

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning and Cost Allocation RM10-23-000
By Transmission Owning and Operating
Public Utilities

NV Energy, Inc. ER13-105-000

**NOTICE OF INTERVENTION AND COMMENTS
OF THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), the Public Utilities Commission of Nevada (“PUCN”) hereby files this Notice of Intervention and Comments in the above-captioned proceedings.¹ By and through its counsel, the PUCN respectfully submits these Comments in response to the Order Nos. 1000 and 1000-A² compliance filings submitted by NV Energy, Inc. (“NV Energy”) on October 11, 2012, pursuant to the Commission’s Notice of Compliance Filings and Notice of Extension of Time.³

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¹ The Commission’s Rule 214(a)(2) provides that a State Commission is a party upon filing a notice of intervention in accordance with Rule 210(b).

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 77 Fed. Reg. 32,184 (May 31, 2012), 139 FERC ¶ 61,132 (2012).

³ Notice of Extension of Time at 3, FERC Docket No. ER13-62-000, *et al.* (Nov. 1, 2012).

The PUCN requests that all correspondence or communications with respect to this proceeding be sent to:

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Concerns with the WestConnect Process

1. The PUCN, staff of other WestConnect state commissions, and staff at WIEB have been working cooperatively to identify shared concerns regarding the WestConnect process, and the PUCN shares the concerns of the other state commissions regarding the lack of coordination, openness and transparency at WestConnect leading up to these WestConnect Order 1000 compliance filings. The PUCN also shares the concerns of the other state commissions regarding this process going forward, including the possibility of closed door “executive sessions” to be held by transmission owners and the problem of the bottom up approach to planning when combined with a voting structure that provides transmission owners with veto power over all WestConnect Planning Management Committee decisions.

2. The PUCN’s concerns center on the failure of the envisioned WestConnect regional planning process to adhere meaningfully to the requirement in Order 1000 that the regional transmission planning process be developed in consultation with

stakeholders.⁴ Order 1000 states that “absent timely and meaningful participation by all stakeholders, the regional transmission planning process will not determine which transmission project or group of transmission projects could satisfy local and regional needs more efficiently or cost-effectively.”⁵ As explained further below, the PUCN is concerned that although the transmission owners and stakeholders are currently participating in discussions to develop the WestConnect regional planning process, the transmission owners are currently empowered to ultimately disregard the input of the stakeholders completely if they so choose. The PUCN is concerned that the outcome may be a regional planning process that complies with the minimum required by Order 1000, without regard to whether the resulting regional plan actually identifies more efficient or cost-effective transmission solutions.

3. Following the effective date of Order 1000, WestConnect formed an Implementation Management Committee (“IMC”) to handle all Order 1000 compliance processes on behalf of the WestConnect member utilities.⁶ The IMC, composed of transmission owners only, will ultimately approve the documents currently being drafted to govern the regional planning process at the new WestConnect Planning Management Committee (“PMC”) – the WestConnect Regional Planning Process Business Practice Manual (“BPM”) and the Planning Participation Agreement (“PPA”).

⁴ Order 1000 at paragraph 151 and footnote 143.

⁵ Order 1000 at paragraph 152.

⁶ See, “WestConnect FERC Order 1000 Overview,” presentation at WestConnect FERC Order 1000 Stakeholder Meeting (February 8, 2012), *available at*: http://westconnect.com/planning_order_1000_stakeholder.php.

4. The PUCN is concerned that although the new PMC will handle all Order 1000-related transmission planning and cost allocation procedures on behalf of WestConnect, the IMC retains the sole authority to approve, disapprove or modify the documents that will ultimately govern the planning process. The new PMC will not even become active until the WestConnect Order 1000 transmission planning and cost allocation processes, as provided in the WestConnect utilities' October 11, 2012 compliance tariff filings, are approved by the Commission.⁷ This timing is important in part because once the new PMC is operating, as the BPM is currently drafted, stakeholders have only limited opportunity to make changes to the regional planning process through formal proposals to modify the BPM that require significant notice.⁸

5. The PUCN is also concerned that after the PMC begins to operate, the structure of WestConnect may permit another committee, such as the existing Steering Committee, to veto PMC action.⁹ Although recent discussion among stakeholders indicates that the PMC will operate independently, the formal relationship between the PMC and the other committees of WestConnect is currently undefined. Neither NV Energy, Inc.'s compliance tariff filing, nor the BPM clarifies the relationship between the

⁷ See: WestConnect Regional Planning Process Business Practice Manual, Version 11, p. 32 (last revised October 12, 2012), available at: http://westconnect.com/planning_order_1000_bpm.php.

⁸ See: WestConnect Regional Planning Process Business Practice Manual, Version 11, p. 2 (last revised October 12, 2012), available at: http://westconnect.com/planning_order_1000_bpm.php.

⁹ Minutes of the WestConnect FERC Order 1000 IMC Meeting p. 5 (July 18, 2012) (*see*: remarks of Western Interstate Energy Board staff member Tom Carr, on behalf of WestConnect: "We do not want a state vote to be rendered meaningless in the PMC if that vote can be overruled by the [Steering Committee] or [Governance Committee]), *available at*: http://westconnect.com/planning_order_1000_imc.php.

existing WestConnect Steering Committee and the PMC.¹⁰ Instead, these issues are reserved for resolution via the PPA, which is only in the very early stages of drafting.

6. Attachment K compliance filings refer to both the BPM and PPA. The BPM states that stakeholders may only vote on changes to the planning process that do not require tariff revision.¹¹ The BPM states that if it conflicts with the PPA, the PPA controls.¹² Such a relationship between documents requires that their terms be clear such that they can be evaluated and coordinated prior to the adoption of any of them. Such evaluation can ensure that the regional planning process is meaningful. Such evaluation can also ensure removal of any provisions in NV Energy's Attachment K compliance filing that would improperly provide the potential for leveraging of Order 890 and Order 1000 requirements to the advantage of NV Energy, and to the disadvantage of retail customers, are removed. Given these considerations, the PUCN is concerned about the considerable uncertainty presented by the unfinished BPM and PPA, and their relationship to this compliance filing. As discussed further below, state

¹⁰ Minutes of the WestConnect FERC Order 1000 Stakeholder Meeting pp. 7-8 (July 17, 2012) (concern expressed by numerous stakeholders that previously-approved Governance proposal had been changed by only a "small percentage of participants" and without stakeholder input; *see*: summary of stakeholder comments on page 10, under "Session Closing"); Presentation at the WestConnect FERC Order 1000 Stakeholder Meeting, slides 58-61 (July 17, 2012) (referencing the "recent shift in thinking" for Order 1000 governance on slide 59 and the new governance proposal on slide 60); Minutes of the WestConnect FERC Order 1000 IMC Meeting pp. 4-6 (July 18, 2012) (stakeholder remarks that Governance Committee's relationship to the PMC had been changed and that an ambiguous relationship now existed between the Governance Committee and the PMC); all meeting minutes and presentations *available at*: http://westconnect.com/planning_order_1000_imc.php and http://westconnect.com/planning_order_1000_stakeholder.php.

¹¹ See: WestConnect Regional Planning Process Business Practice Manual, Version 11, p. 7 (last revised October 12, 2012), available at: http://westconnect.com/planning_order_1000_bpm.php.

¹² See: WestConnect Regional Planning Process Business Practice Manual, Version 11, p. 5 (last revised October 12, 2012), available at: http://westconnect.com/planning_order_1000_bpm.php.

commissions have only limited opportunity to participate in formal decision making regarding the WestConnect regional planning process.

7. For all of the foregoing reasons, the PUCN requests that this Commission not approve NV Energy, Inc.'s compliance filing until revisions have been made, and until the BPM and PPA are complete and have been adopted in an acceptable form by WestConnect.

Specific Comments on the Provisions in NV Energy's Attachment K

8. NV Energy's compliance filing addresses the local planning process in Section II. At what was previously Section II.A.3.h, NV Energy has removed a section addressing "comparability" that stated that "[a]ll solution alternatives that have been presented on a timely basis... including transmission solutions, generation solutions and solutions utilizing demand response resources... will be evaluated on a comparable basis." The PUCN has not located this provision elsewhere in the document, and does not understand the reason for removing it. It seems like a provision that would advance the comparable consideration of transmission and non-transmission alternatives required by Order 1000. Although the comparable evaluation of such alternatives at the local level may not be specifically required by Order 1000, such an evaluation is perhaps warranted in light of the bottom up approach favored by WestConnect transmission providers.

9. In section II.B.2.i, relating to NV Energy's Open Public Meeting Process for Local Transmission Planning, NV Energy states that it would like to "solicit information" on load resources and other needs from customers and stakeholders for the preparation of a draft study plan. The PUCN is unconcerned with the mere solicitation of

information in this section of the tariff, the language of which predates this compliance filing. However, the PUCN has concerns regarding Section II.E regarding cost allocation for local transmission projects, notes that it is not required by Order 1000, and requests that it be removed.

10. Section II.E states that NV Energy will utilize a case-by-case approach to allocate costs for new transmission projects based on two principles, the “Solicitation of Interest” and (somewhat circuitously) the “Allocation of Costs”. The PUCN is concerned that this section sets up a FERC jurisdictional process that could be used to advance NV Energy’s interests inconsistent with Nevada public policy and potentially detrimental to retail ratepayers. This section seems to have little or nothing to do with regional planning, but instead establishes “local planning” rules that would allow NV Energy to on a “case by case” basis pursuant to a federal tariff, put construction costs on the “requestor” or “participant” while potentially putting plant into rate base that Nevada ratepayers would pay for, but would not benefit from.¹³ This would be done at the same time that NV Energy would be indemnified by section II.E.1.ii.c from “assum[ing] cost responsibility for any project if the cost of the project is not approved for recovery in its retail and/or wholesale rates.”

11. The PUCN is concerned that this provision is an attempt to create an argument that although outside of the scope of Nevada resource planning, federal law requires such a solicitation of interest process, which in the end costs Nevada ratepayers while serving customers in other states. In 2011, in PUCN Docket No. 11-05009, NV

¹³ See Section II.E.ii.a and II.E.ii.b, for example.

Energy asserted that such a “solicitation of interest” process was already mandated by FERC Order 888.¹⁴ In Docket No. 11-05009, NV Energy filed a Petition with the PUCN requesting permission to delay filing resource planning amendments regarding their Renewable Transmission Initiative (“RTI”).¹⁵ NV Energy explained that it had already filed an application for a right of way with the Nevada Bureau of Land Management (“BLM”) offices, although NV Energy did not yet know which facilities would be “needed to serve the public interest until the open transmission planning process... is completed.”¹⁶ NV Energy went on to identify the public policy it sought to fulfill as the building of transmission to export renewable energy from Nevada to California and other parts of the southwestern United States.¹⁷ Comments on NV Energy’s Petition pointed out that the scope of resource planning in Nevada permits transmission to be built to benefit ratepayers in the state of Nevada, not to meet the needs of customers in other states.¹⁸ During the 2011 Nevada Legislative Session, in Assembly Bill 416 (“AB 416”)

¹⁴ See Comments filed by NV Energy on June 24, 2011, in Docket No. 11-05009, in which NV Energy stated that the OATT requires NV Energy to “offer access to their transmission systems through standard transmission services and generator interconnection services.” The Nevada Bureau of Consumer Protection countered that NV Energy was “trying to portray their proposal to construct 537 miles of transmission lines through remote areas of Nevada as being required under federal interconnection obligations... there is a substantial difference between a utility’s obligation to connect requesting customers to the existing transmission system and a proactive proposal to invest \$1,000,000,000 in speculative facilities specifically designed to provide renewable energy to customers in other states.” BCP Comments in PUCN Docket No. 11-05009 at page 2.

¹⁵ NV Energy’s own description of its solicitation process placed the step of filing for a right of way permit toward the end of the process, but NV Energy filed for the right of way permit at the beginning instead, prior to having a clear understanding of the facilities that would be needed. NV Energy did not explain why the application for a right of way permit was sought so early in the process. See Petition in Docket No. 11-05009 at page 5. The filing with the BLM triggered Nevada’s Utility Environmental Protection Act permitting requirements, and the requirement that a resource plan amendment be filed.

¹⁶ Petition in PUCN Docket No. 11-05009 at 1.

¹⁷ Petition in PUCN Docket No. 11-05009 at 3.

¹⁸ PUCN Staff’s Comments filed June 22, 2012 in Docket No. 11-05009 at page 4, lines 4 through 14.

NV Energy mounted an effort to expand the statutory language that defines Nevada’s public policy regarding resource planning. Governor Sandoval vetoed AB 416 in a letter dated June 17, 2011, in which he stated “[r]esource plans account for how a public utility will meet consumer demand *in our state...*” (*Emphasis added.*)

12. The PUCN has not located this provision regarding solicitation of interest for the purpose of cost allocation in the preexisting version of Attachment K, and is unsure of what legitimate purpose it would serve to add it now. The PUCN is concerned that the proposed allocation for any local transmission project using the criteria set forth in the tariff could be construed to broaden the scope of resource planning policy as set by the Nevada Legislature in statute, and to preempt the PUCN’s ability to establish retail rates. As this provision is problematic and not necessary to meet the requirements of Order 1000, and because states and other stakeholders will have limited opportunity to change it pursuant to the envisioned voting structure of the PMC at WestConnect, the PUCN requests that this provision be removed prior to approval of this filing.¹⁹

13. Section III.D.5.b states that “[a]ll actions of the Planning Management Committee (including approval of the Regional Plan) shall be made possible by satisfying either of the following requirements...” The section goes on to describe the percentages of member sector votes necessary to approve an action, requiring transmission owner with load serving obligation approval for any action to pass regardless of which other member sectors may or may not approve. This section should be clarified because as drafted any action taken the by PMC would require a stakeholder vote, with a significant

¹⁹ The PUCN is not aware of whether this provision is present in other WestConnect utility compliance filings.

majority being required for any action to pass, and transmission owners with load serving obligations having veto power in every instance. This cumbersome process may not have been intended for some items that do not impact the regional planning process. The PMC actions that require this very high threshold for approval should be identified.

14. Section III.D.6 states that non-transmission alternatives are not eligible for cost allocation at all. Order 1000 requires that transmission owners “identify how they will evaluate and select from competing solutions such that all types of resources are considered on a comparable basis.”²⁰ The PUCN notes that the elimination of non-transmission alternatives from eligibility for cost allocation seems to defeat this goal.

15. Section III.I.1 states that “[a]t a minimum, any transmission needs driven by enacted state or federal public policy requirements will be included in the transmission system models underlying the development of the Regional Plan. Transmission needs driven by proposed public policy requirements may be evaluated in the scenario analysis if time and resources permit.” The PUCN is concerned that this language regarding “proposed public policy requirements” is overly broad. A definition of what “proposed public policy” includes is necessary, whether here in the tariff or in the BPM, which references “non-enacted public policy.”²¹ If this term is not defined, the PUCN is concerned that it could include almost any goal of any entity, which could be used to distort the role of public policy in the regional planning process.

²⁰ Order 1000 at paragraph 155.

²¹ See: WestConnect Regional Planning Process Business Practice Manual, Version 11, p. 16 (last revised October 12, 2012), available at: http://westconnect.com/planning_order_1000_bpm.php.

16. Section III.L, regarding reevaluation of projects in the WestConnect Regional Plan, states that projects that have received approval through local or state regulatory authorities or board approval; local or single system transmission projects that have been planned and submitted for inclusion in the Regional Plan or exist in the 10-year corporate capital project budgets; and projects that are undergoing review through the WECC Project Coordination and Rating Review Process as of the last effective date of the FERC-jurisdictional Transmission Owners' Order 1000 compliance filings, will not be subject to reevaluation under the Regional Planning Process.

17. The PUCN submits that this broad category of projects that are not subject to reevaluation may create an overinclusive group of projects that are treated preferentially, without justification, and prevents the comprehensive evaluation of possible projects at the regional level. The PUCN understands that some projects, such as those that have received resource plan approval should not be required to be reevaluated. However, as written this provision draws the line at too early a stage in the life of a project. Projects that exist in the 10-year corporate capital projects budget or projects that have merely received board approval could include projects that may yet be abandoned or modified. The PUCN is interested in understanding the logic behind drawing the line for reevaluation at the place chosen in this section.

18. Section III.N.a regarding cost allocation for local projects seems to be related to Section II.E, in which NV Energy is creating a federal process for "solicitation of interest" for local transmission projects. This process is not required by Order 1000, and should be removed. While the first paragraph of this section provides useful

clarification about how local transmission projects fit into the larger scheme, the second and third paragraphs of this Section should be removed.

19. Section III.N.b.1 and Section III.N.b.2, addressing Regional Allocation of Costs for Reliability Project and Economic Projects, allocates costs to the “relevant Transmission Owner’s retail distribution service territory or footprint.”²² The PUCN has two concerns regarding this language. First, it appears to exclude from cost allocation transmission customers not located in the retail footprint of the transmission owner. Second, the term “retail distribution service territory or footprint” could be interpreted require that all costs allocated to that transmission owner will be paid by the retail ratepayers in the service territory, bypassing the state’s retail ratemaking process. This proposed allocation of regional reliability cost to the retail service territory or footprint implies these costs are solely associated with providing reliable retail service. Because, transmission system reliability benefits all users, the costs should be borne by both retail service and transmission system customers. If it is their intent to charge all users of the transmission system, this language needs clarification.

²² Allocation of Costs for Reliability Projects states in part: The costs for regional reliability projects shall be allocated according to the following equation: (A divided by B) times C equals D where:

A is the cost of local upgrades necessary to avoid construction of the regional reliability project in the relevant Transmission Owner’s retail distribution service territory or footprint;

B is the total cost of local reliability upgrades in the combination of Transmission Owners’ retail distribution service territories or footprints necessary to avoid construction of the regional reliability project;

C is the total cost of the regional reliability project; and

D is the total cost allocated to the relevant Transmission Owner’s retail distribution service territory or footprint.

20. The PUCN looks forward to implementing a regional planning process that in earnest facilitates the sharing of information with stakeholders, including state commissions, because of the greater transparency and more efficient and cost-effective options this may bring to the PUCN's own resource planning proceedings. The PUCN is committed to working with stakeholders in the WestConnect process to complete the BPM and PPA, and to continue to participate in these proceedings, so that these compliance filings may be approved in a timely manner and the work of the regional transmission planning process can begin.

WHEREFORE, the PUCN respectfully requests that FERC take notice of PUCN's intervention and comments in this proceeding.

Respectfully submitted,

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Dated: November 26, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing pleading on those persons listed on the official service list compiled by the Secretary for this proceeding.

Dated at Carson City, Nevada, this 26th day of November, 2012.

/s/ Breanne Potter _____
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Document Content(s)

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