

124 FERC ¶ 61,026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Tampa Electric Company	Docket No. OA08-20-000
Florida Power Corporation	Docket No. OA08-22-000
Florida Power & Light Company	Docket No. OA08-29-000
Orlando Utilities Commission	Docket No. NJ08-6-000

ORDER ON COMPLIANCE AND CONDITIONALLY GRANTING
SUPPLEMENTAL PETITION FOR DECLARATORY ORDER

(Issued July 9, 2008)

1. On December 7, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ Tampa Electric Company (Tampa Electric), Florida Power Corporation² (Florida Power) and Florida Power & Light Company (FPL), (collectively, Florida Companies) each submitted its transmission planning process as a proposed Attachment K to its Open Access Transmission Tariff (OATT), as required by Order No. 890.³ Each of the Florida Companies submitted the same Attachment K. Also, on December 7, 2007, Orlando Utilities Commission (Orlando) submitted a supplemental filing to its petition for declaratory order (Supplemental Petition) for its updated “safe harbor” OATT that

¹ 16 U.S.C. § 824e (2000 & Supp. V 2005).

² D/b/a Progress Energy Florida, Inc.

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

updates the transmission planning process identified in Attachment K, and is essentially the same Attachment K submitted by the Florida Companies.

2. In this order, we accept the filings of Tampa Electric, Florida Power and FPL subject to further compliance filings, as discussed below. We also conditionally grant Orlando's Supplemental Petition.

I. Background

3. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process.⁴ To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles (discussed below) and to clearly describe that process in a new attachment (Attachment K) to their OATTs.

4. In Order No. 890, the Commission required that each transmission provider's transmission planning process satisfy the following nine principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation and to build on transmission planning efforts and processes already underway in many regions of the country. However, although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules must be

⁴ The Commission, among other things, also amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability (ATC) and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity. These reforms have been or will be addressed in other orders.

specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.⁵

5. The Florida Companies are public utilities within the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA).⁶ However, Orlando is an electric utility authorized by the State of Florida to produce, transmit and distribute electric energy at wholesale or retail. It is not a public utility within the Commission's jurisdiction under sections 205 and 206 of the FPA. After the issuance of Order No. 888,⁷ Orlando sought and obtained a determination by the Commission that it had an acceptable reciprocity tariff.⁸ Subsequently, Orlando submitted additional filings to ensure that its OATT would continue to qualify for safe harbor status.

6. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.⁹ Under this procedure, non-public utilities may voluntarily submit to the Commission a transmission tariff and petition for declaratory order requesting a finding that the tariff meets the Commission's

⁵ As the Commission explained in Order No. 890, not all rules and practices related to transmission service, or planning activities in particular, need to be codified in the transmission provider's OATT. Rules, standards and practices that relate to, but do not significantly affect, transmission service may be placed on the transmission providers' websites, provided there is a link to those business practices on OASIS. See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55. Transmission providers could therefore use a combination of tariff language in the Attachment K, and a reference to planning manuals on their website, to satisfy their planning obligations under Order No. 890.

⁶ 16 U.S.C. §§ 824d, 824e (2000 & Supp. V 2005).

⁷ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁸ *Orlando Utilities Commission*, 81 FERC ¶ 61,397 (1997), *reh'g denied*, 84 FERC ¶ 61,069 (1998).

⁹ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760; *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,281-87.

comparability (non-discrimination) standards. If the Commission finds that the terms and conditions of such a tariff substantially conform or are superior to those in the *pro forma* OATT, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open access transmission service upon request to that particular non-public utility.¹⁰ Order No. 890 requires that a non-public utility that already has a safe harbor OATT (e.g., Orlando) must amend its OATT so that its provisions substantially conform or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.¹¹

II. Filings

A. Florida Companies' Compliance Filings

7. Tampa Electric, Florida Power and FPL submitted the same Attachment K. Florida Companies state that the proposed Attachment K is the culmination of many months of work by FPL, Orlando, Florida Power, Tampa Electric and many stakeholders in the transmission planning process in Florida.

8. Florida Companies explain that their local transmission planning process works in conjunction with, and is an integral part of, the Florida Reliability Coordinating Council's (FRCC) regional transmission planning process, which facilitates coordinated planning by all transmission providers, owners and stakeholders within the FRCC Region. The FRCC Planning Committee, which includes representation by all FRCC members, directs the FRCC Transmission Working Group, in conjunction with the FRCC Staff, to conduct the necessary studies to fully implement the FRCC regional transmission planning process. The description of the FRCC regional transmission planning process submitted in Attachment K summarizes the elements of that process as they relate to Florida Companies (as well as Orlando, as discussed more fully below) and the principles of Order No. 890.

9. Florida Companies state that Attachment K satisfies the nine transmission planning principles, as defined in Order No. 890: coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation.

¹⁰ In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) standards of conduct requirements or obtain waiver of them. *See* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

¹¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191.

B. Orlando's Supplemental Petition for Declaratory Order

10. Orlando submits a Supplemental Petition and asks the Commission to determine that its updates to Attachment K, which are essentially the same as the Florida Companies as stated above, allow Orlando's OATT to continue to be an acceptable safe harbor tariff.¹²

III. Notice of Filing and Responsive Pleadings

11. Notice of Tampa Electric's filing was published in the *Federal Register*, 72 Fed. Reg. 71,884 (2007), with interventions and protests due on or before December 28, 2007. Florida Municipal Power Agency (FMPA),¹³ Reedy Creek Improvement District (Reedy Creek), and the Electric Power Supply Association¹⁴ filed timely motions to intervene. Seminole Electric Cooperative, Inc. (Seminole) filed a timely motion to intervene and comments. Florida Public Service Commission (Florida Commission) filed a notice of intervention and comments.¹⁵

12. Notice of Florida Power's filing was published in the *Federal Register*, 72 Fed. Reg. 71,884 (2007), with interventions and protests due on or before December 28, 2007. Reedy Creek and Reliant Energy, Inc. (Reliant) filed timely motions to intervene. Seminole filed a timely motion to intervene and comments.

¹² We note that with respect to the rates included in Orlando's filing, the Commission recently found these rates to be comparable to the rates Orlando charges itself and, therefore that the proposed rates meet the standard for a reciprocity tariff. *See Orlando Utilities Commission*, 122 FERC ¶ 61,089 at P 26 (2008) (February 1 Order). Further, we note that Orlando included a proposed Attachment L (Credit Review Procedures) in its filing. We will not take any action with respect to Attachment L here as we have already acted on it in Docket No. NJ07-6-001. In that docket, the Commission addressed Orlando's credit review procedures (Attachment L) in a February 1 Order, 122 FERC ¶ 61,089 at P 14, and explained that in order to "ensure that its OATT continues to be a safe harbor tariff, Orlando must demonstrate that its credit review procedures include all elements required by Order No. 890."

¹³ FMPA's motion to intervene also referenced Docket Nos. OA08-22-000 and OA08-29-000.

¹⁴ The Electric Power Supply Association's motion to intervene also referenced Docket Nos. OA08-22-000 and OA08-29-000.

¹⁵ In addition, the Florida Commission's comments included Florida Power's filing in Docket No. OA08-22-000 and FPL's filing in Docket No. OA08-29-000.

13. Notice of FPL's filing was published in the *Federal Register*, 72 Fed. Reg. 71,884 (2007), with interventions and protests due on or before December 28, 2007. Georgia Transmission Corporation, Reedy Creek and Reliant filed timely motions to intervene. Seminole filed a timely motion to intervene and comments.

14. Notice of Orlando's filing was published in the *Federal Register*, 72 Fed. Reg. 71,884 (2007), with interventions and protests due on or before December 28, 2007. None was filed.

15. As stated above, the Florida Commission submitted a notice of intervention and comments. There, the Florida Commission states that the 2005 Florida Central Coordinated Study brought to light two areas for improvement which the Florida Commission believes Florida's utilities should pursue to improve the coordinated transmission planning process: (1) utilities should develop a methodology for allocating the costs of new transmission projects that affect more than one utility¹⁶ and (2) Peninsular Florida's utilities should establish a uniform process for queuing transmission service requests. The Florida Commission states that it will continue to actively participate in FRCC meetings to ensure that these areas of concern are addressed and if necessary, the Florida Commission states that it will initiate formal proceedings to ensure that Florida's electric utilities coordinate their planning efforts to ensure the reliability of the state's electric grid. It further states that the Strawman Attachment K, sponsored by certain FRCC-region Transmission Providers,¹⁷ the final version of which was filed with the Commission on December 7, 2007, recognizes the value of annual Florida Commission workshops to review transmission and generation expansion plans for Florida. In conclusion, the Florida Commission endorses the stakeholder process developed by the FRCC, which enabled participants to have an open dialogue regarding these important transmission issues.

16. Seminole states that, after significant discussions, an outcome was reached that was agreeable to all active participants, including Seminole. Although it has reservations about certain transmission planning issues, Seminole states that it is hopeful that the Attachment K sponsors view their filings as works in progress that may need to be tweaked from time to time in order to ensure the goals of Order No. 890. Seminole acknowledges that substantial progress was made during the pre-filing process and expresses its belief that the key to successful coordinated and non-discriminatory transmission planning in Florida is for all participants to approach transmission planning

¹⁶ The Florida Commission states that under the then existing arrangement, utilities paid for new transmission projects in their service territory regardless of whether a neighboring utility's action caused that need.

¹⁷ The sponsors were FPL, JEA, Orlando, Progress Energy Florida, Inc. (Florida Power) and Tampa Electric.

as an exercise in transparency, information sharing, and meaningful dialogue throughout the process.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

B. Substantive Matters

18. We find that Florida Companies' Attachment K transmission planning process, with certain modifications, complies with each of the nine planning principles and other planning requirements adopted in Order No. 890. Accordingly, we accept the Attachment K filings of Florida Companies to be effective December 7, 2007, subject to further compliance filings as discussed below. Florida Companies are directed to file the compliance filings within 90 days of the date of this order.

19. We also note that, while we accept Florida Companies' transmission planning process in Attachment K, we nevertheless encourage further refinements and improvements to Florida Companies' planning process as Florida Companies and their customers and other stakeholders gain more experience through actual implementation of this process. Commission staff will also periodically monitor the implementation of the planning process to determine if adjustments are necessary and will inform the transmission provider and the Commission of any such recommendations. Specifically, beginning in 2009, the Commission will convene regional technical conferences similar to those conferences held in 2007 leading up to the filing of the Attachment K compliance filings. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas which may need improvement.

20. Orlando's Attachment K is essentially the same as the Florida Companies and therefore, we find that, with certain modifications, it satisfies the revised *pro forma* OATT's requirements.

C. Compliance With Order No. 890's Planning Principles

1. Coordination

21. In order to satisfy the coordination principle, transmission providers must provide customers and other stakeholders the opportunity to participate fully in the planning process. The purpose of the coordination requirement, as stated in Order No. 890, is to

eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. The planning process must provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans, allowing customers and other stakeholders to participate in the early stages of development. In its planning process, each transmission provider must clearly identify the details of how its planning process will be coordinated with interested parties.¹⁸

Commission Determination

22. We find that the planning process outlined in Florida Companies' and Orlando's proposed Attachment Ks, with the modifications discussed herein, satisfies the coordination principle outlined in Order No. 890.¹⁹ Specifically, they state that "a transmission customer may request and/or schedule a meeting to discuss any issue related to the provision of transmission service at any time, and an open dialogue between the transmission customer and [Florida Companies] takes place regarding customer needs."²⁰ Florida Companies affirm that the transmission customer has an opportunity to comment at any time during the evaluation process and/or when study findings are communicated by the Florida Companies to the customer. In addition, under Florida Companies' Attachment K, customer input is included in the early stages of the development of the transmission plans, as well as during and after plan evaluation processes. Florida Companies' Attachment K also provides that detailed evaluations and analyses of the transmission providers/owners' plans are conducted by the FRCC Transmission Working Group and Stability Working Groups under the direction of the Planning Committee.²¹

23. Florida Companies state that, together with other transmission providers, they provide an initial transmission plan to the FRCC which, when consolidated, becomes the initial regional transmission plan that is reviewed by the FRCC as well as all interested transmission customers. Further, Florida Companies assert that the transmission customers not only have an opportunity to provide input and participate during the initial planning process with Florida Companies, but also have an additional opportunity to raise any issues, concerns or minority opinions that they believe have not been adequately

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 451-54.

¹⁹ As the Florida Companies and Orlando filed essentially the same Attachment K filings, we will refer to a singular Attachment K in our analysis.

²⁰ Tampa Electric Transmittal at 7; Florida Power Transmittal at 5; FPL Transmittal at 5; and Orlando Transmittal at 4.

²¹ See section 2.3 of Attachment K.

addressed by any transmission provider's initial transmission plan submittal during the FRCC review process which commences each year.²² According to the planning diagram in Attachment K, the initial local and regional transmission plans are reviewed and assessed through the stakeholder process; however, it appears that inconsistent with the commitment to post plans in other sections of the tariff, in the diagram only the final plan is posted on the FRCC website.²³ Consistent with Order No. 890's requirement that the planning process must provide for timely and meaningful input and participation of all interested customers and stakeholders, we direct the Florida Companies to revise the diagram in Attachment K in a compliance filing to be made within 90 days of the date of this order to provide for the posting of the initial plans.

2. Openness

24. The openness principle requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders. Although the Commission recognized in Order No. 890 that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties, such as a particular meeting of a sub-regional group, the Commission emphasized that the overall development of the transmission plan and the planning process must remain open.²⁴ Transmission providers, in consultation with affected parties, must also develop mechanisms to manage confidentiality and Critical Energy Infrastructure Information (CEII) concerns, such as confidentiality agreements and password protected access to information.²⁵

Commission Determination

25. We find that Florida Companies' and Orlando's Attachment K provides an opportunity for all affected parties to participate in the transmission planning process and, therefore, with the modifications discussed herein, satisfies the openness principle set forth in Order No. 890. Florida Companies explain that they provide notice and schedule

²² The FRCC review process is described in proposed Attachment K section 1.

²³ The Transmission Provider's Local/Regional Coordinated Transmission Network Planning Process Overview is described in proposed Attachment K section 3.

²⁴ The Commission stated in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

²⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

meetings with their transmission customers as deemed necessary by the transmission customer and/or Florida Companies. Florida Companies note that they participate along with other stakeholders in the committee and working group processes at the FRCC. According to the Florida Companies, the FRCC conducts its planning process in an open manner in such a way that it ensures fair treatment for all customers/users, owners and operators of the transmission system. They state that stakeholders have access to and participate in the FRCC planning process and Florida Companies further state that the participants in the planning process at the FRCC are the sector representatives of the Planning Committee. Their Attachment K includes links to the FRCC website where a list of representatives and the rules governing Planning Committee structure and processes can be found.

26. Order No. 890 required that transmission planning meetings be open to all affected parties including, but not limited to, all transmission and interconnection customers, state commissions and other stakeholders.²⁶ While the planning process is open to customers/users, owners and operators of the transmission system, it is unclear whether any individual or entity may attend the planning meetings or participate in the process. Therefore, we direct the Florida Companies to explain, in a compliance filing to be submitted within 90 days of the date of this order, whether any interested entities or persons may participate in the Planning Committee and the Standing Committees.²⁷ In addition, Florida Companies' Attachment K states that the rules governing Planning Committee structure and processes as they relate to Standing Committee Quorum and Voting are set forth on the FRCC website. Given that Florida Companies reference the governance procedures as a part of the overall transmission planning process, we direct Florida Companies to submit a compliance filing, within 90 days of the date of this order, that revises section 2 of Attachment K to reflect the quorum and voting process.

27. Lastly, Florida Companies claim that the FRCC Regional Transmission Planning Process provides for the overall protection of all confidential and proprietary information that is used to support the planning process. They state that a customer may enter into a confidentiality agreement with the FRCC and/or applicable transmission provider/owner, as appropriate, to be eligible to receive transmission information that is restricted due to CEII, security, business rules and standards and/or other limitations.²⁸

²⁶ *Id.*

²⁷ According to FRCC's Rules of Procedure for FRCC's Standing Committees, FRCC's three Standing Committees are the Planning Committee, Operating Committee, and Compliance Committee. See FRCC's website at: www.frcc.com/committees.aspx.

²⁸ Section 2.5 of the Attachment K provides a link to the FRCC website delineating procedures for requesting transmission information that is restricted due to CEII, security, business rules and standards and/or other limitations.

3. Transparency

28. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. To that end, each transmission provider must describe in its planning process the method(s) it will use to disclose the criteria, assumptions and data that underlie its transmission system plans.²⁹ The Commission specifically found that simple reliance on Form Nos. 714 and 715 failed to provide sufficient information to provide transparency in planning because those forms were designed for different purposes. Transmission providers also were directed to provide information regarding the status of upgrades identified in the transmission plan.

29. The Commission explained that sufficient information should be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained in Order No. 890 that simultaneous disclosure of transmission planning information should alleviate Standards of Conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand response resources in transmission planning. Where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis.³⁰

Commission Determination

30. We find that Florida Companies' and Orlando's Attachment K describes the methods that they will use to disclose criteria, assumptions, and data underlying their transmission system plans and complies with the transparency principle set forth in Order No. 890. Florida Companies contend that they plan their transmission systems in accordance with the NERC and FRCC Planning Reliability Standards, along with their own design, planning and operating criteria, which they utilize for all customers on a comparable and non-discriminatory basis. Florida Companies explain that during their local area planning process, they utilize for their base case the FRCC databanks, which contain information provided by Florida Companies and customers of projected loads as

²⁹ In Order No. 890-A, the Commission stated that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to adequately understand the results reached in a transmission plan. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 199.

³⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-79.

well as all planned and committed transmission and generation projects, new facilities, and changes to planned in-service dates over the planning horizon.³¹ Florida Companies also state that projected loads reflect existing and planned demand response resources. Further, Florida Companies state that they make the underlying data, assumptions, criteria, and transmission plans utilized in the study process available to a transmission service customer.

31. Florida Companies' Attachment K provides that Florida Companies will provide written descriptions of the basic methodology, criteria and processes used to develop their plans. Their Attachment K also provides a chart describing the local and regional coordinated transmission network planning process. According to Florida Companies, once the results of all transmission providers' local area planning process are reflected in the initial FRCC regional plan, the FRCC will seek input and feedback from transmission customers for any issues or concerns and the FRCC will independently assess the initial regional plan from its regional perspective. Florida Companies contend that studies conducted pursuant to the FRCC Regional Transmission Planning Process utilize the applicable reliability standards and criteria of the FRCC and NERC that apply to the Bulk Power System as defined by NERC, and such studies utilize the specific design, operating and planning criteria used by FRCC transmission providers. They also assert that the transmission planning criteria are available to all customers and stakeholders. Lastly, Florida Companies state that the FRCC produces annual reports of: (1) aggregate data on demand and energy, capacity and reserves, and proposed new generating unit and transmission line additions for Peninsular Florida as well as statewide; (2) generating unit availability, forced outage rates, load forecast methodologies, and gas pipeline availability; and (3) adequacy of Peninsular Florida's bulk power and transmission system.³²

4. Information Exchange

32. The information exchange principle requires network customers to submit information on their projected loads and resources on a comparable basis (e.g., planning horizon and format) as used by transmission providers in planning for their native load. Point-to-point customers are required to submit any projections they have of a need for service over the planning horizon and at what receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as a proxy for actual reservations.³³ Transmission providers, in

³¹ See section 3.5 of Attachment K.

³² See section 3.6 of Attachment K.

³³ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 207.

consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

33. The Commission also provided that, to the extent applicable, transmission customers should provide information on existing and planned demand resources and their impacts on demand and peak demand. Stakeholders, in turn, should provide proposed demand response resources if they wish to have them considered in the development of the transmission plan. The Commission stressed that information collected by transmission providers to provide transmission service to their native load customers must be transparent and equivalent information must be provided by transmission customers to ensure effective planning and comparability. In Order No. 890-A, the Commission made clear that customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer, and that the transmission provider must maintain the confidentiality of this information. To this end, transmission providers must clearly define in their Attachment K the information sharing obligations placed on customers in the context of economic planning.³⁴

34. The Commission emphasized that transmission planning is not intended to be limited to the mere exchange of information and after-the-fact review of transmission provider plans. The planning process is instead intended to provide a meaningful opportunity for customers and stakeholders to engage in planning along with their transmission providers. To that end, the Commission clarified that information exchange relates to planning, not other studies performed in response to interconnection or transmission service requests.³⁵

Commission Determination

35. We find that Florida Companies' and Orlando's Attachment K provides clear guidelines for the submittal of customer information, and complies with the information exchange principle described in Order No. 890. In particular, Florida Companies state that transmission customers submit data which includes load growth projections, planned generation resource additions/upgrades (including network resources), any demand response resources, new delivery points, new or continuation of long-term firm point-to-point transactions with specific receipt and delivery points, and planned transmission facilities in order for Florida Companies to plan for the needs of network and point-to-point customers.³⁶ Florida Companies further expound that they utilize this data in

³⁴ *Id.* P 206.

³⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 486-88.

³⁶ *See* section 4 (Information Exchange) of Attachment K.

modeling and assessing the performance of their system in order to develop a transmission plan that meets the needs of all customers of their transmission system. Florida Companies state that they exchange the initial transmission plan and data with a transmission customer to provide an opportunity for the transmission customer to evaluate the initial study findings or to propose potential alternative transmission solutions for consideration. They assert that through this information exchange process the transmission customer has an integral role in the development of the transmission plan. Florida Companies affirm that consistent with their obligation under federal and state law, and under NERC and FRCC reliability standards, they are ultimately responsible for the transmission plan.

36. Florida Companies state that the FRCC Transmission Working Group (TWG) sets the schedule for data submittal and frequency of information exchange, which starts at the beginning of each calendar year. They add that updates and revisions are discussed at the FRCC Planning Committee meetings and this process requires extensive coordination and information exchange over a period of several months as the FRCC develops electric power system load-flow databank models for the FRCC Region.³⁷ Florida Companies note that the models include data for every utility in peninsular Florida and are developed and maintained by the FRCC, while TWG is responsible for developing and maintaining power flow base cases. Florida Companies claim that the FRCC power flow base case models contain the data used by the FRCC and transmission providers for intra- and inter-regional assessment studies, and other system studies. In addition, they contend that the models created also are the basis for the FRCC submittal to the NERC Multi-regional Modeling Working Group.

37. Florida Companies state that the FRCC databank models are compiled and incorporate load projections by substations, firm transmission services, and transmission expansion projects over the 10-year planning horizon. Florida Companies further explain that they utilize the FRCC databanks which contain projected loads as well as all planned and committed transmission and generation projects, including upgrades, new facilities and changes to planned in-service dates over the planning horizon, as the base case for their studies. Moreover, these databanks are maintained by the FRCC TWG and are updated on a periodic basis, according to Florida Companies. Florida Companies state that they make available to transmission service customers the underlying data, assumptions, criteria and transmission plans utilized in the study process. If information is deemed confidential, Florida Companies require the customer to enter into a confidentiality agreement prior to providing the confidential information.³⁸

³⁷ See section 4.3 of Attachment K.

³⁸ *Id.*

5. Comparability

38. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop a transmission system plan that meets the specific service requests of their transmission customers and otherwise treats similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. In Order No. 890, the Commission expressed concern that transmission providers have historically planned their transmission systems to address their own interests without regard to, or ahead of, the interests of their customers. Through the comparability principle, the Commission required that the interests of transmission providers and their similarly-situated customers be treated on a comparable basis during the planning process. The Commission also explained that demand resources should be considered, where appropriate, on a comparable basis to the service provided by comparable generation resources.³⁹

39. Lastly, in Order No. 890-A, the Commission clarified that, as part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.⁴⁰

Commission Determination

40. We find that Florida Companies' and Orlando's Attachment K planning process complies with the comparability principle described in Order No. 890, with the modifications discussed below. Florida Companies assert that they incorporate into their transmission plans on a comparable basis all firm transmission obligations, both retail and wholesale. They assert that they plan for forecasted load, generation additions/upgrades, which include network resources, and new distribution substations associated with retail service obligations. Florida Companies explain that a network transmission customer provides corresponding data as part of the provision of service, such as load forecast data, generation additions/upgrades including network resource forecast, new delivery points, and other information needed by Florida Companies to plan for the needs of the customer. They contend that both Florida Companies and the transmission customers reflect their demand resources within the information that is input within this planning process. Further, Florida Companies argue that the data required for planning the transmission system for both retail and wholesale customers is

³⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 494-95.

⁴⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

comparable.⁴¹ The comparability principle is also further described under the Local Transmission Planning Process of Florida Companies' Attachment K.⁴²

41. Florida Companies state that the data is also provided to the FRCC for its use in databank development and analysis under the FRCC Regional Transmission Planning Process. They explain that transmission providers submit to the FRCC their latest 10-year expansion plans for their transmission systems, which incorporate the transmission expansion needed to meet transmission customer requirements, including transmission projects that provides for all firm obligations based on the best available information. Florida Companies state that the FRCC compiles and distributes a list of projects from the transmission providers, updates the project status to keep the list current, and compiles and distributes the transmission providers' 10-year expansion plans. Florida Companies state that all transmission users and other affected parties are asked to submit to the FRCC any issues or special needs that they believe are not adequately addressed in the expansion plans.

42. We note, however, that Order No. 890-A was issued on December 27, 2007, subsequent to Florida Companies submitting their Order No. 890 Attachment K compliance filings. In Order No. 890-A, the Commission provided additional guidance, among other things, as to how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process "how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning."⁴³ Here, Florida Companies have submitted tariff language providing that, as a general matter, demand response resources will be treated comparably. However, since Order No. 890-A was issued subsequent to the filing before us, Florida Companies did not have an opportunity to demonstrate that they comply with this requirement of Order No. 890-A. Therefore, we direct Florida Companies to file, within 90 days of the date of this order, compliance filings providing the necessary demonstration required by Order No. 890-A.⁴⁴

⁴¹ See section 5.2 of Attachment K.

⁴² See Appendix 1 to Attachment K.

⁴³ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, 487, 494 and 549.

⁴⁴ For example, tariff language should provide for participation throughout the transmission planning process by sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources.

6. Dispute Resolution

43. The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise from the planning process. The Commission explained that an existing dispute resolution process may be utilized, but that transmission providers seeking to rely on an existing dispute resolution process must specifically address how its procedures will address matters related to transmission planning. The Commission encouraged transmission providers, customers, and other stakeholders to utilize the Commission's Dispute Resolution Service to help develop a three-step dispute resolution process, consisting of negotiation, mediation, and arbitration. In order to facilitate resolution of all disputes related to planning activities, a transmission provider's dispute resolution process must be available to address both procedural and substantive planning issues. The Commission made clear, however, that all affected parties retain any rights they may have under FPA section 206 to file complaints with the Commission.⁴⁵

Commission Determination

44. We find that Florida Companies' and Orlando's Attachment K complies with the dispute resolution principle in Order No. 890. Specifically, Florida Companies state that if a dispute arises between a transmission customer and Florida Companies under the local transmission planning process or involving transmission service under the OATT, the senior representatives of Florida Companies and the customer shall attempt to resolve the dispute. However, if such dispute is not resolved, then the Dispute Resolution Procedures set forth in Article 12 of the OATT govern. Florida Companies state that if a dispute arises among or between a transmission provider and another transmission owner(s) involving a cost allocation issue under Principle 9 of Attachment K, then the dispute resolution process set forth under that principle governs.⁴⁶

⁴⁵ *Id.* P 501-03.

⁴⁶ We note that the Florida Companies omitted the second step, mediation, of a three step dispute resolution process consisting of negotiation, mediation and arbitration in their dispute resolution provisions when there is a dispute between a Florida Company and a transmission customer or when there is a dispute among or between a Transmission Provider and another transmission owner. While we are not directing the Florida Companies to include mediation, we strongly encourage them to consider including a mediation step in these dispute resolution processes. We have found that a high percentage of disputes sent to the Commission's Dispute Resolution Service or another mediator or an Administrative Law Judge serving as a Settlement Judge settle without adjudication. If the Florida Companies desire to include the mediation step, they should do so in the compliance filing required at the end of this order.

45. If a dispute arises among or between Florida Companies and another transmission provider regarding the FRCC Regional Transmission Planning Process, then Florida Companies specify that the dispute resolution procedures that are contained in the FRCC Regional Transmission Planning Process as set forth in Attachment K will govern. They also note that the FRCC Regional Transmission Planning Process has two alternative dispute resolution processes.⁴⁷ According to Florida Companies, any party raising an unresolved issue may request the Mediator Dispute Resolution Process, which involves a mediator being selected jointly by the disputing parties. If the Mediator Dispute Resolution Process is completed, and the issue is still unresolved, by mutual agreement between the parties, Florida Companies state that the Independent Evaluator Dispute Resolution Process may be utilized. If the issue is unresolved by either of the dispute resolution processes, Florida Companies state that the transmission providers, affected parties, or the FRCC may request that the Florida Commission address such an unresolved dispute. Lastly, Florida Companies pledge that any unresolved issue(s) may be submitted to any regulatory or judicial body having jurisdiction.

7. Regional Participation

46. The regional participation principle provides that, in addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider is required to coordinate with interconnected systems to: (1) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data; and (2) identify system enhancements that could relieve congestion or integrate new resources. In Order No. 890, the Commission stated that the specific features of the regional planning effort should take account of and accommodate, where appropriate, existing institutions, as well as physical characteristics of the region and historical practices. The Commission there declined to mandate the geographic scope of particular planning regions, instead stating that the geographic scope of a planning process should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and subregions. The Commission also made clear that reliance on existing NERC planning processes may not be sufficient to meet the requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations. To the extent a transmission provider's implementation of the NERC processes is not appropriate for such economic issues, individual regions or subregions must develop alternative processes.⁴⁸

⁴⁷ Alternative dispute resolution processes are described in section 6 of the Attachment K.

⁴⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-28.

47. In Order No. 890-A, the Commission clarified that while the obligation to engage in regional coordination is directed to transmission providers, participation in such processes is not limited to transmission providers and should be open to all interested customers and stakeholders.⁴⁹ The Commission also emphasized that effective regional planning should include coordination among regions and subregions as necessary, in order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.⁵⁰

Commission Determination

48. We find that Florida Companies' and Orlando's proposal complies with Order No. 890's regional participation principle, with the modifications discussed below. While Order No. 890 supports regional planning processes that already occur as part of the NERC planning process, the Commission reiterated that they must be open and inclusive and address both reliability and economic considerations.⁵¹ While the Florida Companies acknowledge that their coordination with the Southeastern Subregion of the SERC Reliability Corporation (SERC) augments the reliability of the FRCC bulk power systems, their Attachment K lacks sufficient description of the SERC's reliability planning process. Florida Companies contend that the FRCC Regional Transmission Planning Process begins with the consolidation of the long-term transmission plans of all of the transmission providers/owners in the FRCC region. They explain that such transmission plans incorporate the integration of new firm resources as well as other firm commitments. Florida Companies point out that any generating or transmission entity not required to submit a 10-year plan to the Florida Commission submits its 10-year expansion plan to the FRCC, together with any issues or special needs it believes are not adequately addressed by the transmission providers/owners' 10-year plans.⁵² Under their Attachment K, each transmission provider/owner furnishes the FRCC with a study schedule for each system impact study so that other potentially affected transmission providers/owners can independently assess whether they may be affected by the request, and elect to participate in or monitor the study process.

49. Under Florida Companies' local planning process, in order for a transmission provider to carry out its responsibility of developing the annual 10-year expansion plan and the responsibility of leading the local process on a coordinated basis with customers/stakeholders, data submission from customers/stakeholders is needed on or

⁴⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

⁵⁰ *Id.*

⁵¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 528.

⁵² *See* Section 7.1 of Attachment K.

before January 1 of each year. Florida Companies' Appendix 1 contains an eight-step local planning process that is coordinated with the regional planning process. Under Step 1, Florida Companies explain that customers/stakeholders must provide data submissions for input into the plan, such as load forecasts, transmission delivery points, and existing and planned demand resources, if appropriate. In Step 2, transmission providers and customers/stakeholders develop a power system model with FRCC members. The transmission provider will review and validate the input data assumptions received from each customer/stakeholder, discuss the proposed study schedule, and discuss the study requirements, which will include, but not be limited to: (1) the criteria for determining transmission contingencies for the analysis; (2) the individual company criteria (i.e., thermal, voltage, stability and short circuit) by which the study results will be measured; (3) the FRCC reliability standards and requirements by which the study will be measured; and (4) customer/stakeholder proposed study scenarios for transmission provider consideration in the analysis.

50. Under Step 3, the transmission provider will utilize all the data received from customers/stakeholders during the data submission stage and the standards, criteria, rules and tools, and methods determined in Step 2, to develop the base case models used for the study. The transmission provider will electronically post and provide notice to the customers/stakeholders of the posting of the base case models.

51. When the system models have been tested, the transmission provider will perform a system analysis for Step 4. Florida Companies state that the transmission provider will perform the system analyses (verification that thermal, voltage, stability and short circuit values meet all planning criteria) and will electronically post and provide notice to customers/stakeholders of the posting of initial input data, output data, and files. Step 5 requires that the transmission provider evaluate the initial output data to identify any problems and issues for further investigation. Additionally, the transmission provider must electronically post, and provide notice to the customers/stakeholders if there is an impact to them.

52. Under Step 6, the transmission provider will identify potential solutions and mitigation proposals to address problems and issues. The transmission provider will document, electronically post and provide to the customers/stakeholders the posting of the identified potential solutions/mitigation proposals to address problems. Further, the customers/stakeholders may provide alternative solutions and mitigation proposals for the transmission provider to consider. The transmission provider will determine the effectiveness of the potential solutions through additional studies (thermal, voltage, stability and short circuit).

53. Under Step 7, the transmission provider, in consultation with the customers/stakeholders, will compare alternatives and select the preferred solution and mitigation alternatives based on feasibility, timing and cost effectiveness that provide a reliable cost-effective transmission solution, taking into account neighboring

transmission provider's transmission plans. Florida Companies explain that in the case of transmission provider and customer/stakeholder dispute, the dispute resolution process described in section 6.1 of Attachment K will be used.

54. Once the local transmission plan is selected, the transmission provider will submit its proposed local transmission network plan results to the FRCC, along with an indication of whether there are any pending disagreements regarding the plan (and if there are, will elicit from the dissenting entity(ies), and provide, a minority report regarding such differences of opinion). The transmission provider's 10-year expansion plan will include all transmission system projects without differentiation between bulk projects (i.e., all projects 69 kV and above). This submittal will be made to the FRCC on or about April 1 and will become part of the initial FRCC regional plan. At this point, the FRCC regional planning process will start.

55. Florida Companies' Attachment K provides that the FRCC TWG performs review and assessment of the initial regional transmission plan which may include economic and congestion evaluation from an overall regional perspective. The FRCC Planning Committee issues the preliminary draft regional plan to all FRCC members, and identifies any proposed modifications to the original transmission owner's/provider's plan, and identifies any unresolved issues subject to dispute resolution procedures. Then, the FRCC Planning Committee approves the regional plan and presents it to the FRCC Board for its approval. The final Board approved regional plan is posted on FRCC public website and sent to the Florida Commission.

56. According to Florida Companies, FRCC has a reliability coordination arrangement with Southern Company Services (Southern), which is in the Southeastern Subregion of the SERC Reliability Corporation Region that the FRCC is connected to, with the purpose of safeguarding and augmenting the reliability of the Southern/SERC and the FRCC bulk power supply systems. Florida Companies' Attachment K details that this arrangement provides for exchanges of information and system data between Southern and FRCC for the coordination of planning and operations in the interest of reliability. Also, they state that the arrangement provides the mechanism for regional studies and recommendations designed to improve the reliability of the interconnected bulk power system.

57. Florida Companies state that the duties under FRCC's reliability coordination arrangement with Southern are as follows: (1) coordination of generation and transmission system planning, construction, operating, and protection to maintain maximum reliability; (2) coordination of interconnection lines and facilities for full implementation of mutual assistance in emergencies; (3) initiation of joint studies and investigations pertaining to the reliability of bulk power supply facilities; (4) coordination of maintenance schedules of generating units and transmission lines; (5) determination of requirements for necessary communication between the parties; (6) coordination of load relief measures and restoration procedures; (7) coordination of spinning reserve

requirements; (8) coordination of voltage levels and reactive power supply; (9) other matters relating to the reliability of bulk power supply required to meet customer service requirements; and (10) exchange of necessary information, such as magnitude and characteristics of actual and forecasted loads, capability of generating facilities, programs for capacity additions, capability of bulk power interchange facilities, plant and system emergencies, unit outages, and line outages.

58. Additionally, Florida Companies state that the FRCC is a member of the Eastern Interconnection Reliability Assessment Group (ERAG) which includes other Eastern Interconnection reliability regional entities, the Midwest Reliability Organization, the Northeast Power Coordinating Council, Inc., Reliability First Corporation, SERC Reliability First Corporation, and Southwest Power Pool. The purpose of the ERAG, according to Florida Companies, is to ensure the reliability of the interconnected system and the adequacy of infrastructure in their respective regions for the benefit of all end-users of electricity and all entities engaged in providing electric services in the region.

59. Florida Companies assert that the FRCC and the Southeastern Subregion of SERC are establishing their respective links to transmission providers' and the FRCC/Southeastern Subregion websites, as applicable, that contain study methodologies, joint transmission studies, inter-regional transmission service and generator interconnection service-related studies, and the FRCC/Southeastern Subregion process for requesting inter-regional economic studies.⁵³ In their transmittal, Florida Companies state that transmission providers within the FRCC and Southeastern and Subregion of SERC coordinate with each other as necessary in the performance of economic studies. They further state that FRCC and Southeastern SERC transmission providers are planning to attend transmission planning forums when study findings are presented to stakeholders that affect their respective transmission systems.⁵⁴ While Florida Companies commit to attending meetings and coordinating economic planning studies with the Southeastern Subregion of SERC, it is unclear how such studies are coordinated. In addition, as discussed above, the Florida Companies state that the FRCC is a member of ERAG, which includes other reliability regional entities such as SERC. However, Florida Companies' Attachment K does not describe how ERAG coordinates planning or whether members share system plans and identify system enhancements that can relieve congestion. Therefore, we require Florida Companies to revise Attachment K, within 90 days of the date of this order, to explain in detail how coordination of economic studies and coordination in ERAG is accomplished.

⁵³ See section 7.4 of Attachment K.

⁵⁴ Tampa Electric Transmittal at 16; Florida Power Transmittal at 13; FPL Transmittal at 13-14; and Orlando Transmittal at 12.

60. The Florida Companies further explain that they have a reliability coordination agreement, described above, with Southern for the purpose of safeguarding and augmenting the reliability of the Southern/SERC and the FRCC bulk power supply systems. However, Florida Companies' Attachment K lacks a sufficient description of the SERC reliability planning process. Therefore, we require Florida Companies to modify Attachment K, within 90 days of the date of this order, to provide a description of the SERC reliability planning process that, according to Florida Companies, safeguards and augments the reliability of the FRCC transmission system.

8. Economic Planning Studies

61. The economic planning studies principle requires transmission providers to account for economic, as well as reliability, considerations in the transmission planning process. The Commission explained in Order No. 890 that good utility practice requires vertically-integrated transmission providers to plan not only to maintain reliability, but also to consider whether transmission upgrades can reduce the overall cost of serving native load. The economic planning principle is designed to ensure that economic considerations are adequately addressed when planning for OATT customers as well. The Commission emphasized that the scope of economic studies should not just be limited to individual requests for transmission service. Customers must be given the opportunity to obtain studies that evaluate potential upgrades or other investments that could reduce congestion or integrate new resources and loads on an aggregated or regional basis.

62. All transmission providers, including RTOs and ISOs, were directed in Order No. 890 to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies would be recovered as a part of the transmission provider's overall OATT cost of service, while the cost of additional studies would be borne by the stakeholder(s) requesting the study.⁵⁵

63. In Order No. 890-A, the Commission made clear that the transmission provider's planning process must clearly describe the process by which economic planning studies can be requested and how they will be prioritized.⁵⁶ The Commission also made clear in Order No. 890-A, that a transmission provider's affiliates should be treated like any other stakeholder and, therefore, their requests for studies should be considered comparably, pursuant to the process outlined in the transmission provider's planning process.⁵⁷

⁵⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 542-51.

⁵⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

⁵⁷ *Id.*

Commission Determination

64. We find that Florida Companies' and Orlando's Attachment K complies with the economic planning studies principle described in Order No. 890, subject to the modifications discussed below. Florida Companies submit that in the performance of an economic sensitivity study that is identified as part of the FRCC Regional Transmission Planning Process, they plan to participate in such study utilizing the procedures that are contained in the FRCC Regional Transmission Planning Process. They claim that if Florida Companies receive a specific request to perform economic studies for a transmission customer, they plan to utilize the OASIS for such requests. To the extent an economic study would involve other transmission providers/owners, Florida Companies pledge that they will coordinate with these providers/owners in performing the study. Florida Companies also state that they will be required to perform up to five economic planning studies on an annual basis as requested by stakeholders.⁵⁸

65. Florida Companies submit that the FRCC Regional Transmission Planning Process includes both economic and congestion studies. According to Florida Companies, one of the sensitivities may include evaluating the FRCC Region with various generation dispatches that test or stress the transmission system, including economic dispatch from all generation (firm and non-firm) in the region. Further, they state that other sensitivities may include specific areas where a combination/cluster of generation and load serving capability involving various transmission providers in the FRCC experiences or may experience significant and recurring transmission congestion on their transmission facilities.⁵⁹ Members of the FRCC Planning Committee may also request specific economic analyses that would examine potential generation resource options, or other types of regional economic studies and, to the extent information is available, Florida Companies provide that members may request a study of the cost of congestion. Florida Companies state that the FRCC Planning Committee may consider clustering studies as appropriate. They further state that economic analyses should reflect the upgrades to integrate necessary new generation resources and/or loads on an aggregate or regional (cluster) basis.

66. Order No. 890 required transmission providers, in consultation with their stakeholders during the development of their Attachment K compliance filings, to develop a means to allow the transmission provider and stakeholders to cluster or batch requests for economic planning studies so that the transmission providers may perform the studies in the most efficient manner. Under Florida Companies' Attachment K, it is unclear whether there is a sufficient mechanism for the clustering or batching of requests for economic planning studies. Therefore, we require Florida Companies to file

⁵⁸ See section 8.1 of Attachment K.

⁵⁹ See section 8.2 of Attachment K.

modifications to Attachment K to clearly provide a mechanism for the clustering or batching of requests for economic planning studies in the compliance filing to be made within 90 days of the date of this order.

67. Under Attachment K, Florida Companies are required to perform up to five economic planning studies on an annual basis as requested by stakeholders. Order No. 890 determined that to provide appropriate financial incentives, the stakeholder(s) requesting any additional studies would be responsible for paying the cost of such studies.⁶⁰ However, Attachment K fails to explain how requests that exceed the five identified to be performed in a given year will be treated with respect to costs. Therefore, we require Florida Companies to revise Attachment K to explain the methodology used for customers requesting additional studies within 90 days of the date of this order.

9. Cost Allocation

68. The cost allocation principle requires that transmission providers address in their planning process the allocation of costs of new facilities that do not fit under existing rate structures. In Order No. 890, the Commission suggested that such new facilities might include regional projects involving several transmission owners or economic projects that are identified through the study process, rather than individual requests for service. The Commission did not impose a particular allocation method for such projects and, instead, permitted transmission providers and stakeholders to determine the criteria that best fits their own experience and regional needs. Transmission providers therefore were directed to identify the types of new projects that are not covered under existing cost allocation rules and, as a result, would be affected by the cost allocation proposal.

69. The Commission suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.⁶¹ In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as

⁶⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 547.

⁶¹ *Id.* P 557-61.

participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.⁶²

Commission Determination

70. We find that Florida Companies' and Orlando's proposal, with the modifications discussed below, complies with the cost allocation principle described in Order No. 890. Florida Companies contend that each Transmission Owner in the FRCC is responsible for upgrading its respective transmission system to meet NERC and FRCC Reliability Standards and also participate either directly or indirectly in the FRCC Regional Transmission Planning Process. They explain that upgrades, expansions or provisions of service (Precipitating Events) may result in the need for an upgrade (Remedial Upgrade) on a Transmission Owner's system for which compensation is to be provided (Affected Transmission Owner). According to Florida Companies' Attachment K, Precipitating Events include: (1) a new generating unit to serve incremental load; (2) a new or increased long-term sale or purchase; (3) a new or modified network resource designation; and (4) a new or increased long-term firm reservation for point-to-point transmission service. Conversely, Florida Companies' Attachment K provides that specific non-Precipitating Events include qualifying rollover agreements that are subsequently rolled over; and redirected transmission service for sources to the extent the redirected service does not meet the threshold criteria.

71. Under Florida Companies' planning process, in order to receive compensation, an Affected Transmission Owner must participate in the Attachment K planning process and provide appropriate notification upon learning of the need for a Remedial Upgrade. In the event a Remedial Upgrade is identified as needed, the Affected Transmission Owner must satisfy certain threshold criteria to be entitled to recover from third parties the costs associated with such upgrade: (1) a change in power flow of at least 5 percent or 25 MW, whichever is greater, on the Affected Transmission Owner's facilities which results in a NERC or FRCC Reliability Standards violation; (2) the transmission expansion must be 230 kV or higher voltage; and (3) the costs associated with the transmission expansion must exceed \$3.5 million.⁶³

72. Under Florida Companies' Attachment K, once it is determined that an Affected Transmission Owner's Remedial Upgrade is needed, certain principles govern the amount of compensation that an Affected Transmission Owner is entitled to receive from one or more parties. Florida Companies explain that compensation is determined as follows:

⁶² Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

⁶³ See section 9.3.5 of Attachment K.

(1) recognition of the reasonably determined benefits that result from the [R]emedial [U]pgrades due to the elimination or deferral of otherwise planned transmission upgrades or expansions; and (2) the [R]emedial [U]pgrade costs and/or net of recognized benefits will be allocated 50 percent to the sources or cluster of sources which are causing the need for the transmission expansion; and 50 percent to the load in the area or zone associated with the need for the transmission expansion.⁶⁴

73. In addition, Florida Companies explain that the compensation provided to an Affected Transmission Owner related to one or more transmission service requests keyed to new sources of power is subject to repayment without interest over a ten-year period through credits for transmission service charges by the funding party and, at the end of ten years, through payment of any outstanding balance.

74. In the event a dispute arises and the entities involved are unable to reach agreement on the determination and assignment of cost responsibility within a 60-day period, Florida Companies state that the dispute is referred to the parties' designated senior representatives. In the event the designated senior representatives are unable to resolve the dispute within 60 days by mutual agreement, Florida Companies state that such dispute may be submitted to any body having jurisdiction over the matter.

75. Florida Companies explain that one of the most difficult subjects to resolve in Attachment K has been the development of cost allocation principles for transmission enhancements required of transmission providers in order for another transmission provider to provide service. Florida Companies further explain that the cost allocation principle was unanimously approved by the FRCC Board.⁶⁵ While Order No. 890 stated a preference for regional solutions that garnered the support of stakeholders, including affected state authorities,⁶⁶ the cost allocation principle is intended to apply to projects that do not fit under the Florida Companies' existing rate structure, such as regional projects involving several transmission owners or economic projects that are identified through the economic planning study process discussed above, rather than through individual requests for service.⁶⁷ However, it is unclear whether Florida Companies'

⁶⁴ See section 9.3.7 of Attachment K.

⁶⁵ Tampa Electric Transmittal at 6; Florida Power Transmittal at 4; and FPL Transmittal at 4. Orlando's Transmittal does not include similar language.

⁶⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.

⁶⁷ *Id.* P 558.

Attachment K cost allocation procedures would apply to an economic project identified through the study process or a regional project proposed by several transmission owners. Rather, it appears that the cost allocation methodology is triggered when upgrades are needed on a third party's system due to a transmission customer(s) request for long-term point-to-point transmission service or a new generating unit. Therefore, we require Florida Companies to modify Attachment K, within 90 days of the date of this order, to describe in detail how their cost allocation procedures apply to projects identified through the economic study process and regional projects involving several transmission owners.

D. Recovery of Planning Costs

76. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically addressing that issue after discussing the nine principles that govern the planning process. The Commission directed transmission providers to work with other participants in the planning process to develop cost recovery proposals in order to determine whether all relevant parties, including state agencies, have the ability to recover the costs of participating in the planning process. The Commission also suggested that transmission providers consider whether mechanisms for regional cost recovery may be appropriate, such as through agreements (formal or informal) to incur and allocate costs jointly.⁶⁸

77. We find that Florida Companies and Orlando have not addressed how the planning costs will be recovered. Also, Florida Companies do not explain in their Attachment K the mechanism they will use to recover planning costs incurred. Thus, we require Florida Companies to modify Attachment K, within 90 days of the date of this order, to explain how the planning costs will be recovered and the mechanism that they will use to recover the planning costs incurred.

E. Other Issues

78. Florida Companies request waiver of the requirement under section 35.10(c) of the Commission's regulations⁶⁹ that they include in this filing a marked version of the tariff sheets containing the new Attachment K. Florida Power and FPL state that the Attachment Ks they submitted in this proceeding are new, while Tampa Electric states that the Attachment K submitted here replaces in its entirety the placeholder language included in its OATT in Docket No. OA07-47-000.

79. We will grant the requested waiver. The Florida Companies have substantially complied with the Commission's regulations because they submitted a completely new

⁶⁸ *Id.* P 586.

⁶⁹ 18 C.F.R. § 35.10(c) (2007).

attachment to the tariff rather than a revision thereof, which the requirement under section 35.10(c) was intended to address.

80. Orlando requests that the Commission declare that its OATT continues to be an acceptable safe harbor tariff following the submission of its Attachment K. We will conditionally grant Orlando's request, subject to the submission of the compliance filing directed in this order. Orlando will not have a safe harbor tariff until it incorporates the modifications discussed above.

The Commission orders:

(A) Tampa Electric's compliance filing is hereby accepted, effective December 7, 2007, subject to a further compliance filing, as discussed in the body of this order.

(B) Tampa Electric is hereby directed to submit a compliance filing, within 90 days of the date of this order, as discussed in the body of this order.

(C) Florida Power's compliance filing is hereby accepted, effective December 7, 2007, subject to a further compliance filing, as discussed in the body of this order.

(D) Florida Power is hereby directed to submit a compliance filing, within 90 days of the date of this order, as discussed in the body of this order.

(E) FPL's compliance filing is hereby accepted, effective December 7, 2007, subject to a further compliance filing, as discussed in the body of this order.

(F) FPL is hereby directed to submit a compliance filing, within 90 days of the date of this order, as discussed in the body of this order.

(G) Orlando's supplemental Petition is hereby conditionally granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.