FERC ISSUES LANDMARK TRANSMISSION PLANNING RULE, ORDER NO.1920: FINAL RULE MODIFIES THE PROPOSED RULE, DRAWING 2-1 VOTE

Date: 16 May 2024

US Energy, Infrastructure, and Resources Alert

By: Kimberly B. Frank, Matthew H. Leggett

For the first time in more than a decade, the Federal Energy Regulatory Commission (FERC or the Commission) issued what undoubtedly will be considered a landmark order that promises to fundamentally alter US regional transmission planning. On 13 May 2024, FERC held a special open meeting, during which it issued Order No. 1920, titled “Building for the Future Through Electric Regional Transmission Planning and Cost Allocation.” The final rule aims to substantially change the existing rules for regional transmission planning to address a series of issues that have been extensively discussed by FERC in the docket. The new rule will affect most if not all electric power industry participants, and we expect robust comments from industry regarding its potential impacts.

During his opening remarks, Chairman Willie Philips framed the magnitude of Order No. 1920 by explaining that the order number honors the year of the founding of the Federal Power Commission, the predecessor of FERC. Chairman Phillips noted that the earlier commission recognized that “we're all in this together” and drew parallels between the issues faced by the Federal Power Commission at its founding and today's need for substantial reforms to the regional planning process. He observed that regional planning “is not occurring on a sufficient basis” and that the process no longer meets the just and reasonable legal standard that the Commission utilizes to review rules under the Federal Power Act.

The Commission noted that what it is calling the Grid Expansion Rule is based on the largest record ever compiled by FERC. The order documents are comprised of over 1,300 pages, and the final rule includes the following key provisions:

There is a requirement to conduct and periodically update long-term transmission planning to anticipate future needs. This must occur at least every five years and must look forward at least 20 years, an extension to the 10-year look-ahead period utilized today.

There is now a requirement to consider a broad set of benefits when planning new facilities. This includes a requirement to consider relative benefits alongside costs, which changes the historical project selection criteria that favored the lowest upfront capital costs, even when a more expensive project would result in greater reliability or cost benefits to consumers over time.

Specifically, the rule requires transmission providers to measure and use at least seven enumerated economic and reliability benefits for evaluating and selecting long-term regional transmission facilities, including: (1) avoided or deferred reliability transmission facilities and aging infrastructure replacements; (2) either reduced loss of load

©2005-2026 K&L Gates LLP. All Rights Reserved.

probability or reduced reserve planning margin; (3) production cost savings; (4) reduced transmission energy losses; (5) reduced congestion due to transmission outages; (6) mitigation of extreme weather events and unexpected system conditions; and (7) capacity cost benefits from reduced peak energy losses.

There is also now a requirement to identify opportunities to modify the in-kind replacement of existing transmission facilities to increase their transfer capability, known as “right-sizing.” The Commission is encouraging greater coordination with regional planning where the need for local transmission “end-of-life” replacement projects based on “asset condition” can be met by a project that addresses both local and regional needs. Although some regions, such as PJM, already have rules in place providing for such coordination, other regions do not.

Order No. 1920 also requires transmission providers to:

- Be transparent regarding local transmission planning information and conduct stakeholder meetings about the local process during the regional transmission planning cycle;
- Give incumbent transmission owners a right of first refusal to develop “right-sized” replacement facilities; and
- Revise existing interregional transmission coordination processes to reflect the new long-term regional transmission planning reforms.

The order addresses cost allocation through a number of new provisions. At the heart of these is the principle that customers pay only for projects from which they benefit. FERC is requiring transmission planning entities to open a six-month dialog with states before submitting compliance filings. There must be a “default method of cost allocation” to pay for selected long-term regional transmission projects. The Commission further stated that planning entities may also propose a “State Agreement” process that would last for six months after a project is selected for cost allocation provisions to be developed and filed.

The final rule was approved by a vote of 2-1. In commenting during the open meeting on his dissent, Commissioner Christie explained that he believed the final rule no longer reflected a compromise and could contravene the Major Questions Doctrine. His view is that the final rule will impose costs on consumers that their state representatives have not agreed to, that it unduly favors certain types of resources over others, and that it will permit “free riding” by large loads and generators.

Order No. 1920 will become effective 60 days after publication in the Federal Register, with regional compliance filings due 10 months after the effective date and interregional compliance filings (to reflect changes to the regional processes) due one year after the effective date.

Requests for rehearing of significant orders are common and will likely be submitted in this proceeding. Historically, planning entities have sought regional variations to planning rules. Given the pronouncement that the current revisions are necessary to render planning just and reasonable, we will be watching to see how much latitude is afforded by the Commission and how the various parts of the final rule will operate together. Rehearing requests are due on 12 June 2024.

©2005-2026 K&L Gates LLP. All Rights Reserved.

KEY CONTACTS



KIMBERLY B. FRANK
PARTNER

WASHINGTON, DC
+1.202.778.9064
KIMBERLY.FRANK@KLGATES.COM



MATTHEW H. LEGGETT
PARTNER

WASHINGTON, DC
+1.202.778.9087
MATT.LEGGETT@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.