

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

Tucson Electric Power Company)

Docket No. ER13-77

**MOTION TO AMEND AND COMMENTS
OF PUBLIC INTEREST ORGANIZATIONS**

Pursuant to Rules 211, 212 and 215 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 C.F.R. §§ 385.211; 385.212; 385.215, “Public Interest Organizations” (“PIOs”) respectfully request leave to amend our motion to intervene in the above captioned proceeding,¹ filed on November 26, 2012 (“Intervention Motion”).

I. COMMUNICATIONS

Communications regarding this matter should be addressed, on behalf of the PIOs, to:

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II. MOTION TO AMEND

PIOs respectfully request leave to amend the Intervention Motion to include the comments provided below and to make two administrative amendments described at the end of this filing. PIOs participated in the stakeholder proceedings in the majority of Order No. 1000 regions across the country, including WestConnect, the California Independent System Operator, and the New York Independent System Operator, all of which had intervention deadlines on November

¹ *MOTION TO INTERVENE OF EIGHT PUBLIC INTEREST ORGANIZATIONS*, ER13-91, Nov. 26, 2012

26. In light of limited PIO resources, the Thanksgiving holiday, and our intent to submit targeted and useful comments to the Commission, we were not able to submit comments in all nine WestConnect dockets and the California Independent System Operator by November 26. Our motion and late-filed comments will not prejudice Tucson Electric Power Company (“TEP”) or other parties in this docket, and PIO comments will assist the Commission in its evaluation of TEP’s Order No. 1000 compliance filing. Thus, we request that the Commission grant this motion to amend.

III. SUMMARY OF COMMENTS

PIOs believe that TEP’s compliance filing proposes many planning procedures that reflect prudent utility practice designed to help ensure the selection of more efficient and cost-effective regional planning solutions. These procedures include significant opportunities for stakeholder participation, a plan to incorporate public policy considerations and comparable consideration of non-transmission alternatives (“NTAs”), and cost allocation for electric grid projects. However, in each of these areas, PIOs are concerned that certain aspects of TEP’s proposal do not include sufficiently detailed procedures to ensure consideration and selection of transmission solutions that result in just and reasonable rates and the avoidance of undue discrimination through regional planning.

Specifically, TEP’s filing provides insufficient detail of the procedures by which public policy requirements will be identified as potentially creating system needs that should be incorporated into system modeling. Also, to the extent TEP plans to identify PPR-driven needs through the economic study process, it cannot assure the maintenance of just and reasonable rates and the avoidance of undue discrimination. Further, the filing does not detail the procedure and criteria by which TEP and other WestConnect Transmission Providers, in consultation with

stakeholders, will determine which public policy-driven grid needs will be evaluated for solutions. Further, the compliance proposal project submission criteria may inhibit comparable treatment for non-transmission alternatives, and its cost allocation approach may fail to recognize all the benefits related to public policy-driven transmission projects. Finally, although the proposed governance signals a move towards meaningful stakeholder participation, the participation agreement is still under development and ultimately may not prove congruent with Order No. 1000's requirements. Therefore, PIOs request that the Commission direct TEP to submit an additional compliance filing that corrects these deficiencies.

IV. BACKGROUND

In Order No. 1000, the Commission revised several non-rate terms and conditions of its *pro forma* Open Access Transmission Tariff ("OATT") and ordered public utility transmission providers to submit compliance filings reflecting the Order's requirements.² Pursuant to the Final Rule, TEP submitted its compliance filing on October 11, 2012.

PIOs commend the Commission for adopting and affirming Order No. 1000³ and strongly support the Commission's requirements that public utility transmission providers adopt planning processes that incorporate the consideration of transmission needs driven by public policy requirements, provide for comparable consideration of non-transmission alternatives, and ensure opportunities for timely and meaningful stakeholder participation throughout the planning process. Further, PIOs support the Final Rule's requirement that transmission providers create an appropriate beneficiary-pays cost-allocation methodology for grid solutions included in

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011) ("Order No. 1000").

³ *See also*, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) ("Order No. 1000-A"), *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012) ("Order No. 1000-B").

regional plans. These provisions will make regional transmission planning more cost-effective and efficient, while providing for the integration of public policy-driven resources and non-transmission alternatives. Thus, Order No. 1000's requirements are an important step toward creating a more sustainable transmission grid.

V. COMMENTS

PIOs appreciate that Order No. 1000 provides transmission providers with a significant amount of flexibility to design and implement planning processes and cost allocation methods most appropriate for the specific and unique circumstances of their regions and their stakeholders' interests. However, transmission providers ("TPs") must meet certain minimum requirements (as described in specific instances below) to demonstrate that the processes developed to comply with the Order ensure the selection of "more efficient and cost-effective regional transmission planning"⁴ solutions to meet grid needs—solutions that satisfy the Federal Power Act ("FPA") requirements.⁵ Meeting FPA mandates requires that the procedures proposed by TPs under Order No. 1000 represent good faith, reasonable processes that will create a record capable of demonstrating that transmission projects selected for regional plans are more efficient or cost-effective than alternatives, thereby avoiding rates for jurisdictional service that are unjust and unreasonable and preventing undue discrimination. PIOs are concerned that despite the inclusive stakeholder process in which WestConnect TPs have engaged and which PIOs appreciate, TEP's compliance filing contains deficiencies that fail to satisfy Order No. 1000's process requirements.

⁴ Order No. 1000, *supra* note 2 at ¶2.

⁵ Federal Power Act (FPA), 16 U.S.C. §§ 791a *et seq.*

A. Public Policy Requirements (“PPRs”)

Order No. 1000 requires transmission providers to establish procedures for identifying transmission needs driven by PPRs and for determining which PPR-driven needs will be evaluated for potential solutions.⁶ Stakeholder participation must be an integral component of such a process because stakeholder input into the identification and evaluation of PPR-driven needs is critical to ensuring planning decisions that result in just and reasonable rates and avoid undue discrimination.⁷ PIOs appreciate the challenge that TEP faced in attempting to develop consensus among stakeholders for procedures to incorporate public policy considerations into the planning process, and we commend TEP for its efforts.

1. Compliant Provisions

PIOs believe that TEP made significant strides with a number of provisions in its proposed tariff toward compliance with Order No. 1000. First, we appreciate that TEP’s definition of PPRs includes local policies.⁸ The proposed tariff highlights TEP’s incorporation of energy efficiency, demand response and distributed generation programs mandated by state renewable energy standards and efficiency requirements in local transmission planning load forecasting and provides that proposed public policies may be considered in scenario planning analysis at both the local and regional levels.⁹ PIOs note that TEP has highlighted where in the process PPR considerations will occur via the flowchart included as Attachment K-1.¹⁰ The consideration of PPRs through modeling and studies at multiple stages in the planning process will provide

⁶ Order No. 1000, *supra* note 2 at ¶205.

⁷ *Id.* at ¶¶ 207-208.

⁸ Tucson Electric Power Company, Order No. 1000 Compliance Filing, Docket No. ER13-77, October 11, 2012 (“Attachment K”) at (II)(A)(2)(c).

⁹ *Id.* at (II)(A)(2)(c); (III)(D)(4)(a).

¹⁰ *Id.* at Attachment K-1.

information critical to determining more cost-effective and efficient planning solutions for regional transmission needs and is therefore commendable.

2. Non-Compliant Provisions

PIOs are concerned that while TEP's compliance filing demonstrates a preference by WestConnect members to successfully incorporate PPR-driven needs into the local and regional planning processes and past experience supports WestConnect TPs' good work in this effort, TEP's tariff proposal lacks the specificity necessary to satisfy Order No. 1000 requirements.

Order No. 1000 requires TEP to describe the procedures it will use to identify local and regional transmission needs driven by PPRs¹¹ and the process they will follow to select PPR-driven needs for which potential solutions will be evaluated.¹² TEP's tariff addresses its proposed treatment of PPR-driven needs at both the local and the regional level. At the local level, the proposed tariff language states that TEP will incorporate PPRs into load forecasts and planning study models "as applicable."¹³ The proposal's regional planning language states that "WestConnect stakeholders will review enacted public policy requirements and determine which

¹¹ See Order No. 1000, *supra* note 2 at ¶ 203 (These processes must "provide all stakeholders the opportunity to provide input into what they believe are transmission needs driven by Public Policy Requirements, rather than the public utility transmission provider planning only for its own needs or the needs of its native load customers."). See also Order No. 1000-A *supra* note 3 at ¶ 206 ("we are requiring only that there be a process in place for public utility transmission providers, in consultation with stakeholders, to consider transmission needs driven by Public Policy Requirements.").

¹² See Order No. 1000-A, *supra* note 3 at ¶ 321 ("...we are not requiring anything more than what we directed in Order No. 1000, namely, the two-part identification and evaluation process. As with other Order No. 1000 transmission planning reforms, our concern is that the process allows for stakeholders to submit their views and proposals for transmission needs driven by Public Policy Requirements in a process that is open and transparent and satisfies all of the transmission planning principles set out in Order Nos. 890 and 1000, and that there is a record for the Commission and stakeholders to review to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential.... The OATT revisions that public utility transmission providers submit as part of their Order No. 1000 compliance filings will set forth the process for permitting stakeholders to provide input and for determining which proposed transmission needs will be identified for evaluation."); and ¶ 335 ("... Compliance filers must explain how their process gives all stakeholders a meaningful opportunity to submit what they believe are transmission needs driven by Public Policy Requirements, and allow an open and transparent transmission planning process to determine whether to move forward regarding those needs.").

¹³ Attachment K, *supra* note 8 at (II)(A)(2)(c).

regional planning needs will be included in the modeling for that cycle,”¹⁴ and that “at a minimum, any regional transmission needs driven by [PPRs] will be included in the transmission system models underlying development of the Regional Plan.”¹⁵ However, while TEP’s tariff proposal states that it will meet the Order’s obligations on PPR-driven needs, noting *that* they will be reviewed and *that* they will be incorporated, it does not describe, as also required by the Order, the processes or criteria to be used to meet the obligations – the procedures TEP and the other WestConnect members will use to identify transmission system needs driven by PPRs and the criteria to be used to determine which of those needs will be evaluated for grid solutions.

a. No Procedures for the Identification of PPR-Driven Needs

First, although TEP’s compliance filing notes the incorporation of PPRs in forecasts and planning studies, it lacks any process or guidance as to how TEP and stakeholders will choose the PPRs that will be incorporated into local load forecasting and modeling to determine PPR-driven needs (there is no guidance as to what “as applicable” means).¹⁶ Instead, the tariff filing simply states that the needs will, in fact, be identified. TEP’s local planning tariff explains in detail the process by which TEP will engage in economic studies and the role stakeholders can play in proposing and/or commenting on proposed studies.¹⁷ TEP’s compliance filing contains no similar (or even less detailed) process for the consideration of PPR-driven needs. It is especially important that the local planning process involves clear processes for the identification

¹⁴ *Id.* at (III)(D)(4)(a).

¹⁵ *Id.*

¹⁶ Although Section (II)(A)(2)(c) of Attachment K notes that existing or planned demand-side resource programs provide an example of PPRs that are incorporated into transmission planning, the tariff does not explain how determinations are made regarding PPRs to be incorporated (what constitutes “as applicable”) or describe procedures for stakeholder identification of PPR-driven grid needs beyond these programs.

¹⁷ See Attachment K, *supra* note 8 at (I)(A)(5)-(8).

of PPR-driven needs, since the WestConnect TPs appear to be relying on the local process to inform the PPR-driven projects to be included in the plan.¹⁸

At the regional level, the proposal does not include a process by which regional transmission needs driven by PPRs will be identified; it only states that i) WestConnect stakeholders will review PPRs and determine which regional transmission needs will be included in modeling, and ii) needs driven by PPRs will be included in the system models underlying development of the Regional Plan.¹⁹ No explicit procedures are proposed for identifying the needs or determining the PPR needs to be included in system models. The lack of specificity regarding PPR-driven need identification at both the local and regional levels leaves it unclear whether the process by which these needs will be identified and selected for modeling will be transparent, efficient and cost-effective and thus, TEP's filing does not satisfy the mandates of Order No. 1000.

Under the current proposal, there is no assurance a robust process for the identification of PPR-driven needs will happen at either the local or regional level.

b. No Procedures to Choose the PPR-Driven Needs for which Solutions will be Evaluated

Second, the tariff proposal lacks a specific process at either the local or regional level pursuant to which TEP (and other WestConnect members at the regional level), in consultation with stakeholders, will determine which PPR-driven needs identified by stakeholders or modeling results will be evaluated for solutions. The tariff language says only that PPRs, as

¹⁸ Tucson Electric Power Company Transmittal Letter for Order No. 1000 Compliance Filing, Docket No. ER13-91, October 11, 2012 ("Transmittal Letter") at 13, (stating that "procedurally, transmission needs driven by public policy requirements will be identified by the individual transmission owners within the WestConnect planning region through their respective local planning processes. Those needs, and any projects necessary to satisfy them, will be submitted to WestConnect in accordance with the regional planning process for inclusion in the Regional Transmission Plan.").

¹⁹ Attachment K, *supra* note 8 at (III)(D)(4)(a).

applicable, will be modeled in the local planning studies.²⁰ A logical assumption would be that all PPR-driven needs identified in the studies would then feed into the solutions evaluation process outlined in the tariff,²¹ but the tariff does not state whether TEP will evaluate all identified PPR-driven local needs for solutions. As described in (c) below, Section (II)(A)(4) of Attachment K appears to imply that TEP intends to choose the PPR-driven needs for which solutions will be evaluated through the economic study process. If PIOs have identified TEP's intent, the filing is deficient because it lacks procedures that provide details for how this will occur. Again, the need for clarification at the local level is especially important because of the "bottoms up" approach on which WestConnect TPs appear to be relying to capture PPR-driven needs and solutions. At the regional level, TEP states that "at a minimum, any regional 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."²² However, again, neither the tariff language nor the WestConnect Business Practice Manual ("BPM") makes explicit that all identified regional PPR-driven needs will be evaluated for solutions or provides criteria by which TEP and other WestConnect stakeholders can choose which needs merit solutions evaluation.

Without increased specificity regarding the procedures for identification of PPR-driven grid needs and the determination of which PPR-driven grid needs will be evaluated for solutions, PIOs believe the proposed tariff language fails to meet Order No. 1000's requirements and provides insufficient assurance of meaningful stakeholder input on PPR-driven grid needs. Without clear procedures to facilitate such input, the tariff fails to ensure reasonable TEP

²⁰ *Id.* at (II)(A)(2)(c).

²¹ *Id.* at (II)(A)(3)(h).

²² *Id.* at (III)(D)(4)(a).

consideration of the array of PPR-driven grid needs that may have to be addressed with transmission facilities and limits TEP's ability to select grid solutions that are more efficient or cost-effective, thereby producing just and reasonable rates.

c. Consideration of PPR-Driven Needs through the Economic Study Process May Be Deficient.

Order No. 1000 requires TEP to consider solutions to identified regional needs on a comparable basis, whether developed by TEP itself or proposed by another stakeholder.²³ TEP's tariff proposal for local planning refers to the comparable consideration of solution proposals that have been "presented on a timely basis (per Section (II)(A)(4) of this Attachment K)."²⁴ Section (II)(A)(4) details TEP's economic planning study process. As noted above, it is not clear how TEP plans to consider proposed PPR-driven transmission needs that may then feed into the solutions evaluation process- i.e. whether through the economic study request process, a similar process, or in some other manner. If TEP does, in fact, intend to use the economic study process for studying public policy-driven needs, the tariff lacks clarity as to how the public-policy driven needs will be studied in the economic study process. Further, because TEP's process limits the number of priority local studies to three studies,²⁵ using the economic study process to consider PPR-driven needs does not provide the comparable treatment necessary to ensure just and reasonable rates and the avoidance of undue discrimination, since PPR-driven needs would have to compete for only three slots of studies that TEP will fund. The lack of clarity regarding the study process for PPR-driven needs highlighted here underscores the deficiency in the compliance filing: TEP's failure to include more specifics about the process for considering PPR-driven needs and solutions raises important issues for stakeholders and does not comply

²³ Order No. 1000, *supra* note 2 at ¶211.

²⁴ Attachment K, *supra* note 8 at (II)(A)(3)(h).²⁵ *Id.* at (II)(4)(b)(v).

²⁵ *Id.* at (II)(4)(b)(v).

with Order No. 1000. TEP's tariff needs to make clear *that* and *how* it will accept proposed PPR-driven needs for study and how it will evaluate proposed solutions to identified PPR-driven needs to avoid undue discrimination and to ensure the maintenance of just and reasonable rates.

Thus, PIOs urge the Commission to direct TEP to provide Order No. 1000-compliant additions to its tariff that describe 1) procedures it will use to identify local and regional transmission needs driven by PPRs and 2) the process it will follow to select PPR-driven needs for which potential solutions will be evaluated.

B. Planning and Non-Transmission Alternatives

Order No. 1000 requires transmission providers to address grid needs by establishing regional planning procedures which ensure comparable consideration of alternatives, including both transmission and non-transmission solution options.²⁶ PIOs appreciate TEP's determination to incorporate certain types of data in its planning process, but are concerned that TEP's compliance filing may not contain sufficient specificity to satisfy the comparable treatment requirement.

1. Good incorporation of WECC Data

Initially, PIOs commend TEP and other WestConnect TPs' decision to use WECC-provided data as the baseline in the planning process.²⁷ The use of interconnection-wide data will provide a reasonable starting point for the consistency and coordination necessary to ensure efficient and cost-effective outcomes and will lead to more effective interregional coordination. PIOs also appreciate TEP's inclusion (and that of some of the other WestConnect TPs) of the Comparison Risk Score from WECC Environmental Data Task Force as a criterion for the submission of

²⁶ Order No. 1000, *supra* note 2 at ¶¶154-155.

²⁷ Transmittal Letter, *supra* note 18 at 8.

transmission projects seeking regional cost allocation, when available.²⁸ As a practical matter, the use of the score should inform WestConnect TPs about the likelihood of siting or other difficulties that may arise in relation to a proposed project and should prove useful in the comparison of potential solutions to identified needs.

2. Potential Lack of Comparable Treatment for NTAs

Order No. 1000 requires that procedures for solutions' evaluation must include the identification of transmission and non-transmission alternatives available and the metrics to be used for selecting and evaluating solutions on a comparable basis.²⁹ PIOs appreciate the process WestConnect members have developed for the consideration of NTAs; however we believe that TEP's compliance filing does not satisfy Order No. 1000's mandate for comparable consideration of alternative solutions.

PIOs believe the filing may be deficient in two regards. First, the proposed tariff language for criteria that NTA proposals must satisfy may prove unduly discriminatory in general. TEP's proposed criteria for NTA proposals at the regional level would require that entities proposing NTAs "adhere to and provide the same or equivalent information and submittal fees as transmission alternatives."³⁰ Due to the nature of potential NTA solutions designed to transmission system needs; it may not be possible or appropriate for sponsors of NTAs to submit the same or equivalent information as sponsors of transmission proposals. TEP should not be able to reject a proposed NTA solution for failure to provide the same or equivalent information if such information does not apply to the NTA, or if such information is unnecessary to evaluate and compare the proposed NTA solution. The Commission should require TEP to add clarifying

²⁸ Attachment K, *supra* note 8 at (III)(C)(5).

²⁹ Order No. 1000, *supra* note 2 at ¶155.

³⁰ Attachment K, *supra* note 8 at (III)(C)(6).

language that provides for flexibility in instances that NTA developers need not and cannot provide the same or equivalent information, and especially in cases in which the information may be critical for consideration of a transmission proposal but is unnecessary for consideration of the NTA.

Second, TEP's proposed \$25,000 submittal fee for the submission of an NTA proposal may be especially discriminatory.³¹ PIOs are concerned that while a \$25,000 submittal fee may not pose a problem for a well-financed transmission company submitting a transmission project proposal for cost allocation, the fee could prove cost prohibitive to potential sponsors of NTA proposals. In light of the lack of cost recovery options for NTAs,³² many NTA developers may plan to finance projects off their balance sheets by securing debt or project equity from banks and/or other financial providers. These financial providers often require certainty as to the success of a project's completion before committing their financial support. As a result, NTA project sponsors face a "chicken and egg" problem whereby they do not have the resources to submit a \$25,000 fee they would potentially lose if their project is not chosen as the desired alternative, and the financial providers will not commit to financing a project until it has been chosen as the desired alternative. In such a case, and in other instances not contemplated here, the fee likely will prove unduly discriminatory against certain NTA providers. Thus, PIOs request that the Commission direct TEP to provide for an exception (or at least a reduction) to the upfront NTA submittal fee in cases where NTA sponsors can demonstrate that they will be

³¹ Transmittal Letter, *supra* note 18 at 13-14 (referring to requirements contained in the WestConnect Business Practice Manual).

³² PIOs recognize that the Commission viewed cost recovery for NTAs as outside the scope of the Order No. 1000 proceeding. However, as noted in our comments throughout the rulemaking process, PIOs are concerned that the regional planning process will remain unduly discriminatory toward NTAs if they lack the opportunity for cost recovery at the regional level. Although called non-transmission alternatives, NTAs are non-wires solutions that perform transmission functions. PIOs encourage the Commission to take up the issue of cost recovery for NTAs in a separate proceeding.

able to pay the fee at a later time, should their project be chosen as the desired alternative. Otherwise, the fee criterion could prove unduly discriminatory to NTA options.

In addition, to the extent that TEP or the WestConnect Business Practice Manual will require fees charged for proposals at the regional level in addition to the \$25,000 flat submittal fee TEP laid out in its transmittal letter (and as may be implied by Section (III)(C)(9) of Attachment K), it is impossible to determine whether an additional fee criteria leads to undue discrimination without understanding what that fee would be and how it would be applied. The Commission therefore should require TEP to clarify whether there may be the application of submittal fees not contemplated currently in the tariff.

PIOs therefore recommend that the Commission order ASPCo to submit an additional compliance filing to remedy any potential for undue discrimination in the consideration of NTAs and ensure NTAs comparable treatment.

C. Cost Allocation

1. Proposal Does Not Satisfy First Cost Allocation Principle

The Commission's first cost allocation principle requires that costs be allocated across beneficiaries in a manner that is "at least roughly commensurate" with estimated benefits.³³ WestConnect's cost allocation proposal fails to satisfy this first principle because (1) it appears to make the cost allocation methods voluntary; (2) its cost allocation methods fail to consider all the benefits and beneficiaries of reliability, economic and public-policy driven projects; and (3) even with a proposed multi-driver cost allocation approach, it is not clear that all benefits of proposed transmission facilities will be weighed and appropriate costs assigned under the cost allocation methods proposed.

³³ Order No. 1000, *supra* note 2 at ¶622.

First, the Commission has made clear that the cost allocation methodologies proposed for Order No. 1000 compliance cannot represent participant funding, and that identified beneficiaries within the same region do not need to agree to volunteer to take on the costs related to their identified benefits.³⁴ The WestConnect regional cost allocation tariff language states that “project costs and associated transmission rights will be allocated proportionally to those entities determined by the Planning Management Committee . . . to be beneficiaries of the project, *and who agree* to participate in such regional project.”³⁵ If the regional process identifies beneficiaries to a project that is chosen for cost allocation and the project is implemented, identified beneficiaries do not stop being beneficiaries if they do not volunteer to be assigned costs of the project. PIOs appreciate that participation by non-FERC jurisdictional entities in the development of regional transmission projects may influence the voluntary nature of the WestConnect proposal. However, Order No. 1000 requires that identified beneficiaries be allocated costs for relevant projects chosen for inclusion in the regional plan.

Second, Order No. 1000 requires that TP compliance filings must “clearly and definitively specify the benefits and class of beneficiaries”³⁶ contemplated in their proposed methods. The Commission clearly stated that Order No. 1000-compliant definitions of beneficiaries must not only include those entities that propose or directly cause the need for a project, but also those entities that did not create the need but that will benefit from the new project.³⁷ Specifically, the Commission stated that “Western Area Power Administration takes the position that beneficiaries should be limited to those that it describes as making direct use of the transmission

³⁴ See *id.* at ¶723 (“If proposed as a regional or interregional cost allocation method, participant funding will not comply with the regional cost allocation principles adopted”); ¶723 (“Whether an entity is identified as a beneficiary that must be allocated costs of a new transmission facility is not determined by the entity itself but rather through the applicable, Commission-approved transmission planning processes and cost allocation methods.”).

³⁵ Attachment K, *supra* note 8 at (VI)(C)(emphasis added).

³⁶ Order No. 1000-A, *supra* note 3 at ¶678.

³⁷ *Id.* at ¶¶535-537.

facilities in question, but this fails to acknowledge that other benefits may accrue to an interconnected transmission grid.”³⁸

The WestConnect proposal contained in TEP’s compliance filing fails to identify all the classes of benefits and beneficiaries of reliability, economic and public policy-driven regional projects that are likely to exist. For example, simply defining regional benefits to include local costs avoided, as the WestConnect proposal does for reliability projects, fails to clearly and definitively capture the reasonable universe of benefits of proposed facilities and, thus, appears not to comply with the rule.³⁹ “Beneficiaries” under the rule cannot be limited to the entities avoiding the development and construction of local transmission facilities due to facilities for which cost allocation is being determined, if benefits to other entities are identified through the study process.⁴⁰ A similar deficiency exists in the proposal’s definition of benefits that may be derived from public policy projects – the only measurable benefit would be based on the number of megawatts of policy-driven resources accessed by a given project. The public policy benefits almost certainly go beyond the number of renewable megawatts accessed and, thus, should be considered in allocating costs. Even if state RPS standards were the only PPRs under consideration, which cannot be the case for Order-1000 compliant planning, there would still be a benefit related to the avoidance of RPS penalty costs that cannot be contemplated under the current proposal.

Third, PIOs are concerned that the WestConnect proposal fails to ensure that all types of benefits (i.e., reliability, economic, and/or public policy-derived) of a proposed project will be contemplated as part of the cost allocation process. Order No. 1000 makes clear that “[i]f a

³⁸ *Id.* at ¶625.

³⁹ Order No. 1000, *supra* note 3 at ¶623.

⁴⁰ Order No. 1000, *supra* note 2 at ¶623.

regional transmission plan determines that a transmission facility serves several functions, as many commenters point out it may, the regional cost allocation method must take the benefits of these functions of the transmission facility into account in allocating costs roughly commensurate with benefits.”⁴¹ PIOs support the WestConnect proposal’s inclusion of a cost allocation procedure that allows for the consideration of multiple types of benefits in approving projects for cost allocation. However, while the consideration of all the benefits of a proposed project is “possible” and is to be done “through the WestConnect stakeholder process,” no additional guidance or specificity is provided.⁴² Further, any economic benefits of a project will only be considered if they result from a WECC-approved recommendation to study congestion. The discretion and limited details in the proposal make it a real possibility that all benefits and related beneficiaries of a proposed project will not get considered, therefore unjustly increasing costs for a subset of beneficiaries and exacerbating the free rider problem the Commission aims to mitigate with Order No. 1000’s regional cost allocation requirements.

2. Proposal Does Not Satisfy Fifth Cost Allocation Principle

WestConnect’s filing also fails to satisfy fully the Commission’s fifth cost allocation principle, which requires that methods for determining benefits and beneficiaries be transparent with adequate documentation to allow stakeholders to determine how they were applied to a proposed transmission facility.⁴³ WestConnect’s cost allocation methodologies do not provide adequate detail regarding how benefits and beneficiaries will be determined. WestConnect’s approach does not detail how it will identify the benefits its proposal contemplates. Without any

⁴¹ Order No. 1000, *supra* note 2 at ¶690.

⁴² Attachment K, *supra* note 8 at (VI)(C)(4).

⁴³ Order No. 1000, *supra* note 2 at ¶668.

additional definition, it appears that the cost allocation methods of WestConnect TPs may not satisfy the fifth cost allocation principle.

PIOs, therefore, request that the Commission require TEP to file an additional compliance filing that proposes cost allocation methodologies that comply with the first and fifth cost allocation principles set forth in Order No. 1000. Cost allocation methods that satisfy these principles are essential to ensuring that regional planning results will lead to just and reasonable rates and avoid undue discrimination.

D. Stakeholder Participation

Order No. 1000 also mandates that regional planning procedures provide for consultation with stakeholders – procedures that enable stakeholders to express their needs, access data used in the planning process, and identify and evaluate potential solutions.⁴⁴ Such stakeholder participation helps to ensure efficient and cost-effective planning. TEP and other WestConnect TPs have done a good job of including stakeholders in the process to date,⁴⁵ although (as detailed below) PIOs have concerns about further development of the regional planning governance structure. One important point for ongoing stakeholder participation is the establishment of a clear process by which stakeholders can obtain CEII clearance so that they can access WestConnect and WECC data. Each TP should make the process and timeline for achieving CEII status clear on its website, and should make a representative available to answer stakeholder questions about achieving CEII status.

⁴⁴ Order No. 1000, *supra* note 2 at ¶¶150-152.

⁴⁵ A good example is the open back and forth comment process WestConnect TPs provided for stakeholders in which all parties could submit comments on a web site and the “team” responsible for the issue would respond, describing why a proposal or idea would or would not be incorporated into the planning approach.

E. Stakeholder Governance

Order No. 1000 requires that regional transmission planning processes comply with the principles laid out in Order No. 890, including coordination, openness, transparency, information exchange and comparability.⁴⁶ Although Order No. 1000 does not mandate that transmission providers create a governance structure for compliant regional planning, these principles and the Order's explicit requirements regarding stakeholder consultation highlight the Commission's interest in increasing stakeholder participation in the regional transmission planning process.

1. Provisions that Support Meaningful Stakeholder Participation

PIOs support the efforts of TEP and other WestConnect TPs to enhance stakeholder participation and allow stakeholders better access to planning information and processes. Specifically, we applaud the creation of five member classes in the planning governance structure that includes a "key interest group" class which public interest groups can join.⁴⁷ The structure provides a strong model for other regions. Having a role in the governance structure of regional planning enhances transparency, increases access required for meaningful stakeholder input, and provides the framework for strong stakeholder participation over time. As part of the voting structure, PIOs appreciate that TEP has provided for the waiver of membership fees for certain entities. TEP's transmittal letter states that "certain" non-profit organizations will not be assessed membership fees for participation in the key interest group sector,⁴⁸ and the current draft of WestConnect's Business Practice Manual refers to criteria for non-profit organization exemption from membership fee requirements.⁴⁹ In order to effectuate TEP's intent to enable

⁴⁶ Order No. 1000, *supra* note 2 at ¶151.

⁴⁷ Attachment K, *supra* note 8 at (III)(B)(5)(a).

⁴⁸ Transmittal Letter, *supra* note 18 at 6.

⁴⁹ WestConnect Business Practice Manual (BPM) §3.2.1.3, stating that: "Non-TO PMC Members will be assessed annual dues of \$5,000.00, provided that PMC Members of the State Regulatory Commission Sector and PMC

the broad participation that the waiver of membership fees will allow, PIOs ask the Commission to encourage TEP to design criteria for fee waivers that allow for broad participation by all interested public interest organizations for which a membership fee could prove prohibitive.

2. Provisions that Do Not Support Meaningful Participation

Although we applaud the WestConnect governance structure's inclusion of key interest groups, PIOs are concerned that some aspects of TEP's governance proposal could prove detrimental to effective stakeholder participation which is needed to ensure compliance with FPA obligations. In particular, the "old" WestConnect planning entity appears to be transitioning to a "new" WestConnect, but the compliance filing does not make clear how the transition is taking place and what the implications of the transition will be. The WestConnect TPs have proposed to establish a new Planning Management Committee to manage regional planning.⁵⁰ However, there is an existing Planning Management Committee and the TEP filing does not provide information about the relative roles and relationships of the two committees.⁵¹ It is not clear whether planning responsibilities will be divided between the two committees or combined into one committee. During several stakeholder meetings, some TPs and other

Members from non-profit organizations [citation to general non-profit organizational requirements] will not be assessed annual dues."

⁵⁰ As noted in Footnote 13 of Attachment K, "WestConnect was formed under a memorandum of understanding (MOU) voluntarily entered into by FERC jurisdictional and non-jurisdictional transmission providing electric utilities in the Western Interconnection. The purposes of WestConnect are to investigate the feasibility of wholesale market enhancements, work cooperatively with other Western Interconnection organizations and market shareholders and address seams issues in the appropriate forums. WestConnect has initiated an effort to facilitate and coordinate regional transmission planning across the WestConnect footprint. Following the effective date of APS's Order No. 1000 compliance filing, the WestConnect members shall establish a regional planning management subcommittee which shall be responsible for regional transmission planning under the principles set forth in FERC's order *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), et al. (collectively, "Order No. 890"), and carried forward in FERC's order *Transmission Planning and Cost Allocation by Transmission Owning and Operating Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), et al. (collectively, "Order No. 1000")."

⁵¹ In the WestConnect Business Practice Manual there is an organization chart of what the new PMC will look like, but it does not compare the new committee to the current WestConnect PMC.

stakeholders have appeared amenable to maintaining one Planning Management Committee, and PIOs are supportive of the singular committee proposal.

In addition, TEP and the other WestConnect TPs are planning to execute a new Planning Participation Agreement to govern participation in regional planning after the Commission approves the WestConnect member Order No. 1000 compliance filings,⁵² but the structure and contents of the agreement and overall governance arrangement are still under debate in WestConnect stakeholder proceedings.⁵³ Thus, it remains unclear that governance of the new planning entity will be congruent with the stakeholder participation requirements of Order No. 1000, and the approach to developing the new structure give rise to PIO concerns.

Among PIOs' concerns is that the approach adopted by WestConnect TPs is not congruent with Order 890 transparency and openness requirements. Stakeholders are working with the WestConnect TPs, but still do not know the design of the new participation agreement and, thus, PIOs are concerned that the ultimate WestConnect planning structure may fail to provide an ongoing meaningful stakeholder role in planning process governance, reduce the transparency necessary for effective stakeholder participation, and inhibit the stakeholder consultations required to ensure that planning decisions result in just and reasonable rates and avoid undue discrimination. PIOs are also concerned that the structure may unreasonably discriminate against stakeholders with limited resources by creating duplicative organizational structures in which participation is essential to effectiveness.

⁵² Attachment K, *supra* note 8 at (III)(A)(1).

⁵³ For example, at the July 18 Implementation Management Committee Meeting, stakeholders agreed that "WestConnect Transmission Providers and stakeholders will jointly undertake to design and consider a form of agreement that can be recommended for signature by April 1, 2013, that would, *if implemented*, enable an overarching governance structure. This recommendation does not create any legally binding obligations."

Finally, PIOs are concerned that TEP stakeholders may be left in the position of judging whether some WestConnect TP planning provisions comply with Order No. 1000 *after* the initial compliance proposals have been approved. Thus, PIOs respectfully request that TEP and the other WestConnect members be directed to submit further Order 1000 compliance filings after they finalize the details of the new governance structure and participation agreement in a timely manner.

VI. ADMINISTRATIVE AMENDMENTS

PIOs request that the Commission approve two administrative amendments to the Intervention Motion. First, in the paragraph describing the interests of the Western Resource Advocates, the Intervention Motion inadvertently refers to “Vote Solar.” The reference should be to “WRA.” Second, PIOs request that Sierra Club be removed from the list of intervenors in this proceeding and therefore, Sierra Club has been removed from the signature blocks in this motion to amend.

VII. CONCLUSION AND COMMUNICATIONS

For the reasons set forth above, PIOs respectfully request that the Commission direct TEP to modify its tariff language to remedy the above described deficiencies.

Respectfully submitted,

/s/ Allison Clements

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*(Utah Clean Energy is signing on in support
of the above comments but is not an
intervening party)*

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 30th day of November, 2012.

/s/ Emily Berman

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