order No. 1000 cost allocation of those projects that electrically interconnect with, or provide quantifiable benefits to, an entity not enrolled in the WestConnect region, including the unenrolled non-public utility transmission owners entities participating in the region as Coordinating Transmission Owners.³ In conjunction with this directive, the Commission instructed the Filing Parties to develop a process under which Coordinating Transmission Owners identified as beneficiaries of a transmission project proposed for selection in the regional transmission plan for purposes of Order No. 1000

³ September Order at P 56.

cost allocation would advise enrolled transmission providers whether the Coordinating Transmission Owner(s) would accept its share of the costs of the transmission project.⁴

In presenting this request for rehearing, the Filing Parties object to the legal error embedded in the September Order that appears to strip from the Filing Parties' tariffs a key component of the region's cost allocation method that protected against free ridership and ensured that any regional cost allocations are consistent with cost causation. Unless the Commission's directive is withdrawn, the WestConnect region will be exposed to free ridership in contravention of Order No. 1000 and the just and reasonable standard of the FPA, which requires that costs be allocated to beneficiaries roughly commensurate with the benefits they receive.

A. The Concerns Presented by the Commission's Directive

In its September Order, the Commission rejected the Jurisdictional Utilities' September 2013 Compliance Filing proposal to exclude from regional cost allocation any proposed project that would benefit a non-jurisdictional utility participating in WestConnect regional planning, but not enrolled as a transmission owner.⁵ The Jurisdictional Utilities had proposed this as a mechanism to ensure that the only projects eligible for cost allocation are those projects where the identified beneficiaries are also subject to mandatory cost allocation as enrolled transmission owners. Because unenrolled "Coordinating Transmission Owners" as well as transmission owners joining a different WestConnect membership sector are not subject to mandatory cost allocation,⁶ projects from which they would derive benefits would not be eligible for mandatory

⁴ *Id.* at P 57.

⁵ *Id.* at P 56.

⁶ September 20 Transmittal Letter at 5 ("Transmission owners that do not enroll in the region are allowed to participate in the regional process in the same way as enrolled transmission owners in every aspect *except* Order No. 1000 regional cost allocation . . .").

cost allocation.⁷ The Jurisdictional Utilities' September 2013 Compliance Filing had included the following language:

A project that . . . is demonstrated to provide quantifiable benefits (as such benefits are defined in this Attachment R-PSCo) to a Transmission Owner located within the WestConnect Planning Region, but not enrolled in the WestConnect Planning Region, is not eligible for regional cost allocation. Similarly, a project that . . . is demonstrated to provide quantifiable benefits (as such benefits are defined in this Attachment R-PSCo) to a Transmission Owner not enrolled in any planning region is not eligible for regional cost allocation.⁸

In the September Order, the Commission rejected any categorical exclusion of such projects from mandatory cost allocation,⁹ and in its place the Commission required the Jurisdictional Utilities to establish a new process for the participation of non-jurisdictional utilities in WestConnect regional planning that would allow a project to go forward towards potential selection for purposes of cost allocation even if the project will provide benefits to an unenrolled transmission owner that declines to accept any costs for that project.

Under the Commission's September Order, if a non-jurisdictional transmission owner participates in WestConnect Order No. 1000 regional planning as an unenrolled Coordinating Transmission Owner,¹⁰ WestConnect should identify whether that Coordinating Transmission Owner would benefit from a project proposed for selection in the regional planning process for purposes of cost allocation and would therefore be allocated costs under the WestConnect Order

⁷ September 20 Transmittal Letter at 6 ("Order No. 1000 cost allocation in the WestConnect Planning Region would not be applicable to any proposed project that is shown through the WestConnect study process to provide quantifiable benefits . . . to a Coordinating Transmission Owner, or to any other transmission owner not enrolled in any region.").

⁸ See, e.g., Proposed Attachment R-PSCo § VI.B.

⁹ September Order at P 56.

¹⁰ This also applies to non-jurisdictional utility transmission owners who join a WestConnect membership sector other than the Transmission Owners with Load Serving Obligation sector. For simplicity, such transmission owners will not be discussed separately.

No. 1000 cost allocation methodology.¹¹ If so, the Coordinating Transmission Owner must decide whether it will accept those costs.¹² If the Coordinating Transmission Owner declines to accept those costs and the project “otherwise satisfies the region’s evaluation metrics,” the project still would be eligible for selection in the regional plan for purposes of cost allocation, leaving the impression that the project developer would still be entitled to mandatory cost allocation for that project.¹³ It is this discrete aspect of the September Order that is triggering the need for rehearing or clarification.

The Filing Parties understand the rationale behind providing an unenrolled non-public utility beneficiary an opportunity to indicate whether or not it will accept a project’s cost allocation share. But when the Commission states in the September Order that “[t]o the extent a transmission project otherwise satisfies the region’s evaluation metrics, that project should not be categorically excluded from potential selection in the regional transmission plan for purposes of cost allocation simply because the facility interconnects with or provides benefits to a transmission owner that is not enrolled in the WestConnect region,”¹⁴ the September Order appears to direct the remaining beneficiaries to shoulder the share of project costs that otherwise would have gone to the beneficiary(ies) that declined such costs, as long as these added costs do not result in allocations that exceed the region’s benefit/cost ratio. Is this what the Commission intends?

For example, under the WestConnect regional planning process, an economic project may be a more efficient or cost-effective solution to a regional need for multiple jurisdictional

¹¹ September Order at P 57.

¹² *Id.*

¹³ *Id.* at P 56.

¹⁴ *Id.* at P 32.

utilities enrolled in the WestConnect region, as well as several Coordinating Transmission Owners.¹⁵ If one of those Coordinating Transmission Owners determines not to accept the allocation of costs resulting from the application of the WestConnect cost allocation methodology, as would be their right under the Commission’s directive,¹⁶ the September Order appears to direct that WestConnect must reallocate the costs among the remaining beneficiaries.¹⁷ Then, so long as the other requirements of the WestConnect cost allocation methodology are met, the costs allocated to the enrolled WestConnect transmission owners and remaining Coordinating Transmission Owners would be binding. The cost of the project would be the same, but the total costs allocated to each entity would increase because the same costs must be borne by fewer entities—and the Coordinating Transmission Owner that decided not to accept the cost allocation would still achieve significant benefits because it would still benefit from congestion relief in the form of production cost savings and reductions in reserve sharing requirements.¹⁸ That Coordinating Transmission Owner would have “caused” a portion of the costs for that project,¹⁹ but would not bear any costs.

Similarly, a project driven by a public policy requirement might proceed to mandatory cost allocation, even if one of the Coordinating Transmission Owner beneficiaries identified as benefitting from the project declined to accept the proposed allocation of costs. That would not

¹⁵ See Attachment R-PSCo § VI.B.2.

¹⁶ September Order at P 57.

¹⁷ *Id.* at P 56.

¹⁸ This receipt of benefits is due to the nature of the integrated electric transmission system. As the D.C. Circuit recently concluded, “[t]he physics of electrical transmission supports the Commission’s conclusion that even transmission providers distant from new transmission facilities . . . may benefit from those new facilities.” *S.C. Pub. Serv. Auth. v. FERC*, Case No. 12-1232, slip op. at 74 (D.C. Cir. Aug. 15, 2014); see also Order No. 1000-A, 139 FERC ¶ 61,132 at P 561.

¹⁹ “To the extent that a utility benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed.” *Ill. Commerce Comm’n*, 576 F.3d at 476.

deprive that Coordinating Transmission Owner of the public policy benefits achieved by the project. The benefits of the project will stay with the Coordinating Transmission Owner and will still be realized such as through the satisfaction of renewable energy requirements. However, that Coordinating Transmission Owner will pay *no costs* to achieve those savings.

B. The September Order Is Inconsistent with Order No. 1000's Guidance on Free Ridership

As written, the Commission's directive creates free ridership and is therefore inconsistent with Order No. 1000.

The Commission defines free riders this way:

[F]ree riders for purposes of Order No. 1000 are entities who do not bear cost responsibility for benefits that 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.²⁰

The Commission explained that it is seeking to eliminate free riders with its Order No. 1000 reforms:

Indeed, in seeking to eliminate free riders on the transmission grid, 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.²¹

This key element of Order No. 1000 cannot be reconciled with the September Order's removal of the WestConnect region's sole method of protection against free ridership, which was reflected in the tariff language quoted above.

To the extent the Commission now believes that it is necessary and appropriate for Order No. 1000 cost allocation to be imposed in situations where some, but not all, beneficiaries of a transmission project are allocated project costs (or, even worse, where one beneficiary's cost

²⁰ Order No. 1000-A at P 576.

²¹ Order No. 1000-A at P 578.

share is to be *re-allocated to another*), the Commission’s decision not only violates Order No. 1000, but would be arbitrary and capricious because it lacks a rational connection between the action directed (the removal of the region’s only protection against free ridership) and the goal to be achieved (compliance with Order No. 1000).²² In addition, this new policy is unexplained,²³ and rendered without a new notice and comment period as required by the Administrative Procedure Act.²⁴ The Commission should therefore grant rehearing and withdraw the directive requiring the Jurisdictional Utilities to move forward with projects where some of the unenrolled transmission-owning beneficiaries decline the cost allocation.

C. The Commission’s Order Would Result In Cost Allocations Inconsistent with the Cost Causation Principle

The Commission should also grant rehearing because its directive violates the cost causation principle and therefore would create rates that are unjust and unreasonable.²⁵ If a project is developed after an unenrolled transmission owner declines the allocation of costs, that unenrolled transmission owner would still receive the quantifiable benefits identified through the WestConnect regional planning process, but would not need to pay *any* of the costs for that project.²⁶ This violates the long-standing cost causation principle that requires that costs “be

²² *State Farm*, 463 U.S. at 48-49; *Exxon Co. U.S.A.*, 182 F.3d at 42.

²³ *See State Farm*, 463 U.S. at 41-42; *Robertson*, 490 U.S. at 355-56.

²⁴ While an agency ordinarily has considerable discretion under the APA whether to formulate policy by rulemaking or adjudication, *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974), once it adopts a policy through notice and comment rulemaking, the agency can only amend or repeal its rule or policy through the same notice and comment procedure. *Action on Smoking and Health v. Civil Aeronautics Board*, 713 F.2d at 798-801. *See also Am. Fed’n of Gov’t Employees*, 777 F.2d at 759.

²⁵ *See* Order No. 1000 at P 487.

²⁶ Indeed, a key part of the Commission’s justification for Order No. 1000’s cost allocation requirements is that benefits flow where they flow, independent of whether commercial arrangements exist between the developer and the beneficiary. *S.C. Pub. Serv. Auth.*, Case No. 12-1232, slip op. at 75 (explaining that “an entity that uses part of the transmission grid may obtain benefits from improvements to an expansion of transmission facilities on another part of that grid, regardless of whether that entity has a contract for service on the improved part of the grid”).

allocated to those who cause the costs to be incurred and reap the resulting benefits”²⁷ and that those allocations of costs be “at least roughly commensurate” with the benefits received.²⁸ As the D.C. Circuit concluded in upholding Order No. 1000’s cost allocation reforms, Order No. 1000 “requires transmission providers to devise methods for allocating the costs of certain new transmission facilities to those entities that benefit from them,”²⁹ and the adoption of this “beneficiary-based cost allocation method is a logical extension of the cost causation principle.”³⁰

A violation of the cost causation principle, which Order No. 1000 described as “the foundation of an acceptable cost allocation method,”³¹ is the unavoidable result of the Commission’s directive in the September Order, because any reallocation of costs among a smaller group than the group of jurisdictional and non-jurisdictional utilities that receive benefits from a project will result in certain utilities not paying any costs for the benefits they will receive, which does not approach an allocation of costs “roughly commensurate” with benefits. If the allocation of costs is mandatory, as the Commission insists it must be,³² the apportionment of costs among identified beneficiaries must also ensure that costs are allocated “in a manner which reflects cost incurrence.”³³

In a region such as WestConnect, with its proportionately high number of non-jurisdictional utility planning members, the Filing Parties sought in their September 2013

²⁷ *Nat’l Ass’n of Regulatory Util. Comm’rs*, 475 F.3d at 1285.

²⁸ *Ill. Commerce Comm’n*, 576 F.3d at 477.

²⁹ *S.C. Pub. Serv. Auth.*, Case No. 12-1232, slip op. at 68.

³⁰ *Id.*, slip op. at 74.

³¹ Order No. 1000 at P 626.

³² September Order at P 334 (“[C]ost allocation determinations for transmission projects selected in the regional transmission plan for purposes of cost allocation must be binding.”).

³³ *Utah Power & Light Co.*, 14 FERC ¶ 61,162 at 61,298 (1981).

Compliance Filing to reconcile the two conflicting legal principles present (the restrictions on Commission’s jurisdiction over non-public utilities and the FPA’s cost causation principle) by crafting project eligibility criteria that respected both principles simultaneously, allowing projects that honored both principles to advance to potential selection for Order No. 1000 cost allocation. The September Order respects the jurisdictional reach principle, at the expense of eliminating the region’s adherence to the FPA’s cost causation principle.

The September Order fails to square its requirement that mandatory cost allocation be imposed for a transmission project even though one or more of the beneficiaries of that project will bear no costs for those benefits with the cost causation requirement that FERC “must allocate costs in a manner which reflects cost incurrence”³⁴ and therefore, “[a]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them.”³⁵ FERC’s long-standing requirement is that costs must flow to the customers that cause the utility to incur those costs.³⁶ The courts have upheld this as foundational to the establishment of just and reasonable rates.³⁷ Compliance with the cost causation principle is evaluated “by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.”³⁸

Although the allocation need not be made with “exacting precision,” the calculation must provide for the assignment of costs “roughly commensurate” with the identified benefits, and FERC must provide an “articulable and plausible reason to believe that the benefits are at least

³⁴ *Id.*

³⁵ *Ill. Commerce Comm’n*, 576 F.3d 470 at 476.

³⁶ *Ky. Utils. Co.*, 15 FERC ¶ 61,222 at 61,505 (1981) (“Cost allocation is simply an attempt to spread costs among various customer classes on the basis of a factor that is closely correlated with the incurrence of costs.”).

³⁷ *Nat’l Ass’n of Regulatory Util. Comm’rs*, 475 F.3d at 1285.

³⁸ *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368-69 (D.C. Cir. 2004). As the DC Circuit explained in ruling on FERC’s restructuring of the gas pipeline industry, “[t]here is no ‘neutral’ or inherently ‘fair’ allocation of fixed costs, as the history of rate design amply demonstrates. . . . [T]here is no ‘fair’ baseline from which to judge a particular cost allocation scheme.” *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1171-72 (D.C. Cir. 1996).

roughly commensurate” with the costs allocated.³⁹ To meet this standard, the Commission must at least be able to articulate a reason for quantifying the benefits and costs and concluding why those costs have been allocated in a manner roughly commensurate with the benefits received by the customers paying the costs.⁴⁰ The Commission has not done so here. Instead, the Commission has imposed a process that could require WestConnect to impose mandatory cost allocation on a smaller group of utilities than the utilities that receive significant, quantifiable benefits from a project. FERC cites no case law for the proposition that providing benefits to a customer while at the same time charging zero costs for those benefits is at all consistent with cost causation. Nevertheless, that is the principle that the September Order advances.

Because the directive to proceed with mandatory cost allocation when an unenrolled Coordinating Transmission Owner receives quantifiable benefits but is unwilling to pay any costs is inconsistent with cost causation, the Commission should grant rehearing and permit the Jurisdictional Utilities to exclude from mandatory Order No. 1000 cost allocation any proposed project that provides quantifiable benefits to a Coordinating Transmission Owner that rejects the allocation of costs for that project.

It is essential that the Commission address this issue and grant rehearing at this time because failure to do so will likely guarantee future challenges to WestConnect’s cost allocations on cost causation grounds. Without a change in the Commission’s directive (or a clarification by the Commission that it is not directing a re-assignment of declined costs upon the remaining beneficiaries), if WestConnect does select a project in the regional plan for purposes of cost allocation despite a Coordinating Transmission Owner declining to accept its portion of costs

³⁹ *Ill. Commerce Comm’n*, 576 F.3d 470 at 477.

⁴⁰ *Ill. Commerce Comm’n v. FERC*, Case Nos. 13-1674 et al., slip op. at 11 (7th Cir. June 25, 2014) (requiring at least “an attempt at empirical justification”).

associated with its benefits, those cost allocations may be subject to extensive litigation on cost causation grounds, undermining the likelihood that the project may advance to completion. The Commission's directive will deter construction of new transmission in the WestConnect region, in direct contrast to the objectives of Order No. 1000.⁴¹

D. The Commission's Order Would Result in Cost Subsidization in Violation of the Just and Reasonable Standard of the FPA

The Commission should also grant rehearing because without an eligibility criteria to protect against unenrolled non-public utility transmission owners receiving quantifiable benefits at no cost, project costs shown to benefit non-public utilities would be shifted onto the public utility transmission providers in the region and their wholesale and retail customers. This would result in improper subsidization by existing customers of the public utility transmission providers, contrary to the just and reasonable standard of Sections 205 and 206 of the FPA.⁴² The only way to avoid that result would be to permit the utility to avoid the costs entirely if the beneficiaries will not pay for them (and FERC would not require them to do so).

The Commission's Transmission Pricing Policy Statement speaks to the prohibition against improper subsidization:

As the Commission explained in the Transmission Pricing Policy Statement, the prohibition against improper subsidization forbids both improper subsidization by existing customers and improper subsidization by third parties. This basic pricing principle is

⁴¹ Order No. 1000 at P 11.

⁴² For this reason, the Commission's policy has always been to include prudent expenditures that benefit customers in rates. See, e.g., *Pub. Serv. Co. of N.M. v. FERC*, 832 F.2d 1201 (10th Cir. 1987) (citing *Pub. Util. Comm'n v. FERC*, 660 F.2d 821 (D.C.Cir.1981); see also *Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol*, Order No. 500, 52 Fed. Reg. 30,334 at 30,344 (Aug. 14, 1987), III FERC Stats. & Regs. ¶ 30,762 (1987) (subsequent history omitted) (“[T]ransportation customers which were not previously firm sale customers of the pipeline may reasonably be held responsible for volumetric transportation surcharges. Such customers could not realize the benefits of transportation in the absence of this rule. Therefore, it is appropriate for these customers, who benefit from the pipelines’ functioning as transporters, to contribute toward easing the pipelines’ transition from their role as primarily merchants to transporters.”).

consistent with the just and reasonable standard of FPA Sections 205, 206, and 212.⁴³

The free ridership problem is so at odds with the just and reasonable ratemaking standard of the FPA that one cannot have both at the same time. Free ridership does not produce just and reasonable rates. The Commission has said so:

The Commission also concluded that cost allocation cannot be limited to voluntary arrangements because if it were the Commission could not address free rider problems associated with new transmission investment, and it could not ensure that rates, terms and conditions of jurisdictional service are just and reasonable and not unduly discriminatory.⁴⁴

Because the Commission's directive to move forward with mandatory cost allocation even though certain non-public utilities decline to accept the costs commensurate with the benefits that they receive creates free-ridership, the Commission's directive would result in transmission rates that are *per se* unjust and unreasonable. The Commission should therefore grant rehearing and withdraw the directive.

ALTERNATIVE REQUEST FOR CLARIFICATION

To the extent the Commission does not grant rehearing of that directive from its September Order, the Commission should, in the alternative, clarify its directive to permit the Filing Parties to move forward with a process that allows unenrolled non-public utilities to "opt-out" of cost allocations they find inconsistent with their statutory obligations, but also allows for mandatory cost allocation of any project only where all unenrolled non-public utility beneficiaries "opt-in" to accept the identified cost allocation. Such a clarification would permit the Filing Parties to comply with the September Order while also complying with Order No.

⁴³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 599 (2004) (subsequent history omitted).

⁴⁴ Order No. 1000-A at P 527.

1000's requirement that cost allocation methods should eliminate free ridership and be consistent with cost causation.

The right to opt in or out of a cost allocation would apply not only to Coordinating Transmission Owners, but rather to all unenrolled transmission owners participating in WestConnect's Order No. 1000 regional transmission planning process, because any non-public transmission providers are potential beneficiaries of transmission projects seeking Order No. 1000 cost allocation in the region, not only the Coordinating Transmission Owners.

For the WestConnect region, non-public utilities are not limited with respect to which member sector they may join. For example, a non-public utility that does not desire to be a Coordinating Transmission Owner may choose membership in the Transmission Customers sector, or perhaps the Key Interest Group sector. For this reason, the Filing Parties' 2013 Compliance Filing sought to identify, *as ineligible for Order No. 1000 cost allocation*, all transmission projects that were shown to provide quantifiable benefits to *any entity other than an enrolled transmission owner*. The purpose was to identify beneficiaries without regard to which member sector they reside in. The September Order focuses only on non-public utilities that are Coordinating Transmission Owners, thereby giving the appearance that the Commission is unconcerned with the presence of free rider beneficiaries residing in other member sectors. The Commission should therefore clarify that the opt-in, opt-out process required by the September Order applies to all unenrolled non-public utilities.

Thus, the Filing Parties intend to propose a process in which a proposed project providing quantifiable benefits to *any* unenrolled transmission owners (not just Coordinating Transmission Owners) would not automatically be barred for selection in the regional plan for purposes of cost allocation, but instead would be ineligible for Order No. 1000 cost allocation only if one or more

of the unenrolled transmission owner beneficiaries formally decides not to accept the allocated costs for that project. To the extent the Commission does not grant rehearing on the full directive as requested above, the Jurisdictional Utilities respectfully request that the Commission clarify that this alternative approach would be acceptable.

CONCLUSION

For all of the foregoing reasons, the Jurisdictional Utilities respectfully request that the Commission grant rehearing, and conclude that the region's eligibility criteria is necessary and appropriate to protect against free ridership and to allow for just and reasonable ratemaking under the FPA. In the alternative, the Jurisdictional Utilities ask that the Commission clarify that it would be appropriate to develop a process that addresses potential free ridership after unenrolled non-public utility beneficiaries formally decide whether to accept the proposed costs for a project from which they will receive quantifiable benefits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 20th day of October, 2014.

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