



## Looking back (and forward) at FERC's Order No. 1000

Published In: [Intelligent Utility Magazine May / June 2014](#)

[Jim Hoecker](#)

In mid-2013 Intelligent Utility asked for my personal top 5 observations about Order No. 1000, which would be old news by now if it weren't for its long compliance process.

At that time, I proffered that Order No. 1000 so lacked specificity and prescription that the outcomes in various regions working to implement its planning and cost allocation ideas would be uncertain, quite likely divergent, and conceivably counter-productive. Anticipating the benefits of broader markets for power with different regional flavors, FERC had chosen principally to spur formation of regional mechanisms to plan and pay for the grid, rather than using a heavy hand to mandate that the interstate transmission network must conform to particular configurations or operations within a decade or two. Quite the contrary.

That's why the determination of some critics to portray the Order as fundamentally anti-consumer, an attack on state and regional preferences, or a grab for control of non-jurisdictional entities and to seek its repeal legislatively on that basis simply demonstrates (best case) that the industry and regulators have not coalesced around a discernible vision of the bulk power market of the future. Judging by the arguments against the Order made in Federal court recently (there are always serious questions about the elasticity of the Federal Power Act), the Commission's expectations are not only not universally shared; they are in fact flatly rejected by some regional policy makers who perceive more consumer price risk than reward, appear to favor a plethora of local or sub-regional electricity markets, and fear erosion of their control over traditional utility operations. Order No. 1000 does not appear to have a cure for this level of electric policy incoherence – at least not yet.

It was similarly predictable that, even in the face of the emergence of regional power markets, many entities would aim to preserve some version of the balkanized power markets of the 20th Century, while others would instead seize upon the opportunity to advance, integrate, and enlarge the commerce in electric power by ensuring the adequacy of the transmission platform across state and regional boundaries. To be fair, there are no guarantees that come with generic orders of the potential breadth of Order No. 1000. Such 'mega-rules' as FERC staff calls them, are generally founded on rejection of the well-understood defects or inefficiencies of existing energy systems and policies more than a quantification of the long-term benefits for consumers from reform. However, the intergenerational benefits of Order No. 1000 to the economy, in the form of more competitive and liquid markets supported by an inter-regional transmission network, are clearly perceptible even if hard to measure.

At bottom, the choice is between today's uncoordinated planning regimes, disparate cost allocation principles, resource parochialism and retention of vestigial market power versus the Commission's expectation that bulk power markets would capitalize on robust infrastructure to expand and become more barrier-free and competitive. This is the stuff of national policy making. It is hard to overestimate how dramatic the potential changes inherent in Order No. 1000 could be, not because FERC has set the industry on a forced march toward a specific end-state, but because the Order would create an environment that invites technological innovation, fuel diversity, new business models, and the potential to transform the generation mix and other sectors of the economy such as transportation. Backbone infrastructure like transmission is the basis upon which the market will work its will. Its strength or weaknesses will affect patterns of electrical generation, energy efficiency and demand, the deployment of new technologies, and even the advent of industries yet unborn.

So, I was confident last year that that Order No. 1000 would focus planners on the diverse and often-ignored benefits of most transmission projects, including benefits that may be incidental to a project's original purpose but central to its long-term economic, operational, and environmental value. There was no clearly articulated list of transmission benefits, however. To address this problem, The Brattle Group developed an unprecedented list based on industry experiences in RTO- and non-RTO-markets in a report produced for WIRES. The report understood that even the best planning regimes tend to judge the merits of projects primarily, if not exclusively, using production cost simulations to determine benefits, namely short-run reliability and consumer price impacts. Judging from Order No. 1000 compliance filings little has changed. The report also concluded that, without specifically identifying all of the transmission benefits needed to be part of the analysis in individual cases, as well as the metrics of each benefit, allocating transmission costs to "beneficiaries" of individual projects or groups of projects was bound to remain a constant quarrel. In the extreme case, the lack of a common understanding of the benefits that planners must look for when evaluating any proposed inter-regional project, there would be a greater likelihood that adjacent RTO or bilateral market planners will only agree on projects that meet lowest common denominator criteria.

My confidence that the Brattle/WIRES report would change behaviors and help coordinate planners' practices was premature. The Order No. 1000 compliance filings suggest that the allegiance to state or sub-regional practices and preferences may still prevail and that the Order No. 1000 planning processes may not ensure that the best projects are developed across historical market or RTO seams. This naturally raises serious questions about whether accommodating (as opposed to eliminating) the differences in judging the merits of transmission proposals among RTOs and between RTO- and non-RTO markets will result in optimal transmission planning decisions. Order No. 1000 doesn't require the kind of benefit analysis Brattle suggests is necessary. At least this makes it harder to criticize the Order as dictating any particular outcomes—even operationally and economically superior outcomes.

As I argued last time, Order No. 1000 is a reasonable and defensible continuation of almost four decades of national energy policy favoring competitive markets, innovation, and new technologies. It is thus deserving of a balanced evaluation by the industry and policymakers, provided policy makers have the patience to withhold judgment as the Order's consequences unfold. Its evolutionary arc is rather unprecedented.

Since last year, there is plenty of evidence of the ongoing tug-of-war over electricity policy from several intervening developments. Order No. 1000 compliance filings on inter-regional planning were submitted; a Federal circuit court argument was held (not yet decided) about the Order's legal sustainability; FERC is deadlocked over policies

governing transmission rates of return; deep concern has grown about the physical security of the grid stimulated by the Metcalf substation attack; DOE's Quadrennial Energy Review was inaugurated with a focus on energy delivery infrastructure; competitive transmission development processes continue to grow in organized markets; and the anticipated impacts of low-cost natural gas and EPA's upcoming Clean Air Act Section 111 enforcement rules are fueling speculation about what comes next. While Order No. 1000's collaborative approach has yet to win over its critics, many of whom misapprehend both its intent and its methods, it remains FERC's principal marker in the electricity policy arena and a convenient target. Attempts to legislate its repeal are possible, especially if the rule survives court review as expected. Planners in organized markets continue to employ uniquely regional criteria and priorities, ignoring a range of shared transmission benefits in their analyses and therefore missing the efficiencies and long-term consumer benefits potentially available in more integrated markets. The Commission will find this understandable; the question is whether it is tolerable.

Suffice it to say, the tasks of diminishing market balkanization and achieving regulatory harmonization are still formidable. Order No. 1000 is only part of the solution to those hoary problems. Yet, despite the risks and challenges in this changing regulatory and industry environment, incumbent utilities, equity investors, non-traditional developers and transmission providers retain their enthusiasm for the investing in the transmission sector. After all, rebuilding our Nation's core infrastructures is supposedly near the top of our domestic priority list. As Order No. 1000 plays out to its logical if uncertain conclusion over the next 1 to 3 years, the transmission 'industry' will continue moving positively ahead to address reliability, congestion, stranded resources, and aging facilities undeterred by all the regulatory challenges and policies in flux, hopeful that important pro-market outcomes will result. That's a good thing.

*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, and is senior counsel at Husch Blackwell LLP in Washington, D.C.*