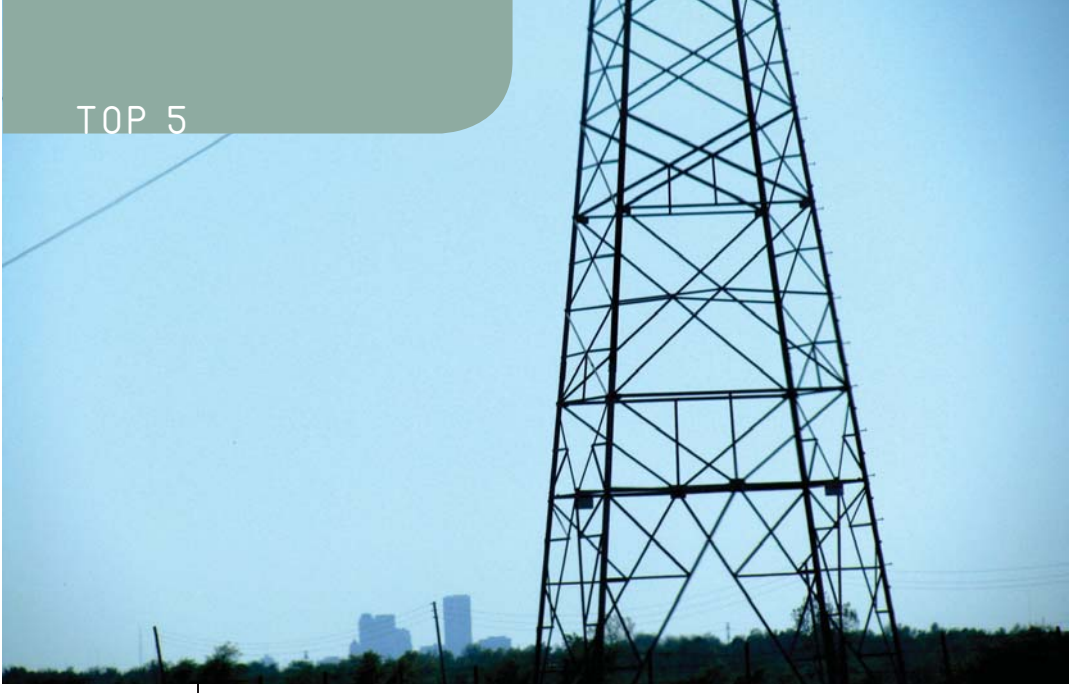

FERC's Order No. 1000

+ What you need to know

By Jim Hoecker

ANY EFFORT TO IDENTIFY THE FIVE KEY IMPLICATIONS FOR utilities of FERC's Order No. 1000 may be entirely arbitrary and somewhat capricious. What follows are highly personal observations, for which my clients and colleagues, past and present, are in no way responsible.

You won't find me among the cadre of government-haters in Washington who wish regulators and other public officials would butt out of economic affairs. But I concluded long ago as FERC chairman that one of the most valuable jobs of a regulator was to create the rules or framework within which a market must evolve and operate, and then let those markets work their magic without undue interference. I don't know if that constitutes activist government, but I didn't feel the President had appointed us as commissioners just to invoke the 10th Amendment. Of course, if state or federal policymakers get the rules wrong or fail to recognize predation when it starts, as happened in California a decade ago, markets can produce ugly results.

Order No. 1000 represents FERC's boldest policy-making foray since regional transmission organizations (RTOs) were authorized in 1999. I wish the Commission well in this endeavor because modernizing how we plan and pay for the grid holds great promise for industry, consumers and the economy overall. It alone is in a position to devise market-wide solutions.

Here are five things for us all to think about:

1. ORDER NO. 1000 IS NOT A RECIPE BOOK FOR TRANSMISSION DEVELOPMENT. It is not quite an empty vessel, but the Commission conspicuously opted not to adopt a Final Rule that would bracket compliance filings and make transmission development in various regions more similar than dissimilar. Far from flexing its federal musculature, the Commission calculated that the road to a more rationally planned and financed high-voltage grid runs through more processes and greater deference to the myriad "stakeholders" with a stake in how the grid, and the markets it supports, evolve.

FERC has thus far found it unnecessary to detail its expectations, provide threshold requirements and criteria, or prescribe how it plans to fix existing planning and cost allocation practices that it has expressly found unlawful. There's a risk inherent in this deferential approach, of course. Without clear guidance, the distinction between legitimate regional preferences and practices founded on the operational realities of the various electric systems and the kind of balkanization and downright discrimination the FERC's restructuring efforts have been designed to end will remain unclear. This raises the possibility that FERC will be accused of arbitrariness if it raises its expectations, as it should, later in the game.

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2. THE COMPLIANCE FILINGS WILL BE REVEALING IN ONE PARTICULAR WAY. Filing utilities will capitalize on the order's open-endedness either by preserving some version of the balkanized 20th century power market—after all, regional planning and broadly applicable cost allocation methods have not been utilized

in half the nation's bulk power systems—or by seizing the opportunity to advance, integrate and enlarge power markets by ensuring the adequacy of the transmission platform across state and regional boundaries. In many cases, the filing entities will be deeply conflicted about this. They need firmer guidance. We will have some indication who is in which camp this year but it will take three years or more, and probably some expensive litigation, before we know how the story ends.

3. THE VIEW THAT ORDER NO. 1000 REPRESENTS AN UNWARRANTED INTRUSION INTO PERFECTLY FUNCTIONAL POWER MARKETS OR INTO REGIONAL AND STATE PREROGATIVES IS AS QUESTIONABLE AS THE VIEW THAT, AS IT STANDS, IT IS REVOLUTIONARY IN ITS IMPACT ON FUEL DIVERSITY AND MARKET STRUCTURE.

While the order is far from inconsequential, its meaty achievements will not be fully understood or cemented until FERC works through a series of tariff amendments and filings implementing the revised tariff procedures. The Commission has clearly identified critical speed bumps on the road to establishing an adequate infrastructure platform for liquid, expansive bulk power markets—uncoordinated planning regimes, disparate cost allocation principles and investor uncertainty, and vestigial market power. It nevertheless remains to be seen how FERC will try to work its will in those respects.

4. AN UNEXPECTED BENEFIT OF ORDER NO. 1000 COULD BE A BETTER, MORE WIDELY ACCEPTED UNDERSTANDING OF TRANSMISSION'S BENEFITS. The development, upgrade and expansion of high-voltage projects entail a number of calculable and harder-to-estimate benefits that accrue to energy customers and the economy over the 40-50 year life of the facilities. But, until now, those benefits have not been well understood or uniformly determined region to region. There is no reason that calculus itself should vary.

The "beneficiaries pay" theorem adopted by FERC is unaccompanied by a definition of the range of potential transmission benefits or how to calculate them in individual cases. Such an explanation could facilitate planning, cost allocation, and even rate-of-return determinations and help avert the endless debates about how severely to restrict or broadly share cost responsibility. This proceeding gives FERC an opportunity to be much clearer about how to ascertain the benefits of any project.

5. ORDER NO. 1000 WAS INEVITABLE. Like its antecedents—Orders No. 888, 2000, and 890 and, yes, Order No. 636—it reaffirms the Commission's commitment to competitive energy markets as the best way to ensure long-term consumer benefits. That national electricity policy was inaugurated over three decades ago in Carter-era energy legislation and reiterated in the Energy Policy Acts of 1992 and 2005.

In Order No. 1000, the Commission sets the table for continuing the industry-wide conversation about the appropriate path to a 21st century electric power market. Like Order No. 2000, it supplies a procedural and institutional framework for achieving true open access and comparability, this time by ensuring the adequacy of the energy delivery infrastructure (i.e., transmission).

That's not to say that apprehension about certain probable end results—losing a monopoly privilege, exposing sunk costs to the uncertainties of competition, or the perceived loss of protection from bigger entities in the market—is not legitimate. Those fears are why regulators still stand guard for those exposed to such risks. But it will be the market, not regulators, devising new technologies and innovations, new energy supplies, and long-term strategic benefits. That's the idea that I hope drives implementation of Order No. 1000. ⧗

Jim Hoecker is a former chairman of the Federal Energy Regulatory Commission. He serves as counsel and advisor to WIRES, an industry coalition promoting transmission infrastructure.

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