



# Energy Law for a **New** Generation

## Springtime at the Law Offices of Carolyn Elefant



Spring has nearly sprung in Washington D.C., with cherry blossoms just around the corner.

This season, my firm finds itself busy on a variety of issues in several different forums beyond my standard FERC practice. Here's a small sampling of some recent matters:

- Serving as local counsel in two cases, and lead counsel in two cases all before the D.C. Circuit.

Three of the cases involve judicial review of FERC orders, while the fourth presents as a direct appeal to the D.C. Circuit (my first) under Section 19(d) of the Natural Gas Act.

- Representation of petitioners in a FOIA action against FERC in federal district court for the District of Columbia
- Representing QF in a PURPA enforcement petition at FERC
- Assisting several companies in FERC permit and license matters for marine and hydrokinetic projects
- Participating in a project and two roundtable/symposium on constitutional issues (commerce clause and preemption) and clean energy



In addition to cherry blossoms, another sign of spring in Washington D.C. (at least for me) as co-founder of and counsel to the [Ocean Renewable Energy Coalition](#) is our annual [Global Marine Renewable Energy Conference](#) (GMREC) to be held on April 10-11 here in DC. Now celebrating its sixth anniversary, GMREC is a fabulous conference with lots of opportunities to come up to speed on this emerging industry and network with leaders from all over the globe at a Scotch tasting and embassy parties. You can register [here](#). Finally if you haven't done so already, mark your calendar for my colleague Scott Hempling's Current Topics in Electricity Seminar on June 3-4 (details [here](#)).

In the meantime, this newsletter brings a bit of spring break reading for you - an overview of the public policy planning and cost allocation requirements in Order No. 1000. If you have any questions or comments, or would like assistance with any Order 1000 compliance matters, drop me an email at [carolyn@carolynelefant.com](mailto:carolyn@carolynelefant.com). Be sure to ask about my flat fees and other incentive rates that can make participation at FERC and related matters more affordable than you ever thought.

Happy Spring!

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# My Safari through Order 1000 Filings and Public Policy Cost Allocation

In anticipation of FERC rulings at its upcoming [March 21, 2013 meeting](#) on the Order No. 1000 compliance filings by the majority of the ISO/RTOs, I finally decided to take a sojourn through the proposals. Let's just say that slow going hardly begins to describe my slog through each tariff's terrain, dense with muddy explanations and tangled redlined or blue-lined forests of text. Whether or not one supports Order No. 1000's goals, this process isn't regulation's finest hour. Somehow, there's got to be a better way to tame this jungle of redundancies and plodding text - perhaps through use of visual guides such as flow charts, forms or diagrams.



In any event, now that I've completed my safari through Order No. 1000, I'm ready to share the treasures of my trip. Specifically, I'd gone in search of the Order No. 1000 provisions related to consideration of public policy needs during transmission planning and cost allocation of public public driven projects. The results for organized markets are depicted in the table below (I dared not venture into the uncharted territories of newly established planning regions).

Summary of ISO/RTO Public Policy Definitions, Planning, Cost Allocation and Consideration of Non-Transmission Alternatives				
CASO	Policy-driven transmission facilities are defined as those necessary to achieve state and federal policy requirements and directives, such as the reduction of greenhouse gas and increased renewable energy targets	With respect to public-policy-driven projects, the ISO applies a "least-regret" analysis (i.e., evaluating a range of plausible scenarios made up of different generation portfolios, and identifying the transmission requirements found to be necessary to determine the transmission upgrades or additions that "efficiently and effectively meet applicable policies under alternative location and siting scenarios and scenarios, while mitigating the risk of stranded investment")	The tariff allocates the cost of high voltage facilities under the ISO's operational control regime, as by definition they are facilities "included in the transmission plan for the purpose of regional cost allocation" as directed by Order No. 1000. Costs of low voltage facilities are allocated to the applicable participating transmission owner, who recovers the costs of such low voltage facilities from a customer that the use the low voltage facilities. Although the ISO's transmission plan includes both high and low voltage transmission facilities, only the high voltage facilities are eligible for regional cost allocation.	Specific avenues available for continued consideration of demand response, generation and other types of non-transmission alternative for meeting identified needs.
NEISO	Public policy references federal and state requirements. No further discussion or examples.	Consideration of federal public policy requirements (Section 4.0) public policy consideration added by voluntary participation of member owners, who claim Mobile-Serra production from south modification. States will identify Public Policy Requirements that show the need for public policy projects (many times, though, with federal public policies and references, not state/federal ISO-NE will fund and conduct a Public Policy Study to identify high-level solutions. Consistent process to conduct and own a public-policy project may be put forth through a two-stage process where NEISO addresses whether the project will satisfy public policy needs and considers engineering plans for project development. The new public-policy transmission	The costs of Public Policy Transmission Equipment shall be allocated to the Regional Network Load for all utilities in states based on each state's respective load ratio share of the Qualified Transmission Project. Sponsor's proposal/indication costs for that project as set forth in Attachment K of the GATT. If an alternative cost allocation is specified in the RESOLVE Public Policy Transmission, costs will be allocated in accordance with mechanisms to implement such alternative cost allocation included in the Tariff and/or other documents filed with and accepted by the Commission by the project PTO in accordance with the TOA or by a Qualified Transmission project Sponsor that is not a PTO, if not already a party to the TOA, each	Market Response <sup>16</sup> is the terminology used in New England for non-transmission. Existing Sections 3.5 and 4.2(a) of Attachment K address the market in which non-transmission alternatives can address required transmission solutions. Section 4.2 also specifies the market in which market responses, including demand response resources, are accounted for in needs assessments to determine whether the reliability or market efficiency need permits in light of a market solution. In addition, to ensure equal consideration of demand response and generation resources, Section 4.2(a) requires ISO-NE to incorporate in the needs assessments resources of any type

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To access the six regional filings discussed in the chart above, click [here](#).

Below are some of my observations about each region's compliance filings, as well as some thoughts on how they'll be received by FERC.

## Proposals reflect geographic diversity

First, the compliance filings do indeed reflect the type of regional diversity that the Commission hoped to preserve in adopting Order No. 1000. PJM's plan includes a supplemental option for inclusion of public policy projects proposed by states that are either paid for by retail customers or allocated between sponsoring states and recovered pursuant to a FERC accepted cost allocation. As explained by PJM, the supplemental option (which is in addition to the standard mechanism for including public policy considerations in regional planning) acknowledges the differences in needs between PJM's RPS and non-RPS members.

But will PJM's supplemental proposal withstand the criticism

that it is nothing more than a noncompliant participant-funded mechanism cloaked in public policy robes? I predict FERC approval given that PJM's supplemental option is in addition to an already compliant planning process and was devised to accommodate the disparate policies of PJM states consistent with FERC's desire to protect regional diversity.

Meanwhile, SPP's policy also contains its own geographic quirk. Home to an abundance of wind generation, SPP's Order No.1000 compliance filing provides an allocation formula of 2/3-regional/1/3 local for byways (i.e., line less than 300 kV) associated with wind generating facilities, in contrast to the 1/3 regional/2/3 local cost allocation for all other byways. As SPP's cost allocation methodology was [previously approved](#), there's no reason to expect that FERC will act any differently here.

### **Definition of public policy**

In Order No. 1000-A, FERC clarified that public policy is defined as requirements established by local, state or federal laws including duly enacted statutes or regulations promulgated by a relevant jurisdiction whether within a state or at the federal level. Yet only SPP's tariff includes local requirements within its definition of public policy. MISO's public policy definition is linked to the percentage of power produced by a type of generation (code for RPS, I suppose) while NE-ISO's filing did not appear to include a definition (of course, NE-ISO's filing has an obstinate tone, having been made under protest that any revisions will violate *Mobile Sierra* - so including a definition of public policy was the least of NE-ISO's worries). FERC takes this definition seriously -- in last month's [order](#) on Maine Public Service Commission's compliance filing, the Commission faulted the company for failing to include a definition of public policy in its tariff (notwithstanding that the Order No. 1000 definition was referenced in the submittal letter). My guess is that FERC will direct revisions to the definitions in some of these submissions.

### **Consideration of public policy in planning**

The regions adopted different approaches to consideration of public policy in transmission planning. Many - like MISO, PJM and SPP - took a holistic approach, integrating public policy factors along with economics and reliability as part of the planning process. Others like NYISO and CAISO seem to evaluate policy-driven needs separately. Either approach is fine by FERC, so long as public policy needs are considered and stakeholders have opportunity to play a part in identifying public-policy projects.

### **Cost allocation of public policy driven projects**

For those regions that take public policy into account along with reliability and economics, there's no real need to quantify public policy benefits separately. Thus, PJM and SPP (both of which use the holistic approach) have cost allocation methodologies based on line voltage, with larger lines presumed to confer more of a regional benefit. MISO's cost allocation scheme has come under more controversy - it establishes a category of "multi-value projects" that reliably and economically serve public policy goals and which are subject to one hundred percent regional cost allocation. MISO's MVP cost allocation policy, previously approved by FERC, is currently under challenge by the Illinois Commerce Commission and several others at the DC Circuit. *ICC v. FERC*, Docket 11-3421 et. al.

Other regions, like NYISO, developed a separate cost allocation methodology for public policy projects and developed metrics for assigning benefits. Of course, spreading public policy benefits in a one state region like New York or California is easier because generally, state residents benefit equally from state policy. By contrast, quantifying and allocating public policy benefits is more challenging in multi-state regions where states may have different policy goals, including avoiding new transmission entirely through distributed generation or conservation.

## Non transmission alternatives

Most regions declined to establish a separate process for proposal of non-transmission alternatives (NTA). Instead, in most instances, NTAs are considered as part of the needs analysis - meaning that if there are sufficient NTAs to meet a region's transmission needs, including public policy needs, construction of new transmission will be delayed or deferred.

I'll be tracking the outcome of the cases on the docket. Meanwhile, if I'm feeling particularly intrepid (or more accurately, like a glutton for punishment), I hope to explore a few of the other Order No. 1000 filings from non-RTO markets before the interregional cost allocation submissions, which are due on July 10, 2013 following FERC's [grant](#) of a 90-day extension. Stay tuned...

## Beyond Order No. 1000

Much as Order No. 1000's recommendation for including public policy considerations in transmission planning will drive renewables, so too will other FERC policies. Here's a slide deck from my recent presentation, Order No. 1000 and Beyond.










**ORDER NO. 1000 AND BEYOND: FERC TRANSMISSION POLICY, RENEWABLES AND THE ROLE OF STATES**

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February 25, 2013

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