148 FERC ¶ 61,172
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Tampa Electric Company	Docket Nos.	ER13-80-001 ER13-80-002
Duke Energy Carolinas, LLC		ER13-86-001 ER13-86-002
Florida Power & Light Company		ER13-104-001 ER13-104-002
Orlando Utilities Commission		NJ13-2-002 NJ14-4-000

ORDER ON REHEARING AND COMPLIANCE

(Issued September 5, 2014)

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1. On June 20, 2013, the Commission issued an order accepting, subject to modifications,[1] compliance filings that Tampa Electric Company (Tampa Electric), Florida Power & Light Company (Florida Power & Light), Duke Energy Florida, Inc. (Duke Energy),[2] and Orlando Utilities Commission (Orlando)[3] (collectively, Florida

[1] *Tampa Elec. Co.*, 143 FERC ¶ 61,254 (2013) (First Compliance Order).

[2] Effective April 29, 2013, Florida Power changed its name from "Florida Power Corporation" to "Duke Energy, Inc." In the First Compliance Order, we referred to Duke Energy, Inc. as Florida Power; however, this filing was submitted as Duke Energy and thus, we refer to it as Duke Energy in this order.

[3] Orlando submitted revisions to its safe harbor Open Access Transmission Tariff (OATT) transmission planning process under section 206 of the Federal Power Act (FPA) in compliance with Order No. 1000. However, Orlando is not a public utility under section 201 of the FPA and is not subject to the requirements of FPA sections 205 and 206; therefore, we reviewed Orlando's proposed revisions to its transmission planning process under the reciprocity standard to determine whether such revisions substantially conform or are superior to the *pro forma* OATT, as modified by Order No. 1000.

Parties) made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.[4]

2. On July 19, 2013 and July 22, 2013, requests for rehearing of the First Compliance Order were filed by various entities, as discussed below. On July 22, 2013, National Association of Regulatory Utility Commissioners (NARUC) filed a motion to intervene out-of-time.

3. On December 17, 2013, Tampa Electric, Florida Power & Light, and Duke Energy separately submitted, pursuant to section 206 of the FPA,[5] revisions to Attachment K or N-2 of their respective Open Access Transmission Tariffs (OATTs) to comply with the First Compliance Order. In addition, on December 18, 2013, Orlando submitted revisions to its Attachment K to update its transmission planning process consistent with the Attachment Ks submitted by Tampa Electric, Duke Energy, and Florida Power & Light.[6] For the reasons discussed below, we deny rehearing and accept in part, and reject in part, Florida Parties' respective proposed OATT revisions, subject to conditions, and direct Tampa Electric, Florida Power, and Florida Power & Light to submit further revisions to their respective OATTs in further compliance filings due within 60 days of the date of issuance of this order.[7]

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[4] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

[5] 16 U.S.C. § 824e (2012).

[6] To avoid confusion, we will refer only to Attachment K in this order, but the findings apply equally to Attachment N-2 for those entities that have Attachment N-2 rather than Attachment K.

[7] We note that the same or similar issues are addressed in the following orders that have been issued: *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,198 (2014); *PacifiCorp*, 147 FERC ¶ 61,057 (2014); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 (2014); *So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 (2014); *Louisville Gas & Elec. Co.*, 147 FERC ¶ 61,241 (2014); *Maine Pub. Serv. Co.*, 147 FERC ¶ 61,129 (2014); *New York Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044 (2014).

I. Background

4. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890[8] to require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

5. The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its OATT a method, or set of methods, for allocating the costs of new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. Order No. 1000 also required that each cost allocation method adhere to six cost allocation principles.

II. Requests for Rehearing or Clarification – Docket Nos. ER13-80-001, ER13-86-001, and ER13-104-001

6. On July 19, 2013 and July 22, 2013, Florida Power Service Commission (Florida Commission); LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively, LS Power); Florida Municipal Power Agency and Seminole Electric Cooperative, Inc. (collectively, FMPA/Seminole); and Duke Energy[9] submitted timely requests for rehearing or clarification of the First Compliance Order. On June 30, 2014, FMPA/Seminole filed a notice of withdrawal of a portion of its July 22, 2013 request for rehearing or clarification of the First Compliance Order.

7. On July 22, 2013, NARUC filed a motion to intervene out-of-time.

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[8] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[9] Duke Energy requested rehearing only in Docket No. ER13-86-000.

III. Compliance Filings – Docket Nos. ER13-80-001, ER13-86-001, and ER13-104-001

8. In response to the First Compliance Order, Florida Parties submitted further revisions to their local and regional transmission planning processes to comply with the Commission's requirements in the First Compliance Order, including modifications to their Attachment Ks relating to the regional transmission planning requirements, consideration of transmission needs driven by public policy requirements, nonincumbent transmission developer reforms and cost allocation. Florida Parties state that this filing was developed through a collaborative process and reflects the consensus of Florida Parties following discussions with other stakeholders. Florida Parties submitted a joint transmittal letter and corresponding OATT revisions in each respective transmission provider's OATT. Florida Parties request an effective date for their respective compliance filings of January 1, 2015.

9. Notice of Florida Parties' compliance filings was published in the *Federal Register*, 78 Fed. Reg. 79,428 (2013), with interventions and protests due on or before January 16, 2014.

10. The Florida Commission filed comments. LS Power and FMPA/Seminole filed protests. Tampa Electric, Florida Power & Light, Duke Energy, and Jacksonville Electric Authority (collectively, Florida Answering Parties) filed an answer.[10] FMPA/Seminole filed an answer to Florida Answering Parties' answer.

IV. Discussion

A. Procedural Matters

11. As an initial matter, we address NARUC's motion to intervene out-of-time. NARUC states that the Commission should grant its out-of-time requests for intervention, arguing that "[c]ompelling and unique circumstances" surround its request.[11] NARUC states that it has good cause for not timely filing their interventions given that it could not have foreseen the First Compliance Order's "potential profound and far reaching impacts

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[10] For purposes of this order, Florida Answering Parties includes Jacksonville Electric Authority, which joined Florida Parties in its answer but did not join in the compliance filing. Florida Answering Parties does not include Orlando, which did not join in the Answer.

[11] NARUC, Motion to Intervene Docket Nos. ER13-80-000; (filed July 22, 2013) (NARUC Petition).

to transmission siting policy."[12] NARUC avers that this late request could not have been avoided unless it filed interventions in every Order No. 1000 compliance docket filing. In addition, NARUC contends that it agrees to accept the record as it stands at the time of its intervention so that permitting NARUC's intervention will not disrupt the proceeding or prejudice any party. NARUC also states that the filing deadlines in the proceeding besides those for rehearing requests have passed. Finally, NARUC argues that, absent its intervention, its interests would not be adequately represented.[13]

12. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial.[14] We find no such prejudice here, and we grant NARUC's motion to intervene out of time.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. <u>Substantive Matters</u>

14. We grant in part and deny in part the requests for rehearing as discussed more fully below.

15. We find that Florida Parties' respective compliance filings partially comply with the directives in the First Compliance Order. Accordingly, we accept Florida Parties' compliance filings to be effective January 1, 2015, subject to further compliance filings, as discussed below. We direct Tampa Electric, Florida Power, and Florida Power &

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[12] *Id.* at 3.

[13] *Id.* at 4.

[14] The Commission looks with disfavor on interventions filed at the rehearing stage of a proceeding. *Central Illinois Public Service Co.*, 59 FERC ¶ 61,219, at 61,753-54 (1992); *Western Resources, Inc.*, 83 FERC ¶ 61,077, at 61,379 (1998); *PJM Interconnection, L.L.C.*, 88 FERC ¶ 61,039, at 61,091 (1999); *ISO New England, Inc.*, 90 FERC ¶ 61,053, at 61,224 (2000); *American Electric Power Service Corp.*, 90 FERC ¶ 61,244, at 61,809 (2000); *California Power Exchange*, 90 FERC ¶ 61,343, at 62,130-31 (2000); *Tennessee Power Co.*, 91 FERC ¶ 61,271, at 61,923-24 (2000); *Southern Company Services, Inc.*, 92 FERC ¶ 61,167, at 61,565-66 (2000). *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

Light to submit the further compliance filings within 60 days of the date of issuance of this order.

16. Orlando's Attachment K is essentially the same as Tampa Electric's, Florida Power's, and Florida Power & Light's Attachment Ks and, therefore, we find that, with the modifications discussed throughout this order, it satisfies the requirements of Order No. 1000 and the First Compliance Order.

1. Overview of the Regional Transmission Planning Process

17. Florida Parties propose to adopt a biennial cycle for their proposed Order No. 1000 regional transmission planning process.[15] This biennial regional transmission planning process will fold into the existing Florida Reliability Coordinating Council, Inc. (FRCC) transmission planning cycle, which will continue to be an annual process; that is, an FRCC transmission plan (consisting of a roll-up of local transmission plans as well as transmission projects selected in the regional transmission plan for purposes of cost allocation on a biennial basis) will continue to be developed each year.[16]

18. Under the proposal, to become a qualified transmission developer for an upcoming biennial regional transmission planning cycle, a potential developer must submit its qualification application to the FRCC by January 1 of the first year of the two-year process.[17] During the period February through April of the first year of the biennial planning cycle, the FRCC Planning Committee[18] or other appointed subcommittee shall seek out potential regional transmission projects (CEERTS projects) from its analysis of

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[15] We address Florida Parties' proposed timeline in the General Evaluation Process section of this order.

[16] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 1.2.14. Overall, Florida Parties predict that this time period may be shorter for some Cost Effective and/or Efficient Regional Transmission Solution (CEERTS) projects, such as where the transmission developer has previously satisfied the qualification criteria or the transmission project is relatively small in scale.

[17] *Id.* 1.2.11.D.1.

[18] The FRCC Planning Committee reports directly to the FRCC Board and is responsible for reliability in the FRCC region and assessing and encouraging generation and transmission adequacy. Its membership consists of representatives of the board with each voting member appointing one representative who is empowered to vote on the member's behalf. FRCC Bylaws, section 5.2.

the most recent FRCC Board-approved transmission plan.[19] By May 1 of the first year of the regional transmission planning cycle, the FRCC Planning Committee shall post on the FRCC website any potential unsponsored CEERTS regional transmission projects that the FRCC Planning Committee identifies. Entities interested in sponsoring or developing an unsponsored transmission project must submit the relevant information in accordance with the information requirements and a $100,000 study deposit for the unsponsored CEERTS project by June 1.[20] For sponsored CEERTS projects, entities interested in sponsoring transmission projects they do not intend to develop and transmission developers interested in sponsoring transmission projects that they intend to develop, must also submit the required information in accordance with the information requirements and $100,000 study deposit for these sponsored CEERTS projects by June 1 of the first year of the regional transmission planning process.[21]

19. During the 30 to 45 days following CEERTS project submittals, the FRCC Planning Committee shall review the project sponsor submittals and ensure that they meet the minimum threshold criteria. If a submittal is incomplete, the FRCC Planning Committee shall inform the CEERTS project sponsor in writing within 15 days after the next regularly scheduled FRCC Planning Committee meeting of the specific deficiencies, and the CEERTS project sponsor has 30 days to submit the information required for a complete submittal. This is referred to as Step 1 in the regional planning process.[22]

20. At the next FRCC Board meeting[23] following the review of the CEERTS project submittals, the FRCC Planning Committee shall provide an update to the FRCC Board related to all potential CEERTS projects submitted and deemed complete. For those CEERTS projects that have cleared through Step 1, the FRCC Planning Committee shall

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[19] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 1.2.2.

[20] *Id.* § 1.2.2.C.ii.

[21] *Id.* §§ 1.2.2.C & 1.2.14.

[22] *Id.* § 1.2.5.

[23] The FRCC Board of Directors consists of industry representatives allocated among several sectors including: (1) suppliers – 3 members with 2.5 votes; (2) non-investor owned utilities wholesale – 2 members with 2 votes; (3) load serving entities – 1 member from a municipal with 0.5 votes and 1 member from a cooperative with 0.5 votes; (4) generating load serving entities – 3 members with 3 votes; (5) investor owned utilities – 3 members with 3.5 votes; (6) general – 2 members with 1 vote; (7) and the CEO of FRCC (an ex-officio non-voting member). FRCC Bylaws, section 3.2a, 3.2e.

post this information on the FRCC website (subject to any posting restrictions to protect Critical Energy Infrastructure Information or other confidential information). This is referred to as Step 2 in the regional planning process.[24]

21. During the five to seven months following the FRCC Board meeting in Step 2, the FRCC Planning Committee, together with an independent consultant, will conduct a technical analysis for the purpose of either developing CEERTS project information or validating CEERTS project information and analysis provided by a CEERTS project sponsor.[25] The FRCC Planning Committee will provide a report to the FRCC Board that includes its findings from the technical analysis and a recommendation as to whether a proposed CEERTS project should proceed to the next step in the evaluation process. This is referred to as Step 3.[26]

22. Over a period of two to three months from receipt of the FRCC Planning Committee report provided in Step 3, the FRCC Board will review the FRCC Planning Committee report and any comments on the report that may be submitted by the CEERTS project sponsor and determine if the CEERTS project should proceed to the next evaluation step. The CEERTS sponsor shall be invited to be present and participate in any FRCC Board meeting that addresses the FRCC Planning Committee report to answer questions and to present its views regarding the CEERTS project and the FRCC Planning Committee report. If a CEERTS sponsor does not agree with the FRCC Board's determination, then the FRCC Bylaws Dispute Resolution Procedures in Appendix 6 are available for use. This is referred to as Step 4.[27]

23. Over a period of four to six months from the FRCC Board approval of the continuation of the CEERTS project evaluation in Step 4, the FRCC Planning Committee will continue the evaluation process under the direction of the FRCC Board.[28] For reliability and economic CEERTS projects, this aspect of the evaluation process includes a cost-benefit analysis performed by an independent consultant.[29] For a proposed public

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[24] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.6.

[25] *Id.* § 1.2.7.A.

[26] *Id.* § 1.2.7.C.

[27] *Id.* § 1.2.8.

[28] *Id.* § 1.2.9.

[29] *Id.* §§ 1.2.9.B.1 & 1.2.9.C.

policy CEERTS project, the FRCC Planning Committee will determine whether the proposed CEERTS project meets the public policy transmission needs identified.[30] If the FRCC Planning Committee verifies the benefits of a proposed public policy CEERTS project, then an independent consultant will calculate the estimated public policy CEERTS project costs.[31] Subsequently, the FRCC Planning Committee provides a report to the FRCC Board of its recommendation based upon its review of the analysis performed by the independent consultant.[32] The FRCC Board will then review the FRCC Planning Committee report as well as comments on the report to determine, using the applicable criteria, if the proposed CEERTS project should continue in the evaluation process.[33] This is referred to as Step 5.[34]

24. Florida Parties also maintained a provision in the OATT that states that the FRCC Planning Committee will provide a report to the FRCC Board of its recommendation based upon the cost-benefit review above. Over a period of three to four months following a decision that a CEERTS project should move forward from Step 5, the FRCC Board will complete the evaluation process and make the final decision whether to select a CEERTS project in the regional transmission plan for purposes of cost allocation. This is referred to as Step 6.[35]

2. Regional Transmission Planning Requirements

25. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that produces a regional transmission plan and that complies with the identified transmission planning principles of Order No. 890.[36]

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[30] *Id.* § 1.2.9.B.2.

[31] *Id.* §§ 1.2.9.B.2 & 1.2.9.C.3.

[32] *Id.* § 1.2.9.D.

[33] *Id.* § 1.2.9.E.

[34] *Id.* § 1.2.9.

[35] *Id.* § 1.2.10. The OATTs state that the evaluation process would be completed within approximately 21 months. This time period may be shorter for some CEERTS projects, such as where the project developer has previously satisfied the qualification criteria and/or the project is relatively small in scale. *Id.* § 1.2.14.

[36] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

The regional transmission planning reforms required public utility transmission providers to consider and select, in consultation with stakeholders, transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related transmission needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.[37]

a. Transmission Planning Region

26. Order No. 1000 required each public utility transmission provider to participate in a transmission planning region, which is a region in which public utility transmission providers, in consultation with stakeholders and affected states, agree to participate for purposes of regional transmission planning.[38] The scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.[39] However, an individual public utility transmission provider cannot, by itself, satisfy Order No. 1000.[40]

27. In addition, Order No. 1000 required public utility transmission providers to explain how they will determine which transmission facilities are subject to the requirements of Order No. 1000.[41] Order No. 1000 also required public utility transmission providers in each transmission planning region to have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region[42] and, thus, become eligible to be allocated costs under the regional cost allocation method.[43] Order No. 1000 also required that each public utility transmission provider include in its OATT a list of

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[37] *Id.* PP 11, 148.

[38] *Id.* P 160.

[39] *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

[40] *Id.*

[41] *Id.* PP 65, 162.

[42] Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

[43] *Id.* PP 276-277.

all the public utility and non-public utility transmission providers enrolled as transmission providers in the transmission planning region.[44]

i. First Compliance Order

28. In the First Compliance Order, the Commission found that the scope of the FRCC transmission planning region and the description of new transmission facilities that will be subject to the requirements of Order No. 1000, complied with Order No. 1000. However, the Commission found that Florida Parties' proposed enrollment process and effective date partially complied with the requirements of Order No. 1000.[45]

29. The Commission found that Florida Parties' compliance filings did not meet Order No. 1000-A's requirement that each public utility transmission provider include in its OATT, a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in the transmission planning region.[46] Rather than including a list of all public utility and non-public utility transmission providers that have enrolled as transmission providers in the FRCC transmission planning region in their OATTs, Florida Parties proposed to maintain a list of entities enrolled in the FRCC transmission planning region on the FRCC website.[47] Accordingly, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to comply with Order No. 1000-A by revising their respective OATTs to include a list of all the public utility and non-public utility transmission providers that have enrolled as Order No. 1000 transmission providers in their transmission planning region.[48] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

30. The Commission also found that Florida Parties did not include a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the FRCC transmission planning region, as required by Order No. 1000.[49] While Florida Parties' compliance proposal described how the

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[44] *Id.* P 275.

[45] First Compliance Order, 143 FERC ¶ 61,254 at P 24.

[46] Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

[47] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 5.4.

[48] First Compliance Order, 143 FERC ¶ 61,254 at P 26.

[49] *Id.* at P 27.

FRCC will determine whether transmission providers are qualified to enroll in the FRCC transmission planning region (i.e., the entity is a public utility transmission provider or is registered with NERC as a Transmission Service Provider),[50] the Commission found that it did not provide the procedures through which an existing public utility transmission provider, a future public utility transmission provider, or a non-public utility transmission provider other than Florida Parties may request to enroll in the FRCC transmission planning region or the information that such transmission providers would be required to provide. Thus, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to submit a compliance filing establishing a clear enrollment process that defined how entities, including non-public utility transmission providers, made the choice to become part of the FRCC transmission planning region. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

31. In addition, the Commission found that the requirement that non-public utility transmission providers register with NERC as Transmission Service Providers in order to enroll in the FRCC transmission planning region for purposes of cost allocation was unnecessary.[51] The Commission noted that, as it had explained in Order No. 1000-A, "all owners and operators of bulk-power system transmission facilities, including nonincumbent transmission developers, that successfully develop a transmission project, are required to be registered as Functional Entities and must comply with all applicable reliability standards."[52] The Commission also found that Florida Parties had not addressed the implications of the proposed NERC registration requirement for a new transmission developer that has not yet energized any transmission facilities and, therefore, does not yet administer an OATT or provide transmission service. Therefore, the Commission required Tampa Electric, Florida Power, and Florida Power & Light to

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[50] Florida Parties' Attachments K provided that participating public utility transmission providers will be deemed enrolled by the FRCC in the planning process for purposes of regional cost allocation. In addition, Florida Parties' Attachment Ks provided that a non-public utility transmission provider registered with NERC as a Transmission Service Provider that wishes to enroll in the FRCC transmission planning region may do so by requesting enrollment through the FRCC.

[51] First Compliance Order, 143 FERC ¶ 61,254 at P 28. The NERC Glossary of Terms defines a Transmission Service Provider as the entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements. *Id.* n.52.

[52] *Id.* (quoting Order No. 1000-A, 139 FERC ¶ 61,132 at P 365).

either provide further justification explaining why the additional requirement was needed or remove the additional requirement from their OATTs. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

32. Finally, the Commission found that Florida Parties' proposed effective date did not comply with the requirements of Order No. 1000. Specifically, the Commission rejected Florida Parties' proposal to establish an effective date at the start of the next transmission planning cycle following the Commission's acceptance of the compliance filing, which would have been contingent on the Commission "largely" adopting the proposed regional transmission planning process.[53] The Commission stated that it was not necessary to delay the effective date of the proposed revisions until every issue in this proceeding had "largely" been resolved. As a result, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to submit a compliance filing that established an appropriate effective date to coincide with the beginning of the next transmission planning cycle following issuance of the Commission's First Compliance Order.[54] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

ii. Summary of Compliance Filings

33. On compliance, Florida Parties state that they have added to their respective Attachment Ks, a list of all the public and non-public utility transmission providers that have enrolled as Order No. 1000 transmission providers in the FRCC region.[55] Florida Parties also include an enrollment process that requires an entity to submit a written or email communication to the FRCC stating its desire to enroll in the FRCC region.[56] In response to the Commission's concern that limiting enrollment to only those transmission

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[53] *E.g.*, Florida Power & Light Co., Transmittal at 31.

[54] *See, e.g., ISO New England Inc.*, 143 FERC ¶ 61,150, at P 26 (2013) (finding that ISO New England Inc.'s proposal to not specify a requested effective date, indicating that a considerable amount of time would be necessary to put in place procedures and hire staff to implement the revised regional transmission planning process, and that an immediate effective date would be inappropriate did not comply with Order No. 1000).

[55] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 5.4 (listing the current enrolled transmission providers as Duke Energy, Florida Power and Light, Jacksonville Electric Authority, Orlando, and Tampa Electric).

[56] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 5.4.

providers that are registered with NERC as Transmission Service Providers may have implications for a new transmission developer that has not yet energized any transmission facilities and therefore does not yet administer an OATT or provide transmission service, Florida Parties propose to expand the enrollment criteria. Specifically, an entity wishing to enroll in the FRCC region must be a transmission provider that controls transmission facilities in the FRCC region and satisfy one of the two enrollment criteria: (1) be registered with NERC as a Transmission Service Provider or a Transmission Owner within the FRCC region or (2) be selected to develop a CEERTS project.[57] In support of the enrollment criteria, Florida Parties also explain that the criteria reflect the approach to cost allocation for CEERTS projects, which allocates costs to transmission providers and owners based on avoided transmission project cost benefits, estimated transmission line loss value benefits, and/or resources enabled by a public policy project within their respective service territories.[58]

34. Once the FRCC receives a written request, the FRCC will validate the request against the enrollment criteria. If the request is granted, then the entity is considered enrolled as of the date the request is granted and Florida Parties will update their Attachment Ks to reflect the new member.[59]

35. Based on stakeholder feedback, Florida Parties also provide removal and withdrawal provisions. If a transmission developer that is not registered with NERC as a Transmission Service Provider or Transmission Owner within the FRCC transmission planning region has been selected to develop a CEERTS project but (1) abandons that CEERTS project and (2) does not have any other approved CEERTS project in the region, then the FRCC will notify the transmission developer that steps will be taken to remove it from the list of enrolled entities.[60] A non-public utility transmission provider may withdraw by submitting a written request to the transmission providers and its withdrawal is effective as of the date the notice of withdrawal is provided to the transmission providers.[61] In addition, the OATT provides that a withdrawing non-public utility transmission provider will be subject to any regional cost allocations, if any, that were approved during the period in which it was enrolled and was determined to be a

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[57] *Id.* § 5.4.

[58] *E.g.*, Florida Power & Light Co., Transmittal at 9.

[59] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 5.4.

[60] *Id.* § 5.4.

[61] *Id.* § 5.5.

beneficiary. Any withdrawing non-public utility transmission provider will not be allocated costs for any regional transmission project selected in a regional transmission plan for purposes of cost allocation that is approved after its termination of enrollment becomes effective.[62] Florida Parties' proposal also provides that, if a non-public utility transmission provider withdraws, the remaining transmission providers in the region will submit to FERC an updated list of enrolled transmission providers with the proposed effective date to coincide with the effective date of the non-public utility transmission provider's withdrawal.[63]

36. As for the effective date, Florida Parties assert that January 1, 2015 is appropriate.[64] Although the start of the next transmission planning cycle following the issuance of the First Compliance Order begins in early 2014, Florida Parties state that implementing the Order No. 1000 compliance activities is impractical. They assert that an effective date of January 1, 2015 is the start of the subsequent transmission planning cycle and would allow sufficient time for Florida Parties to implement all necessary changes in this compliance order, which they assume will be issued sometime during 2014. Florida Parties cite several organizational changes needed at the FRCC and numerous implementation activities that FRCC needs to complete prior to the first transmission planning cycle, including a revised timeframe of the Order No. 1000 regional transmission planning process from an annual to a biennial transmission planning cycle.[65] Florida Parties state in selecting the proposed effective date they considered the FRCC regional transmission planning process, the timing of its NERC compliance activities and the upcoming Order No. 1000 Interregional Transmission Planning processes that it is developing with Southeastern Regional Transmission Planning (SERTP) transmission providers.

iii. <u>Protests/Comments</u>

37. Although FMPA/Seminole generally agree with the withdrawal provision, they assert that it fails to provide that a withdrawing non-public utility provider will continue

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[62] *Id.* § 5.5.

[63] *Id.* § 5.6.

[64] *E.g.*, Florida Power & Light Co., Transmittal at 5.

[65] *Id.* at 5-6.

to receive any payments it is entitled to under the Attachment Ks. They argue that the provision should be amended accordingly.[66]

38. FMPA/Seminole also support Florida Parties' proposed January 1, 2015, effective date but are concerned that the new date could be used to effectively prohibit: (1) nonincumbent transmission developers from participating in the first biennial regional transmission planning cycle; and (2) transmission projects driven by public policy needs from being submitted in the first biennial regional transmission planning cycle.[67] FMPA/Seminole state that proposed transmission developers must submit their qualifications by January 1 of the first year of the biennial regional transmission planning cycle, and argue that the proposed effective date would give potential transmission developers one day to submit their qualifications for the 2015-2016 regional transmission planning cycle. Similarly, FMPA/Seminole assert that the process for identifying public policy projects requires that a stakeholder identify a transmission need that is driven by public policy requirements by January 1 of the first year of the biennial regional transmission planning cycle. FMPA/Seminole request that the Commission require Florida Parties to amend their filings to allow for a reasonable time period, such as 30 days, for transmission developers to submit qualification packages and stakeholders to identify transmission needs that are driven by a public policy requirement.[68]

39. LS Power objects to Florida Parties' proposal to delay the effective date until January 2015. LS Power argues that Florida Parties have failed to show that their proposed effective date is more appropriate than the beginning of the next planning cycle, which Florida Parties acknowledged begins in early 2014.[69] LS Power urges the Commission to reject Florida Parties' primary reason for requesting delay, namely because there is too much to do to get ready, and argues that it would reward non-compliance. LS Power adds that Florida Parties have had over two years to develop or revise the FRCC regional transmission planning process to implement Order No. 1000 and that several items Florida Parties list under organizational activities do not need to be completed prior to the effective date. Furthermore, it argues that a delay will cost

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[66] FMPA/Seminole Protest at 91.

[67] *Id.* at 90.

[68] *Id.* at 91.

[69] LS Power Protest at 5.

ratepayers in lost savings.[70] LS Power argues that Florida Parties once again seek a similar result to what the Commission rejected in the First Compliance Order by delaying implementation and then moving to a two-year planning cycle.[71]

iv. <u>Answer</u>

40. In response, Florida Answering Parties argue that a January 2015 effective date is appropriate. Florida Answering Parties assert that it would not be feasible to fully implement the revised compliance filing until the beginning of the next transmission planning cycle following issuance of the Commission's order, since several FRCC activities and approvals must occur in order to implement the Order No. 1000 process.[72] Florida Answering Parties argue, contrary to LS Power's claims, the FRCC Planning Committee will update documents, assign committee roles, and implement procedures reflecting the tariff filings. Furthermore, Florida Answering Parties state that a January 2015 effective date would coordinate with the proposed effective date of the Order No. 1000 interregional compliance activities. Florida Answering Parties also disagree with LS Power's statement regarding potential cost savings lost to ratepayers due to the delay.[73]

41. Florida Answering Parties also assert that FMPA/Seminole, who Florida Answering Parties argue are familiar with the FRCC process, support the delayed implementation date.[74] Florida Answering Parties also argue that LS Power knew of their intention to propose a new effective date at the November stakeholder meeting, but did not comment at that time.[75]

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[70] *Id.* at 5 (LS Power notes that PJM has found ways to offer ratepayers the benefits of Order No. 1000 in advance of full implementation and notes that PJM received transmission project proposals for a single reliability concern that range from $120 million to over $1 billion).

[71] *Id.* at 5-6 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 30).

[72] Florida Answering Parties Answer at 6.

[73] *Id.* at 9 (Florida Answering Parties argue that LS Power's reference to PJM reflects alleged, estimated savings and is not a guarantee of actual cost savings).

[74] *Id.* at 8.

[75] Florida Answering Parties explain that interested stakeholders reviewed the compliance materials during several Order No. 1000 stakeholder meetings. Florida

(continued…)

v. Commission Determination

42. We find that the enrollment process outlined in Florida Parties' respective Attachment Ks partially complies with the directives of the First Compliance Order. First, we find that Florida Parties comply with the Commission's directive in the First Compliance Order that they revise their Attachment Ks to include a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in the FRCC transmission planning region.[76] We also find that Florida Parties' proposal to require that, to enroll in the FRCC region, a public or non-public utility transmission provider must be registered with NERC or be selected to develop a CEERTS project complies with the Commission's directives in the First Compliance Order. First, Florida Parties have revised their Attachment Ks to address the Commission's concern that a future public utility transmission provider would not be able to enroll in the transmission planning region by allowing an entity that has been selected to develop a CEERTS project to enroll. In addition, Florida Parties have explained that the proposed requirement that an entity be registered with NERC as a Transmission Service Provider[77] or Transmission Owner is appropriate given the regional cost allocation method, which allocates costs to transmission providers and transmission owners.

43. However, Florida Parties' additional proposed requirement (that the transmission provider must control transmission facilities within the FRCC region) would bar a transmission provider with transmission facilities adjacent to the FRCC from requesting to enroll in the FRCC because it would not be able to meet the requirement to control transmission facilities *in* the FRCC region before it actually enrolled because its transmission facilities are adjacent to but not yet within the FRCC region. Similarly, a

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Answering Parties Answer at 8.

[76] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 5.4 (listing the current enrolled transmission providers as Duke Energy, Florida Power and Light, Jacksonville Electric Authority, Orlando, and Tampa Electric). *Id.*

[77] Florida Parties' OATTs adhere to the NERC definition of Transmission Service Provider as it is "modified by NERC and approved by [the Commission] from time to time." Florida Power & Light Co., FPL OATT, Attachment C: Methodology to Assess Available Transfer Capability. *See* NERC Glossary of Terms Used in the Reliability Standards, Definition of Transmission Service Provider. The NERC Glossary of Terms defines a Transmission Service Provider as the entity that administers the transmission tariff and provides transmission service to transmission customers under applicable transmission service agreements.

transmission developer selected to develop a CEERTS project may not yet control transmission facilities in the FRCC region. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings that revise this provision to remove this requirement. Likewise, Orlando should also submit a further compliance filing to address this issue.

44. We also find that Florida Parties' removal and withdrawal provisions partially comply with Order No. 1000. We accept Florida Parties' proposal that, if a transmission developer that is not registered with NERC as a Transmission Service Provider or Transmission Owner has been selected to develop a CEERTS project in the FRCC region, abandons that CEERTS project, and does not have another CEERTS project in the region, then the FRCC will notify that developer that steps will be taken to remove the transmission developer from the list of enrolled entities. In addition, we accept Florida Parties' proposed withdrawal provision that allows a non-public utility transmission provider to withdraw from the FRCC regional planning process effective as of the date that the non-public utility transmission provider provides written notification to the transmission providers. Under the proposed withdrawal provision, "[t]he withdrawing non-public utility will be subject to regional cost allocations, if any, that were approved in accordance with this Attachment K during the period in which it was enrolled and was determined to be a beneficiary."[78] Further, the proposed withdrawal provision also states that a "withdrawing non-public utility will not be allocated costs for regionally cost-allocated projects approved after its termination of enrollment becomes effective."[79] We find that this provision is consistent with the Commission's discussion of withdrawal provisions in Order No. 1000-A because it allows a non-public utility transmission provider to withdraw from the transmission planning region but requires that the non-public utility transmission provider continue to pay any costs it is allocated pursuant to the regional cost allocation method for a transmission facility that was selected in the regional transmission plan for purposes of cost allocation while it was enrolled, until the entire prudently incurred cost of the transmission facility has been recovered.[80]

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[78] *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 5.5.

[79] *Id.* § 5.5.

[80] Order No. 1000-A, 139 FERC ¶ 61,132 at P 622 n.734 (finding that, to accommodate the participation of non-public utility transmission providers, the relevant tariffs or agreements governing the regional transmission planning process could establish the terms and conditions of orderly withdrawal for non-public utility transmission providers that are unable to accept the allocation of costs pursuant to a

(continued…)

45. However, we agree with FMPA/Seminole that a non-public utility transmission provider should continue to receive any payments due it for developing a transmission facility selected in the regional transmission plan for purposes of cost allocation. Thus, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings that revise the withdrawal provision to ensure that a non-public utility will continue to receive any payments it is owed for developing a transmission facility selected in the regional transmission plan for purposes of cost allocation until it has recovered the entire prudently incurred costs of that transmission facility. Likewise, Orlando should also submit a further compliance filing to address this issue.

46. We accept Florida Parties' revised Attachment Ks effective January 1, 2015, i.e., the date Florida Parties indicate they will start the next regional transmission planning process. The Commission believes that the January 1, 2015 effective date would allow sufficient time for Florida Parties to implement all necessary changes in this compliance order. We disagree with LS Power that an earlier effective date is necessary and find the effective date appropriate given the organizational changes needed at the FRCC and numerous implementation activities that FRCC needs to complete prior to the first regional transmission planning cycle. We also do not believe that any revisions are needed to address FMPA/Seminole's concerns that the proposed January 1, 2015 date would give potential transmission developers only one day to submit their qualifications and stakeholders one day to submit transmission needs driven by public policy requirements for the 2015-2016 regional transmission planning cycle. While the revised FRCC transmission planning process will not take effect until January 1, 2015, entities need not wait until the day before the due date to complete their qualification packages or to consider transmission needs driven by public policy requirements that they may wish to propose. Instead, they can begin doing so before the January 1, 2015 deadline. In addition, Florida Parties' Attachment Ks do not prohibit Florida Parties from accepting such items prior to the January 1, 2015 effective date (although Florida Parties' processing of the information would follow the schedule and provisions that take effect on January 1, 2015) and Florida Parties' should take necessary steps to ensure that stakeholders and potential transmission developer can participate as of this date. Given these factors, we find unwarranted FMPA/Seminole's concern that the January 1, 2015 effective date could be used to keep entities from fully participating in the transmission planning cycle that begins on that date.

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regional or interregional cost allocation method). *See also Avista Corp.*, 143 FERC ¶ 61,255, at PP 270, 273 (2013).

b. Order No. 890 and Other Regional Transmission Planning Process General Requirements

47. Order No. 1000 required that the regional transmission planning process result in a regional transmission plan[81] and satisfy the Order No. 890 transmission planning principles of (1) coordination, (2) openness, (3) transparency, (4) information exchange, (5) comparability, (6) dispute resolution, and (7) economic planning.[82]

i. First Compliance Order

48. The Commission found that the revisions to Florida Parties' regional transmission planning process complied in part with Order No. 1000's general regional transmission planning requirements.[83] The Commission noted its prior finding that Florida Parties' regional transmission planning process satisfied the requirements of Order No. 890, explaining that the Commission's focus in the First Compliance Order was on the incremental changes to Florida Parties' regional transmission planning process developed to comply with the requirements of Order No. 1000.[84]

49. Regarding the dispute resolution principle, the Commission found that Florida Parties' filings partially complied with this principle. Florida Parties stated that the proposed dispute resolution changes incorporate by reference the approved FRCC Bylaws' dispute resolution process.[85] However, the Commission found that Florida Parties must incorporate the dispute resolution procedures into their respective Attachment Ks rather than incorporating by reference the dispute resolution procedures in the FRCC Bylaws. Accordingly, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to include dispute resolution procedures that address disputes that arise from the regional transmission planning

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[81] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

[82] *Id.* PP 146, 151. These transmission planning principles are explained more fully in Order No. 890.

[83] First Compliance Order, 143 FERC ¶ 61,254 at P 39.

[84] *Id.* P 39 (citing *Tampa Electric Co.*, 124 FERC ¶ 61,026, at P 18 (2008); *Tampa Electric Co.*, 127 FERC ¶ 61,277 (2009); *Tampa Electric Co.*, Docket No. OA08-29-002 (May 12, 2010) (unpublished letter order)).

[85] *Id.* P 40 (referencing Florida Power & Light Co., Transmittal Letter at 20).

process. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

50. In addition, the Commission noted that the FRCC Bylaws state that, after 30 days from completion of the dispute resolution steps described in the FRCC Bylaws (i.e., settlement, mediation, arbitration, and board proceeding), if parties have not agreed to resolution of any issue in dispute, a party may seek resolution through a regulatory proceeding before a state or federal regulatory agency having jurisdiction of all parties and the subject matter of the dispute.[86] The Commission found that this provision would significantly limit a party's rights to file a section 206 complaint with respect to transmission planning disputes. The Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to clarify that nothing limits a party's rights to file a section 206 complaint. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

51. Further, the Commission stated that Order No. 890 recommends a three-step dispute resolution process, consisting of negotiation, mediation, and arbitration,[87] and noted that the FRCC Bylaws include a fourth step; specifically, a board proceeding, in which the FRCC Board votes on appropriate resolution of the dispute.[88] The Commission agreed with commenters' concerns that this fourth step may unnecessarily lengthen the dispute resolution process. Additionally, the Commission questioned how the dispute resolution process would result in an impartial decision regarding disputes between incumbent transmission providers and others who may or may not have adequate representation on the FRCC Board. Therefore, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to provide further justification for this fourth step, as well as describe how FRCC Board decision-making in the dispute resolution process will be impartial, or to exclude this provision from their OATTs. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

ii. <u>Requests for Rehearing or Clarification</u>

52. Duke Energy and the Florida Commission argue that the Commission erred in requiring Florida Parties to change the dispute resolution procedures. Duke Energy

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[86] *Id.* P 41 (citing FRCC Bylaws § 11.4(e)).

[87] *Id.* P 41 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 503).

[88] *Id.* P 41 (citing FRCC Bylaws § 11.4(d)). *See also* Docket No. RR12-4-000.

argues that the Commission erred by requiring Florida Parties to remove the provision that allowed parties that had not resolved all issues following completion of the dispute resolution process the option of seeking resolution through a regulatory proceeding before a state or federal agency having jurisdiction over all parties. Duke Energy states that the Commission accepted this provision as compliant with Order No. 890.[89] Similarly, Duke Energy argues that the Commission previously approved the FRCC board proceeding as the fourth step in the dispute resolution process and, at the time it accepted this fourth step, did not indicate that FRCC Board involvement caused an issue as to impartiality.[90] Duke Energy argues that the Commission failed to explain why these provisions were acceptable under Order No. 890 but are not acceptable now.[91] The Florida Commission adds that these changes appear to eliminate or dilute the FRCC dispute resolutions procedures which it asserts allow inter-utility complaints to go to the FRCC and then to the Florida Commission. It argues that the Commission's requirements in the First Compliance Order substitute a dispute resolution process via a Commission section 206 complaint process.[92] The Florida Commission adds that, in Order No. 1000, the Commission had indicated that all of the regions' dispute resolutions processes were in compliance with Order No. 1000.[93]

iii. <u>Compliance</u>

53. Florida Parties state they have included the dispute resolution procedures as an appendix to their Attachment Ks and have included a provision that provides that:

> The parties are strongly encouraged [to] take part in the complete process described herein prior to initiation of judicial proceedings or the utilization of other external dispute resolution process, but the use of any of the steps of the process shall not be a required condition for the initiation of judicial or regulatory proceedings or the utilization of other external dispute resolution processes, including the filing of a

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[89] Duke Energy Rehearing at 30 (citing *Florida Power Corp.*, 124 FERC ¶ 61,026 at PP 44, 55).

[90] *Id.* at 31.

[91] *Id.* at 30.

[92] Florida Commission Rehearing at 8.

[93] *Id.* at 8 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 750).

> complaint pursuant to Section 206 of the Federal Power Act.[94]

54. Regarding the fourth step of the dispute resolution process, Florida Parties state that they have retained this step and contend that this provision is beneficial and does not compromise the impartiality of the process.[95] Florida Parties argue that the fourth step provides the only regional forum for resolving regional issues. Florida Parties assert that the first three steps, negotiation, mediation and arbitration focus on the perspectives of the parties involved in the dispute, whereas the FRCC Board has a regional scope and asserts that a regional body should have a say on issues involving the FRCC region such that, to the extent possible, those indirectly or directly affected by the unresolved issues have a voice in resolving the dispute.[96]

55. Florida Parties also assert that the fourth step provides an element of finality to the dispute resolution process. Florida Parties state that the arbitrator's decision is advisory, and while the FRCC Board proceeding is also non-binding, it does bring an element of finality since the FRCC Board represents all the stakeholders in the region and has regional expertise on regional planning issues. As such, Florida Parties argue that a decision by the FRCC Board is an indication of the region's final position and reduces the likelihood of additional proceedings.[97]

56. Florida Parties assert that the FRCC Board provides an impartial decision-making process. Florida Parties state that the FRCC Board is comprised of six different sectors including: suppliers, non-investor owned utility wholesales, load-serving entities, generating load-serving entities, investor owned utilities, and customers. Florida Parties state that this wide variety of participants ensures that no single interest can dominate the proceeding. Florida Parties state that nonincumbent transmission owners can join the FRCC and directly participate if they choose, and the procedural rights of all parties to the dispute are the same regardless of a party's FRCC membership status.[98]

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[94] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, Appendix 5 § 1.

[95] *E.g.*, Florida Power & Light Co., Transmittal at 10.

[96] *Id.* at 10.

[97] *Id.* at 10-11.

[98] *Id.* at 11.

57. Florida Parties also assert that this process is voluntary, short, and consistent with Commission policy.[99] Florida Parties contend that both parties would have to agree to the board proceeding before it can be utilized, and that any party can, at any time, file a complaint with the Commission pursuant to section 206 of the Commission's regulations. Florida Parties assert that the additional time involved is minimal since the FRCC Board is required to issue its recommendation within 90 days after the board proceeding begins. Finally, Florida Parties argue that the FRCC Board proceeding is consistent with Commission policy.[100] Florida Parties recognize that the Commission has recommended a three-stage process (negotiation, mediation, and arbitration), but note that it has not required those stages.[101] Florida Parties argue that the FRCC Board proceeding, which is optional and where all parties explicitly retain their section 206 filing rights with the Commission, has been found to comply with Order No. 890 principles.[102]

iv. Commission Determination

58. We deny Duke Energy's and the Florida Commission's requests for rehearing. Contrary to the arguments raised on rehearing, the Commission did not require Florida Parties to remove the provision that states that at the completion of the dispute resolution steps, parties may, to the extent they have not agreed to resolution of any issue, seek resolution through a regulatory proceeding before a state or federal regulatory agency having jurisdiction of all parties and the subject matter of the dispute. Rather, the Commission required Florida Parties to "clarify that nothing limits a party's rights to file a section 206 complaint."[103] The Commission based its decision on statements in Order No. 890 that "[r]egardless of the process adopted by a transmission provider, affected parties of course would retain any rights they may have under FPA section 206 to file complaints with the Commission."[104] Thus, whether it was in Florida Parties' OATTs or not, parties retained any rights they may have under FPA section 206 to file complaints with the Commission. The fact that the Commission did not require Florida Parties to

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[99] *Id.*

[100] *Id.* at 12 (citing *Tampa Elec. Co.*, 124 FERC ¶ 61,026 at P 44 n.46).

[101] *Id.*

[102] *Id.* at 12 (citing *Tampa Elec. Co.*, 124 FERC ¶ 61,026 at PP 44-45).

[103] First Compliance Order, 143 FERC ¶ 61,254 at PP 41-42.

[104] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 503.

"clarify that nothing limits a party's rights to file a section 206 complaint"[105] at the time of Order No. 890 compliance, and in the Florida Parties' dispute resolution process itself, does not bar the Commission from requiring Florida Parties to add this statement now.

59. On compliance, we find Florida Parties' inclusion of the dispute resolution procedures as an appendix to their Attachment Ks complies with directive in the First Compliance Order. We also find that the inclusion of the provision explicitly providing that FRCC's dispute resolution procedures, while recommended, are not required as a precedent to a party filing a section 206 compliant with the Commission,[106] addresses the concerns the Commission set forth in the First Compliance Order.[107]

60. Duke Energy also seeks rehearing of the Commission's requirement to eliminate the fourth step in the dispute resolution procedures. Again, the Commission did not require Florida Parties to remove the fourth step from its procedures, but instead required them to either explain how the fourth step will not unnecessarily lengthen the dispute resolution process and will not compromise the impartiality of the process, or exclude the fourth step from their Attachment Ks.[108] Although the Commission approved this fourth step as compliant with Order No. 890, it must consider whether the fourth step is appropriate in light of the new requirements in Order No. 1000, particularly the requirement that public utility transmission providers allow nonincumbent transmission developers to compete to develop new transmission facilities. Thus, it is appropriate for the Commission to consider whether the FRCC Board will be impartial under the fourth step when voting on a final resolution to a dispute, which could be between an incumbent transmission provider and nonincumbent transmission developer, as well as whether the addition of the fourth step could delay the evaluation and selection of transmission solutions. In light of the justification provided by Florida Parties regarding the fourth step of the dispute resolution process in their compliance filing, we accept this added step in the dispute resolution process. We agree with Florida Parties that the fourth step provides a regional forum for resolving regional issues and provides finality to the dispute resolution process.

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[105] First Compliance Order, 143 FERC ¶ 61,254 at PP 41-42.

[106] Florida Power & Light Co., FPL OATT, Attachment K, Appendix 6 § 1.

[107] First Compliance Order, 143 FERC ¶ 61,254 at P 41.

[108] *Id.* P 42.

c. Requirement to Plan on a Regional Basis to Identify More Efficient or Cost-Effective Transmission Solutions

61. Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.[109] Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the transmission planning region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.[110] In addition, whether or not public utility transmission providers within a transmission planning region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is a more efficient or cost-effective solution to their needs.[111]

62. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer[112] must provide to the regional transmission planning process to allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.[113]

63. Finally, the regional transmission planning process developed by public utility transmission providers, in consultation with stakeholders, must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's transmission needs.[114] Order No.

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[109] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

[110] *Id.* P 149.

[111] *Id.* P 331.

[112] Order No. 1000 defines merchant transmission projects as projects "for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates." *Id.* P 119.

[113] *Id.* P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

[114] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

1000 does not require that the resulting regional transmission plan be filed with the Commission.

i. Affirmative Obligation to Plan

(a) First Compliance Order

64. In the First Compliance Order, the Commission found that Florida Parties' compliance filings did not comply with the requirement of Order No. 1000 that public utility transmission providers participate in a transmission planning region that conducts a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs.[115] Specifically, the Commission found that Florida Parties' proposed tariff revisions did not require that the transmission providers in the FRCC region develop a single transmission plan for the region that reflects their determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's transmission needs.[116]

65. The Commission stated that Order No. 1000 addressed the deficiencies in the existing requirements of Order No. 890 by, among other requirements, placing an affirmative obligation on public utility transmission providers to participate in a regional transmission planning process that produces a regional transmission plan.[117] The Commission further explained that it is not sufficient for a transmission planning region to merely "roll-up" local transmission plans without analyzing whether the regional needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution.[118] Public utility transmission providers must conduct a regional analysis themselves to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider. Accordingly, the Commission directed Florida Parties to revise their Attachment Ks to set forth the affirmative obligation to identify transmission solutions that more efficiently or cost-effectively meet reliability requirements, address economic considerations, and meet transmission needs driven by public policy requirements. The Commission stated that these OATT revisions must

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[115] First Compliance Order, 143 FERC ¶ 61,254 at P 53.

[116] *Id.* P 56.

[117] *Id.* P 55 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148).

[118] *Id.* P 54.

describe the process Florida Parties will use to identify more efficient or cost-effective transmission solutions and explain how the region will conduct that regional analysis through power flow studies, production cost analyses, and/or other methods.[119] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

(b) Requests for Rehearing or Clarification

(1) Summary of Requests for Rehearing or Clarification

66. The Florida Commission argues that the First Compliance Order's finding that a roll-up of individual transmission providers' transmission plans is insufficient in the context of the transmission planning regions' established procedures and their Order No. 1000 compliance filings is impermissible. The Florida Commission argues this finding interferes with state integrated resource planning processes and does not allow for the flexibility expressly provided for in Order No. 1000.[120]

67. The Florida Commission argues that by requiring a top down review of the regional transmission plan, the First Compliance Order exceeded its authority under Order No. 1000 and the FPA and infringed upon the Florida Commission's transmission planning process.[121] The Florida Commission argues that Order No. 1000 provided for a "bottom up" approach to regional transmission planning as an acceptable regional transmission planning process.[122]

68. The Florida Commission argues that by eliminating the "primary use of the 'roll-up' of local transmission plans without additional steps" the Commission is impeding FRCC and the Florida Commission's ability to comply with state law.[123] They also argue that Order No. 1000 did not require regions to "solicit or develop additional proposals beyond those in the regional plan."[124] The Florida Commission asserts that requiring this

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[119] First Compliance Order, 143 FERC ¶ 61,254 at P 56.

[120] Florida Commission Rehearing at 3, 9-11.

[121] *Id.* at 3.

[122] *Id.* (citing First Compliance Order, 143 FERC ¶ 61,254 at PP 158, 321).

[123] *Id.* at 5.

[124] *Id.* at 10.

top-down approach is pushing the Florida utilities to adopt a "RTO-like" framework, which the state has already rejected.

69. The Florida Commission states that Florida statutes establish a ten-year site plan process which addresses integrated resource planning and establishes a bottom-up process for each utility to submit its plan to the Florida Commission for approval. The Florida Commission argues that in the ten-year plan, the individual utilities submit estimated generation needs, locations of proposed power plants, and any needed transmission additions to address reliability, economic and public policy considerations. The Florida Commission and Duke Energy assert that when a transmission line siting application is filed pursuant to the Florida Transmission Siting Act, the ten-year plan is considered in determining the need for the transmission line.[125] Duke Energy further explains that the Florida Commission may classify a proposed plan as suitable or unsuitable and may suggest alternatives, and that any new transmission service requests necessary to implement any changes would be submitted to the appropriate transmission provider. Therefore, Duke Energy contends, all firm transmission needs are accounted for through these processes.[126]

70. The Florida Commission and Duke Energy assert that the Commission infringed upon the Florida Commission's express statutory authority over the transmission grid. Duke Energy further contends that because in Florida the state regulates the processes used to identify and evaluate transmission needs and potential solutions to those needs, the Commission's statement that Order No. 1000's requirements do not infringe on states' siting, permitting, or construction authority has no merit unless the state's laws and regulations are respected.[127] The Florida Commission states Florida statutes provide the Florida Commission with the authority to "require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes."[128] The Florida Commission also asserts that state statutes "grants the Florida commission jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to ensure an adequate and reliable source of energy for operational and emergency purposes in Florida and to avoid uneconomic duplication of

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[125] *Id.* at 5.

[126] Duke Energy Rehearing at 10-14.

[127] *Id.* at 7-10 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 107; Order No. 1000-A, 139 FERC ¶ 61,132 at P 105).

[128] Florida Commission Rehearing at 4 (referencing FLA. STAT. §366.04(2)(c)).

generation, transmission, and distribution facilities."[129] The Florida Commission argues that the Commission's holdings will produce duplicative transmission expansion processes and administrative inefficiencies.[130]

71. The Florida Commission argues that the affirmative obligation to plan infringes upon the state integrated resource planning processes and exceeds the Commission's jurisdiction, violating section 217(b)(4) of the FPA.[131] The Florida Commission asserts that the Commission's jurisdiction over interstate transmission and wholesale power sales is limited to only those matters that are not subject to state regulation[132] and that the Commission's regulations provide for the Commission to facilitate planning, not to direct it.[133] The Florida Commission argues that the Commission's "regulation of interstate transmission and wholesale power sales is limited to only those matters which are not subject to regulation by the states."[134] The Florida Commission recognizes the Commission's "jurisdiction to approve and enforce compliance with bulk transmission reliability standards" but that does not authorize the Commission to preempt the Florida Commission from ensuring the safety, adequacy or reliability of the electric service within the state of Florida.[135]

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[129] *Id.* at 4 (referencing FLA. STAT. § 366.04(5)).

[130] *Id.* at 4-7.

[131] *Id.* at 3. Section 217(b)(4) states that "[t]he Commission shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs." 16 U.S.C. § 824q(b)(4) (2012).

[132] *Id.* at 6.

[133] *Id.* at 6-7 (discussing section 217 of the FPA).

[134] *Id.* at 6 (referencing FERC's limited backstop authority under the 2005 Energy Policy Act to site transmission and citing *Conn. Light & Power v. FPC*, 324 U.S. 515, 529-530 (1945) (emphasizing the Federal Power Commission's limited authority)).

[135] *Id.* at 6.

72. Duke Energy contends that the Commission erred in the First Compliance Order because it failed to recognize differences between transmission planning regions within RTOs and transmission planning regions without RTOs.[136] First, Duke Energy argues that the Commission's determinations in the First Compliance Order fail to acknowledge that under its siting authority, the Florida Commission has broad authority to identify transmission needs and ensure that those identified needs are met cost-effectively. According to Duke Energy, Florida's transmission siting-related laws and regulations achieve similar goals to those stated in Order No. 1000 such that the Commission's transmission planning processes are largely duplicative, leading to inefficiencies.

73. Second, Duke Energy states that the FRCC transmission planning region is also different from transmission planning regions within RTOs since the FRCC region itself has no inherent transmission needs given that it has no OATT or other obligation to serve customers arising under state or local law. Instead, Duke Energy asserts, the transmission providers and their transmission customers have individual transmission needs that the transmission providers are obligated to meet. Duke Energy states that the combined transmission needs of all transmission customers are evaluated to determine if they can be met more efficiently and cost-effectively at both the local and regional levels in accordance with state law and regulations. According to Duke Energy, the role of transmission planning in Florida is limited given that the integrated resource planning process is a separate process subject exclusively to the Florida Commission's jurisdiction. Duke Energy states that transmission planners identify transmission customers' transmission needs through transmission service requests, which reflect the resource decisions of those transmission customers, and have no authority to alter the resource decisions that transmission customers make.

(2) <u>Commission Determination</u>

74. We deny the requests for rehearing and affirm the findings in the First Compliance Order. As to the Florida Commission's arguments that Florida meets the requirements of Order No. 1000 pursuant to its existing transmission planning efforts and the Ten-Year site plan process, we affirm the finding in the First Compliance Order that under Order No. 1000, Florida Parties along with the other transmission providers in the transmission planning region "must conduct a regional analysis themselves to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider."[137]

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[136] Duke Energy Rehearing at 7.

[137] First Compliance Order, 143 FERC ¶ 61,254 at P 56.

Thus, in conducting this regional analysis, Florida Parties may not rely exclusively on proposals from interested parties as the transmission planning region's only means to identify more efficient or cost-effective regional transmission solutions.[138]

75. More specifically, in Order No. 1000 the Commission found action was needed to remedy deficiencies in Order No. 890-compliant local transmission planning processes. In explaining the need for Order No. 1000's reforms, the Commission stated that "[a]fter careful review of the voluminous record in this proceeding" it concluded that "the additional reforms adopted herein are necessary at this time to ensure that rates for Commission-jurisdictional service are just and reasonable in light of changing conditions in the industry."[139] The deficiencies in the existing Order No. 890 transmission planning processes that were identified by Order No. 1000 included the lack of an affirmative obligation on public utility transmission providers to plan for regional transmission needs.[140] Thus, the Commission found that it had an obligation under the FPA to ensure that Commission-jurisdictional services resulting from regional transmission planning processes are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential, and that regional transmission planning processes must include the affirmative obligation on public utility transmission providers to plan in order to satisfy the FPA's just and reasonable standard.[141] While Duke Energy is correct that, unlike transmission planning regions with regional transmission organizations, the FRCC region itself has no obligation to provide transmission service pursuant to an OATT, the requirements of Order No. 1000 nonetheless apply to each individual public utility transmission provider in the FRCC region, and Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that produces a regional

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[138] *Id.* P 56.

[139] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 1; *id.* P 116 ("[F]or the pro forma OATT (and, consequently, public utility transmission providers' OATTs) to be just and reasonable and not unduly discriminatory or preferential, it must be revised in the context of transmission planning to include the requirement that regional transmission planning processes result in the production of a regional transmission plan using a process that satisfies the specified Order No. 890 transmission planning principles and that provides an opportunity to consider transmission needs driven by Public Policy Requirements.").

[140] *Id.* PP 147-148.

[141] *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 55, 147-148.

transmission plan and that complies with certain Order No. 890 transmission planning principles.[142]

76. Under their pre-Order No. 1000 Attachment Ks, Florida Parties had no affirmative obligation to plan for the region's transmission needs that culminated in a regional transmission plan that reflects the evaluation of whether alternative regional transmission solutions may be more efficient or cost-effective than transmission solutions identified in local transmission planning processes.[143] In their initial Order No. 1000 compliance filings, Florida Parties did not explain in either their proposed OATT revisions or their transmittal letters how they would comply with the requirement to undertake an affirmative obligation to plan for the region's transmission needs in the absence of requests by stakeholders. The Commission thus appropriately concluded that Florida Parties had failed to satisfy this requirement of Order No. 1000. Florida Parties address this requirement in their second round compliance filings and, as addressed more fully below in this section, we find that Florida Parties partially comply with this obligation.

77. In requiring Florida Parties to affirmatively plan for the transmission needs of the transmission planning region, we disagree that we are ignoring Order No. 1000's statement that a transmission planning region could continue to use a "bottom up" approach to transmission planning. Nothing in Order No. 1000 or the First Compliance Order requires Florida Parties to abandon their bottom up approach. Indeed, this approach can be used as the basis for Florida Parties' regional transmission planning process, as it is used in other non-RTO regions.[144] Thus, for instance, as Florida Parties' Attachment Ks provide, in developing their local transmission plans, Florida Parties may continue to identify local transmission needs and local transmission facilities, and then roll-up their local transmission plans along with each other.[145] The First Compliance Order does not require Florida Parties to change their process in this regard. However, once the local transmission plans are rolled-up and analyzed, Order No. 1000 requires public utility transmission providers in the transmission planning region to take the

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[142] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 146.

[143] As defined in Order No. 1000, the "local" transmission planning process is the transmission planning process that a public utility transmission provider performs for its individual retail distribution service territory or footprint pursuant to the requirements of Order No. 890. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 68.

[144] *E.g.*, *PacifiCorp*, 143 FERC ¶ 61,151 (2013), *order on compliance*, 147 FERC ¶ 61,057 (2014).

[145] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 1.3.

additional step of determining whether there are more efficient or cost-effective transmission solutions to meet the transmission needs of the region, which would be conducted through the regional analysis undertaken by Florida Parties.[146]

78. Similarly, we reject the argument that Order No. 1000's affirmative obligation to plan runs counter to, or otherwise interferes with, state-regulated integrated resource planning. As an initial matter, we reiterate the Commission's finding in Order No. 1000-A that the regional transmission planning requirements "will provide more information and more options for consideration by public utility transmission providers and state regulators and, therefore, can hardly be seen as detrimental to state-sanctioned integrated resource planning."[147] Public utility transmission providers can use the results of the Order No. 1000 regional transmission planning process to inform their state-regulated integrated resource planning processes, just as they can use the results of their integrated resource planning processes to inform the regional transmission planning process. However, nothing in Order No. 1000 requires that public utility transmission providers modify their state integrated resource plans.[148] The regional transmission planning requirements of Order No. 1000 are not the vehicle by which state integrated resource planning is conducted, which "may be a separate obligation imposed on public utility transmission providers under the purview of the states."[149] Thus, to the extent Florida Parties' Order No. 1000 regional transmission planning process results in the identification of transmission facilities that could provide access to lower-cost resources than those that were approved in a state-regulated integrated resource planning process, neither Order No. 1000 nor the First Compliance Order requires that Florida Parties modify their resource selections or the transmission facilities that they plan as part of the state-level integrated resource planning process to access those resources identified in the integrated resource plan. We therefore disagree that the First Compliance Order is inconsistent with, or disruptive to, the Florida Commission's planning requirements.

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[146] *See, e.g., Duke Energy Carolinas, LLC*, 147 FERC ¶ 61,241 at P 85.

[147] Order No. 1000-A, 139 FERC ¶ 61,132 at P 190; *see also id.* P 192 (responding to argument that regional transmission planning would disrupt integrated resource planning).

[148] *Id.* PP 168-179.

[149] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 154; *see also id.* P 107 (explaining that Order No. 1000's reforms "in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning…").

79. Further, as discussed above, Order No. 1000 identified deficiencies in existing transmission planning processes, and thus concluded that the regional transmission planning reforms are necessary. These deficiencies included the lack of an affirmative obligation on public utility transmission providers within a transmission planning region to develop a single transmission plan for the region that reflects their determination of the set of transmission facilities that more efficiently or cost-effectively meets the region's transmission needs.[150] Thus, the Commission found that it had an obligation under the FPA to ensure that Commission-jurisdictional services resulting from regional transmission planning processes are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential, and that regional transmission planning processes must include the affirmative obligation on public utility transmission providers to plan for the region's transmission needs in order to satisfy the FPA's just and reasonable standard.[151] The Commission reviewed Florida Parties' compliance filings to determine whether Florida Parties had complied with these requirements and concluded that Florida Parties failed to specify in their Attachment Ks how they will comply with the affirmative obligation to plan for the region's transmission needs. Thus, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to set forth the affirmative obligation to identify transmission solutions that more efficiently or cost-effectively meet reliability requirements, address economic considerations, and meet transmission needs driven by public policy requirements. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.[152]

80. Regarding the Florida Commission's rehearing arguments stating that the affirmative obligation to plan infringes on the state integrated resource planning and exceeds the Commission's jurisdiction under FPA section 217(b)(4), we disagree. We agree that Florida Parties must comply with the requirements of the Florida Commission's state processes. However, we find that the directives of the First Compliance Order are not inconsistent with integrated resource planning. We further find that these requirements are consistent with section 217(b)(4) because they support the development of needed transmission facilities that benefit load-serving entities and, contrary to the Florida Commission's arguments, do not preempt state siting authority.[153]

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[150] *Id.* PP 147-148.

[151] *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 55, 147-148.

[152] First Compliance Order, 143 FERC ¶ 61,254 at P 56.

[153] *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 108 (explaining that Order No. 1000's reforms "… [do] not conflict with FPA section 217" and "is consistent

(continued…)

Nothing in Order No. 1000 is intended to prevent or restrict a load-serving entity from fully implementing resource decisions made under state authority.

81. Furthermore, we find that the Florida Commission's arguments that the First Compliance Order exceeds the Commission's jurisdiction are a collateral attack on Order Nos. 1000 and 1000-A, where these issues were addressed. In Order No. 1000, the Commission explained that it had identified deficiencies in the Order No. 890-compliant transmission planning processes and, because transmission planning is a practice affecting transmission rates, the Commission had an obligation under the FPA to ensure that Commission-jurisdictional services resulting from regional transmission planning processes are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential.[154] Order Nos. 1000 and 1000-A also fully responded to arguments that FPA section 202(a) limited the Commission's jurisdiction over regional transmission planning.[155] We therefore reject the collateral attacks on Order Nos. 1000 and 1000-A.

(c) <u>Compliance</u>

(1) <u>Affirmative Obligation to Plan</u>

(i) <u>Summary of Compliance Filings</u>

82. To comply with the directives of the First Compliance Order, Florida Parties propose tariff revisions setting forth an affirmative obligation to identify and evaluate more efficient or cost-effective transmission solutions to regional transmission needs.[156]

83. Florida Parties propose revising their Attachment Ks to state that the Transmission Provider, in collaboration with other transmission providers, FRCC staff, and other FRCC members, shall identify and evaluate whether there are more efficient or cost-effective regional transmission solutions to regional transmission needs relative to the transmission facilities in the initial regional transmission plan. The regional analysis

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with section 217 because it supports the development of needed transmission facilities, which ultimately benefits load-serving entities").

[154] *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 55, 147-148.

[155] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 100-106; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 121-158.

[156] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 1.2.1.

shall utilize the standards, criteria, rules, tools, data, models, methods, and studies of the local transmission plans, supplemented as necessary for the regional analysis. Florida Parties propose that the regional analysis shall determine if there is a solution meeting CEERTS project criteria, in accordance with the minimum threshold requirements.[157] Additionally, Florida Parties provide that the regional analysis shall include consideration of potential transmission solutions to transmission needs driven by public policy requirements, as such needs are identified, pursuant to the Public Policy planning section of the OATT. Florida Parties further state that the provisions for stakeholder involvement and input in the regional transmission plan, and ability to propose CEERTS projects on their own initiative are fully applicable to potential transmission solutions to transmission public policy needs driven by public policy requirements.[158]

84. Florida Parties revised their Attachment Ks to state that any entity desiring to propose a CEERTS project for regional cost allocation must submit a CEERTS project to the FRCC no later than June 1st of the first year of the biennial regional transmission planning cycle.[159] Florida Parties further revised their Attachment Ks to state that in addition to the right of individual entities to submit potential CEERTS projects, the Transmission Provider shall participate with other transmission providers and other interested entities, through the FRCC Planning Committee, in the identification and evaluation of potential CEERTS projects for submission. The FRCC Planning Committee, or a designated subcommittee thereof, shall proactively seek out potential CEERTS projects from its analysis of the most recent FRCC Board-approved plan. Florida Parties state that this will occur during the period of February through April of the first year of the biennial regional transmission planning cycle.

85. Florida Parties propose as the general steps of the initial evaluation process,[160] to gather all relevant information relating to the most recent FRCC Board-approved plan (e.g., approved long range studies and early project suggestions from interested entities), and request and collect all necessary supplemental information from transmission providers and other entities (e.g., project details and cost estimates for projects identified for potential displacement, list of potentially feasible projects not selected in the initial regional transmission plan).[161] Then Florida Parties propose to analyze the current plan

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[157] *Id.* § 1.2.1.

[158] *Id.* § 1.2.1.

[159] *Id.* § 1.2.2.

[160] *Id.* § 1.2.2(A-C).

[161] *Id.* § 1.2.2(A).

information to identify potential opportunities for alternative projects. The analysis will include comparative load flow studies to evaluate various potential transmission project alternatives. For example, comparative load flow studies will be run to identify and evaluate potential CEERTS projects that could displace transmission projects in the initial regional transmission plan.[162] Finally, Florida Parties propose to develop potential CEERTS project alternatives and solicit project sponsorship from transmission providers and other entities which may have an interest in sponsoring potential CEERTS projects.[163] Florida Parties note that a potential CEERTS project developed by this process will contain the following minimum set of transmission project information: (1) general description of the transmission facilities being proposed; (2) general path of the transmission lines; and (3) transmission systems that would interconnect with the potential CEERTS project.[164]

(ii) <u>Protests/Comments</u>

86. FMPA/Seminole argue that Florida Parties failed to satisfy the affirmative obligation to plan because they: (1) did not include provisions to identify or evaluate economic projects; (2) failed to describe the process by which they will identify more efficient or cost-effective transmission solutions; (3) failed to explain how they will conduct regional analysis to evaluate identified transmission projects; and (4) failed to include cost comparison or provide for technical studies in order to evaluate whether a transmission project is more cost-effective or efficient.[165] FMPA/Seminole argue that Florida Parties' proposal fails to provide for independent identification or evaluation of economic projects.[166] FMPA/Seminole argue that Florida Parties' revisions providing for the identification and evaluation of potential regional transmission projects only apply to projects that may displace other projects in the regional transmission plan.[167] Consequently, FMPA/Seminole argue that economic projects would be excluded and public policy projects would not be fully considered. LS Power states that regional

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[162] *Id.* § 1.2.2(B).

[163] *Id.* § 1.2.2(C).

[164] *Id.* § 1.2.2(C)(i).

[165] FMPA/Seminole Protest at 36.

[166] *Id.* at 37.

[167] *See* Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.2.1 and 1.2.2.

planning is all about regional benefits, not exclusively about replacing one or more local projects, and regional benefits may arise where there is no local need at all.[168]

87. FMPA/Seminole assert that the information gathering provision is confusing as to whether it relates to only the existing projects that could potentially be displaced, or whether it includes potential new projects that might be considered as CEERTS projects.[169] FMPA/Seminole request that the provision be clarified so that the information gathering provision relates to both types of projects to ensure meaningful identification and evaluation of projects.[170]

88. Regarding section 1.2.2.B, FMPA/Seminole argue that Florida Parties' proposal is deficient in two ways. First, it argues that the comparative load flow studies should capture the technical data identified in sections 1.2.4 and 1.2.7 which, they argue, is necessary for proper evaluation to occur. Further, FMPA/Seminole contend that the comparative load flow studies may not include the relevant stability and short circuit data that would be necessary for proper evaluation of an affirmative obligation project since this information would be necessary for a potential project sponsor to make an informed decision about becoming a project sponsor and making the required $100,000 deposit. Second, FMPA/Seminole argue that a comparative cost analysis is missing. FMPA/Seminole assert that the analysis must be sufficient so that an entity can fairly evaluate whether it wants to become a project sponsor of the identified project, i.e. whether that new project is more cost-effective and/or efficient than the transmission project being displaced.[171] FMPA/Seminole argue that without this technical and cost comparison data, any projects identified through this affirmative obligation process will not move forward in the planning process. Finally, FMPA/Seminole argue that the Commission should require Florida Parties to streamline the remainder of the CEERTS evaluation process to reduce the opportunities for Florida Parties to delay affirmative obligation projects.[172]

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[168] LS Power Protest at 23.

[169] FMPA/Seminole Protest at 38-39 (referencing Florida Power & Light Co., FPL OATT, Attachment K, §1.2.2A).

[170] *Id.* at 39.

[171] *Id.* at 39-41 (referencing Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.2.1, 1.2.2).

[172] *Id.* at 42.

(iii) Answer

89. In response, Florida Answering Parties assert that Florida Parties' revisions establish an affirmative obligation to identify and evaluate more efficient or cost-effective transmission solutions to regional transmission needs.[173] Florida Answering Parties assert that this provision includes an obligation to search for solutions to economic projects including transmission solutions to relieve congestion. Florida Answering Parties disagree with FMPA/Seminole's and LS Power's arguments that their regional transmission planning process does not provide for identifying projects that resolve regional congestion issues. Florida Answering Parties argue that the existing FRCC regional planning process provides for both economic and congestion studies. Florida Answering Parties note that FMPA/Seminole has never requested an economic study under this process since its implementation five years ago.

90. Florida Answering Parties assert that these economic studies, as well as studies made pursuant to transmission requests, are made to support economic transactions designed to relieve congestion. Florida Answering Parties assert they have a history of proposing economic projects specifically in the central Florida region which resulted in several transmission projects that were unanimously accepted by the FRCC Board of Directors, which include representatives from FMPA/Seminole. Florida Answering Parties disagree with FMPA/Seminole's and LS Power's contention that Order No. 1000 provides an additional obligation to look for regional studies that allow for production cost savings across the region. Florida Answering Parties argue that while production cost modeling can be a useful tool, it is inefficient in justifying new projects in FRCC's non-RTO environment. Florida Answering Parties assert that production cost modeling would lead to disagreements and challenges over the models, proposed benefits and costs.

91. Florida Answering Parties disagree with FMPA/Seminole's assertion that a comparative cost analysis is needed at the initial review stage. Florida Answering Parties argue that requiring a more complete analysis at the initial project review stage would delay the process and waste resources on transmission projects that would not pass the existing initial review stage.[174] Florida Answering Parties assert that contrary to FMPA/Seminole's assertion, the FRCC Planning Committee is directed to "relook at projects previously identified as potential projects to determine if one or more of those

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[173] Florida Answering Parties Answer at 14 (referencing Florida Power & Light Co., FPL OATT, Attachment K, §1.2.1).

[174] *Id.* at 29.

potential projects does in fact meet CEERTS criteria."[175] Florida Answering Parties also dispute FMPA/Seminole's claim that sections 1.2.2.A and 1.2.2.B, should be expanded to include technical data identified in sections 1.2.4 and 1.2.7. Florida Answering Parties assert that would be inappropriate and unnecessary. Florida Answering Parties argue that the FRCC Planning Committee is aware of the necessary planning technical data and that information need not be detailed in the tariff, and that requiring this data for all projects at this early initial review stage would lengthen the process and waste resources. Furthermore, Florida Answering Parties contend that FMPA/Seminole's request for a cost analysis at this initial state is also unwarranted. Florida Answering Parties argue that while some cost analysis will be done at this initial stage, the more detailed cost analysis is best conducted in the evaluation stage.[176]

(iv) <u>Commission Determination</u>

92. We find that Florida Parties' proposal partially complies with the requirements of the First Compliance Order. Florida Parties' proposed OATT revisions provide that transmission providers and FRCC staff and members will identify and evaluate whether there are more efficient or cost-effective regional transmission solutions relative to the transmission facilities in the initial regional transmission plan.[177] Florida Parties' proposed revisions outline the process for identifying potential CEERTS projects, which includes gathering relevant information, analyzing the current regional transmission plan for possible alternatives, and soliciting sponsors for transmission projects identified under this affirmative obligation to plan. These OATT provisions provide more detail on the regional transmission planning process than Florida Parties proposed in their First Compliance Order concerning how the FRCC process will identify more efficient or cost-effective transmission solutions through a regional analysis. We find these revisions consistent with the directives in the First Compliance Order.

93. As currently proposed, section 1.2 does not specify that this process applies to economic, public policy and/or reliability regional transmission projects. While it appears that this section applies to all three types of regional transmission projects, additional clarification would address FMPA/Seminole's concern that this process does not apply to economic projects. Accordingly, we direct Tampa Electric, Florida Power,

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[175] *Id.* at 28 (referencing Florida Power & Light Co., FPL OATT, Attachment K, §1.2.2.A).

[176] Florida Answering Parties Answer at 29 (comparing Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.2.2.B with 1.2.9).

[177] Florida Power & Light Co., FPL OATT, Attachment K §1.2.1.

and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings clarifying that section 1.2 applies to economic, public policy and reliability regional transmission projects. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

94. Regarding FMPA/Seminole's request for clarification as to whether the information gathering process applies to only transmission projects in the existing regional transmission plan that could potentially be displaced (i.e., the rolled-up local plans) or would include potential new CEERTS projects,[178] we find that this section applies to the FRCC, describes the first step in its affirmative obligation to plan process, and directs the FRCC to gather all relevant information on the existing and proposed transmission projects. This includes "early project submissions from transmission provider and other entities."[179] Any potential new CEERTS project that has been suggested would be included in this provision and as part of FRCC's process of gathering the information that it will need to analyze the current state of the region.

95. As to FMPA/Seminole's protest that there is insufficient information developed at the initial stages of the project review process for an entity to make a decision to be a project sponsor and its corollary request that the Commission require Florida Parties to move up some of the required analysis from the evaluation stage, we disagree. We find that Florida Parties have struck a reasonable balance between what information and analysis is needed at this initial review stage versus what is needed at the later evaluation stage. As discussed in the First Compliance Order, Order No. 1000 requires Florida Parties participate in a regional transmission planning process that conducts a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs.[180] Florida Parties' respective OATTs indicate that (1) the FRCC regional transmission planning process will conduct its own analysis to identify more efficient or cost-effective transmission solutions, including the development of unsponsored transmission projects that may be selected in the regional transmission plan for purposes of cost allocation,[181] and (2) the FRCC transmission

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[178] FMPA/Seminole Protest at 38-39 (referencing Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.2.A).

[179] Florida Power & Light Co., FPL OATT, Attachment K, §1.2.2.A.

[180] First Compliance Order, 143 FERC ¶ 61,254 at 54.

[181] A complete description of this evaluation process can be found below in the section titled, Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation.

planning region will use a regional perspective to consider unsponsored transmission projects generated through regional analysis.[182] Moreover, Florida Parties provide that potential transmission project sponsors will have access to any data, models, plans, or analysis that is available or was utilized for identifying potential transmission projects. Accordingly, we find this provision to be consistent with Order No. 1000 and the Commission's directives in the First Compliance Order.

(2) Planning Cycle

(i) Summary of Compliance Filings

96. As part of developing their interregional compliance filings and revised regional compliance filings, Florida Parties state they determined that a two-year transmission planning cycle was most appropriate for the FRCC region.[183] Florida Parties concluded that a new regional transmission projects planning process was necessary that takes the work of the existing FRCC Regional Planning Process, uses it to carry out the directives of Order No. 1000, and then inserts the product(s) of the regional transmission projects planning process back into the functioning FRCC Regional Planning Process.

97. Florida Parties highlight several benefits to a biennial versus annual regional transmission planning process. First, Florida Parties note that the process aligns with the proposed interregional process developed in collaboration with the Southeastern Regional Transmission Planning region, which also proposes a biennial interregional process due to its multiple interregional seams, leveraging the interregional coordination that necessarily occurs. Second, Florida Parties assert that the regional transmission planning process has built in some flexibility with window timeframes for a total start-to-finish time that ranges from 18 to 23 months for final approval of a CEERTS project, noting that some CEERTS project submittals may benefit from schedule flexibility or shortening of the regional transmission planning process' steps depending on the regional transmission project's nature or complexity, the availability of the qualified transmission project developer, or other factors. Finally, this biennial process will fold into the existing transmission planning cycle, which will continue to be an annual process. Florida Parties state that the timeline also includes a placeholder to include potential CEERTS projects that show promise for moving forward in the annual FRCC analyses performed for NERC compliance, as a sensitivity, well in advance of final approval.[184]

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[182] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 1.2.2.

[183] *E.g.*, *id*.

[184] Florida Power & Light Co., Transmittal Letter at 7-8.

(ii) Protests and Comments

98. LS Power argues that the Commission should reject Florida Parties' proposal to adopt a biennial cycle for their regional planning process instead of the previously approved annual one. While it does not oppose a biennial cycle as a general matter, LS Power asserts that, under the proposal, Florida Parties will have an annual planning cycle for local transmission projects and a biennial cycle for regional transmission projects selected in a regional transmission plan for purposes of cost allocation. LS Power argues that the disjointed planning cycles will result in a bias for local transmission projects and a discriminatory barrier for regional transmission projects. LS Power asserts that barriers arise because Florida Parties seek to retain an annual local transmission planning process and then roll-up those plans to form the "initial regional plans" in the biennial process for regional transmission planning. LS Power asserts that tying this with the incentives Florida Parties have given themselves to develop local transmission projects as much as possible before reviewing regional transmission projects, the real and only winners in having an annual local process and an elongated biennial regional process are Florida Parties.[185]

99. LS Power asserts that Florida Parties have offered minimal support for moving to a biennial process, only asserting that the local annual process is tied to NERC compliance activities. LS Power argues that rather than attempting to match up this annual process with the local transmission planning process, Florida Parties chose to segregate off Order No. 1000 regional transmission projects selected in a regional transmission plan for purposes of cost allocation and put them into a biennial planning cycle while continuing to call what they have been doing a "regional plan."[186] LS Power notes that, as an example, in the "Process Overview" of the FRCC Planning Process Overview, the FRCC has a line item that provides for a Final Board Approved Regional Plan to be posted on the FRCC public website and sent to the Florida Commission.[187] However, LS Power states that the next item is to "[b]egin FRCC Regional Projects Process identifying potential CEERTS projects, solicit sponsorship, and receive project submittals based on the FRCC Board approved Regional Plan."[188] According to LS Power, it is clear that what Florida Parties call a "regional plan" in this instance is

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[185] LS Power Protest at 8.

[186] *Id.* at 9.

[187] *Id.* at 9 (citing Florida Power & Light Co., FPL OATT, Attachment K, Attachment C).

[188] *Id.* at 9.

nothing more than Florida Parties' individual local transmission plans rolled-up and stapled into a single plan, not a regional plan as contemplated in Order No. 1000. LS Power states that to the extent that Florida Parties continue to prepare a local transmission plan, it should be limited to their local transmission plan and not rolled-up with other local transmission plans to create a "regional plan" that the FRCC provides to the Florida Commission before starting the Order No. 1000 regional transmission planning process. Alternatively, LS Power argues that the local and regional transmission planning cycles should both be on a biennial cycle.

100. Furthermore, LS Power objects to the roll-up of the local transmission plans being identified as the "initial regional plan."[189] LS Power argues that any analysis that the FRCC proposes to determine how those individual plans work together should be done as part of the regional transmission planning process after nonincumbent transmission developers and others have had an opportunity to evaluate those local transmission plans and propose regional transmission alternatives. LS Power states that the FRCC should not be fine-tuning the local transmission plans so that they work together before all stakeholders can participate in the process. In addition, LS Power notes that it is unclear why the analysis of regional transmission projects will utilize the standards, criteria, rules, tools, data, models, methods, and studies of the local transmission plan supplemented as necessary for the regional analysis.

101. Further, LS Power notes that Florida Parties propose to continue developing local transmission projects during the regional transmission planning cycle. LS Power argues that this is significant because any costs incurred to develop local transmission projects are counted as costs of the regional transmission project for determining whether a proposed regional transmission project is more efficient or cost-effective. Thus, LS Power states that having divergent local and regional transmission planning processes incentivizes Florida Parties to develop as much of their local transmission projects as possible prior to the determination of the more efficient or cost-effective regional transmission project.[190]

(iii) <u>Answer</u>

102. In response, Florida Answering Parties assert that the biennial process for the Order No. 1000 regional transmission planning process will appropriately overlay the current FRCC transmission planning process.[191] Florida Answering Parties argue that the

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[189] *Id.* at 17.

[190] *Id.* at 10.

[191] Florida Answering Parties Answer at 10.

biennial process recognizes that due to their size and scope, regional transmission projects are generally planned many years in advance and require additional annual analysis before actual construction.

103. Florida Answering Parties argue that the biennial transmission planning cycle allows Florida Answering Parties to fully address the complex requirements of Order No. 1000.[192] Consequently, Florida Answering Parties state that a new biennial process was necessary to take the Order No. 1000 planning provisions out of the FRCC regional planning process to develop the CEERTS projects and insert the product of that biennial process back into the FRCC regional planning process.[193] Florida Answering Parties also argue that LS Power does not understand the FRCC process and did not object to the proposed biennial process at the November stakeholder meeting when the process was explained.

104. Regarding LS Power's protest that FRCC should not use local plans in the regional transmission planning process, Florida Answering Parties argue that starting its regional planning process with a blank slate would violate Order No. 1000 and NERC reliability standards, and fails to provide an existing plan for which alternatives could be proposed.

(iv) <u>Commission Determination</u>

105. We find Florida Parties' proposal to adopt a biennial cycle for their regional planning process consistent with the requirements of Order No. 1000. As the Commission stated in Order No. 1000 "[w]e allow public utility transmission providers developing the regional transmission planning process to craft, in consultation with stakeholders, requirements that work for their transmission planning region. Consistent with this approach, we will not impose additional rules that would detail consistent planning cycles, impose stakeholder procedures, establish timelines for evaluating regional transmission projects in the regional transmission planning process (including establishing minimum long-term planning horizons)."[194] We are persuaded by Florida Parties' explanation that a two-year regional transmission planning cycle will provide sufficient time for addressing the requirements of Order No. 1000, including the nonincumbent transmission developer provisions and analyzing competing transmission projects.

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[192] *Id.* at 11.

[193] *Id*.

[194] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 157.

106. Regarding LS Power's protest that FRCC should not utilize rolled-up local transmission plans as a basis for its regional transmission plan, we disagree. Nothing in Order No. 1000 requires Florida Parties to abandon their bottom-up approach and this approach can be used as the basis for developing the regional transmission plan in FRCC's regional transmission planning process. Contrary to LS Power's arguments, Florida Parties are not solely relying on the roll-up of local transmission plans as their regional transmission plan. As described above, Florida Parties have revised their OATTs to conduct a regional analysis themselves to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider. We note that Order No. 1000 does not limit transmission providers from including transmission projects for which the transmission developers are not seeking regional cost allocation in their regional transmission plans. We also note that LS Power did not indicate an OATT provision that it finds objectionable nor identify a conflict with Order No. 1000. Under Florida Parties' proposal, and as consistent with Order No. 1000, a regional transmission project for which a transmission developer wishes to pursue regional cost allocation must comply with the CEERTS process.

107. We disagree with LS Power's claim that Florida Parties' proposal may result in a bias for local transmission projects and a discriminatory barrier for regional transmission projects. We find such concern to be speculative, as there is no evidence that Florida Parties will not conduct their proposed biennial process in an open and fair and not unduly discriminatory or preferential way.

ii. Minimum Threshold Requirements for CEERTS Projects

(a) First Compliance Order

108. In the First Compliance Order, the Commission found that Florida Parties' proposed minimum thresholds for CEERTS projects partially complied with Order No. 1000. In their First Compliance Filings, Florida Parties proposed that, to be considered as a CEERTS project, a proposed transmission facility must be a transmission line subject to the requirements of the Florida Transmission Line Siting Act or successor statute. The Commission directed Tampa Electric, Florida Power, and Florida Power & Light to remove the reference to the Florida Transmission Line Siting Act and successor statutes in its entirety.[195] The Commission stated that while Order No. 1000 did not prohibit public utility transmission providers in a region from proposing minimum

[195] *Id*. P 65.

thresholds, Florida Parties' proposal lacked clarity because Florida Parties proposed to use the Florida Transmission Line Siting Act as the sole criterion rather than describing the specific thresholds for eligibility for selection in the regional transmission plan for purposes of cost allocation. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

109. Specifically, the Commission directed Florida Parties to balance their objective of excluding clearly local transmission projects that are unlikely to provide regional benefits from being submitted for evaluation in the regional transmission planning process with the need to evaluate in the regional transmission planning process those transmission facilities that are likely to provide regional benefits. The Commission stated that should Florida Parties propose to set forth minimum threshold requirements as part of further compliance filings, they must provide justifications as to how their proposed threshold requirements reach this balance and identify transmission facilities that are likely to have regional benefits.[196] The First Compliance Order provided an example stating that, they could provide a historical analysis of which existing transmission facilities within the transmission planning region would have been eligible for evaluation for selection in the regional transmission plan for purposes of cost allocation under the proposed minimum threshold requirements. The Commission also directed Florida Parties to similarly justify their proposed minimum threshold requirement that a CEERTS project must be materially different than projects already in the regional transmission plan or, in the alternative, remove this requirement from their Attachment Ks. Moreover, should Florida Parties propose to retain this requirement in their Attachment Ks, the Commission directed them to provide additional explanation of how a proposed transmission facility will be determined to be "materially different," as the Commission stated its concern that the proposed OATT revisions could provide undue discretion for the transmission providers to determine what transmission facilities may be proposed as CEERTS projects.[197] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

110. The Commission noted that a requirement that a transmission facility not be entirely limited to established rights-of-way to be eligible as a CEERTS project would not comply with Order No. 1000. The Commission acknowledged in Order No. 1000 that its reforms "are not intended to alter an incumbent transmission provider's use and control of its existing rights-of-way[,]" that Order No. 1000 does not "grant or deny transmission developers the ability to use rights-of-way held by other entities, even if transmission facilities associated with such upgrades or uses of existing rights-of-way are

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[196] *Id.* P 67.

[197] *Id.* P 67.

selected in the regional transmission plan for purposes of cost allocation[,]" and that the "retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way."[198] However, the Commission did not find that as part of its compliance filing, a public utility transmission provider may preclude a transmission facility from being considered for selection in the regional transmission plan for purposes of cost allocation because it is entirely limited to established rights-of-way.[199]

(b) Requests for Rehearing or Clarification

(1) Summary of Requests for Rehearing or Clarification

111. Duke Energy and the Florida Commission argue that the Commission erred in rejecting Florida Parties' proposal to link the threshold criterion for projects submitted to FRCC for Order No. 1000 regional cost allocation to Florida's Transmission Line Siting Act.[200] Duke Energy asserts that the proposal to link the state statute as an Order No. 1000 regional transmission planning criteria was an attempt to respect and harmonize federal and state law. Duke Energy contends that the Commission's directive creates waste and inefficiencies since any CEERTS project would be required to be approved by the Florida Commission to address retail cost recovery issues. Duke Energy asserts that the Florida Commission, as its mandate, reviews transmission projects balancing "the need for the transmission lines with the broad interests of the public in order to effect a reasonable balance between the need for the facility as a means of providing reliable, economical, and efficient electric energy and the impact on the public and the environment resulting from the location of the transmission line corridor and the construction operation, and maintenance of the transmission lines."[201] Duke Energy argues that approval of the Florida Commission effectively ensures the developer will receive retail rate recovery since the Florida Commission would already have determined there was a need for the project. Duke Energy states that while the Commission's filed rate doctrine ultimately would compel retail rate recovery, it argues that ensuring

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[198] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

[199] First Compliance Order, 143 FERC ¶ 61,254 at P 68.

[200] Duke Energy Rehearing at 27-29; Florida Commission Rehearing at 8.

[201] *Id.* at 28 (citing FLA. STAT. § 403.521).

recovery under the Commission's cost allocations can take years of litigation and uncertainty.[202]

(2) Commission Determination

112. We deny Duke Energy's and the Florida Commission's requests for rehearing. In the First Compliance Order, the Commission rejected Florida Parties' proposal to reference the Florida Transmission Line Siting Act as the threshold for eligibility for selection in the regional transmission plan for purposes of cost allocation, rather than describing the individual thresholds included in the Florida Transmission Line Siting Act.[203] As the Commission explained in the First Compliance Order, Florida Parties' proposal lacked clarity because Florida Parties proposed to use the Florida Transmission Line Siting Act as the sole criterion rather than describing the specific thresholds for eligibility for selection in the regional transmission plan for purposes of cost allocation.[204] Furthermore, if the Transmission Line Siting Act were to be amended or revised in the future, the Commission would not have an opportunity to review the new thresholds.

(c) Compliance

(1) Summary of Compliance Filings

113. On compliance, Florida Parties state that as directed in the First Compliance Order, they have removed from their Attachment Ks the reference to the requirements of the Florida Transmission Line Siting Act and incorporated the minimum threshold requirements directly into their respective OATT. Specifically, Florida Parties proposed that to be eligible for inclusion in the regional transmission plan, a CEERTS project must "[b]e a transmission line 230kV or higher, designed to cross a county line within the state of Florida and 15 miles or longer, or be a substation flexible AC transmission [FACTS] device, e.g., series compensation or static var compensator designed to operate at 230 kV or more."[205] In addition, the project must "[b]e materially different than projects already in the regional plan."[206] Florida Parties will consider a project to be materially different

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[202] *Id.* at 29.

[203] First Compliance Order, 143 FERC ¶ 61,254 at P 65.

[204] *Id*.

[205] Florida Power & Light Co., FPL OATT, Attachment K 1.2.3.A.

[206] *See* First Compliance Order, 143 FERC ¶ 61,254 at P 99. CEERTS projects cannot qualify as local transmission facilities located solely within a transmission

(continued…)

"if it displaces a different local project or projects or is not considered a minor adjustment to an existing local or CEERTS project that it is displacing."[207] Under the OATT, minor adjustments could include changes in equipment size, different terminal bus arrangement, or a slight change in route.[208]

114. In support of the definition, Florida Parties state that adopting the standards required by the Florida Transmission Line Siting Act in their Attachment Ks aligns the regional Order No. 1000 transmission planning process with the state regulatory process ensuring that transmission projects will be built. Florida Parties argue that in adopting these standards they have balanced their objective of excluding local transmission projects that are unlikely to have regional benefits with the need to evaluate regional transmission projects that are likely to have regional benefits.[209] Florida Parties also submitted a list of transmission projects approved through the Transmission Line Siting Act since 2004 to demonstrate how these minimum threshold criteria have not hindered the development of regional transmission projects.[210]

115. Florida Parties argue that these minimum requirements encourage sizable, higher voltage transmission projects that are more likely to have regional benefits, and therefore, more likely to qualify for regional cost allocation.[211] Florida Parties assert that by establishing these minimum thresholds they are attempting to avoid wasting regional resources on small projects that are less likely to have regional benefits. Florida Parties state that higher voltage facilities are used to "transfer power over greater distances and integrate loads and resources within the region, providing transmission with lower impedances and higher loadings than lower-voltage facilities."[212]

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provider's footprint that are not selected in the regional transmission plan for purposes of cost allocation. The Commission accepted this part of the definition in the First Compliance Order, and thus, we do not discuss it again in this order.

[207] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K 1.2.3.B.

[208] *Id.* § 1.2.3.B.

[209] *E.g.*, Florida Power & Light Co. Transmittal at 17.

[210] *Id.* at 17.

[211] *Id.* at 14.

[212] *Id.*

116. Florida Parties state that the requirement that a proposed CEERTS project be at least 15 miles long encourages projects that provide increased transmission over a greater area, thereby increasing transmission capacity that inherently benefits more areas of the transmission system.[213] Florida Parties state that the requirement that a proposed CEERTS project cross a county line is commensurate with the topography and concentration of the transmission system in Florida. They argue that "it is unlikely that any transmission line project with regional benefits would be contained within a single county, including larger counties such as Polk, Collier, and Dade Counties."[214] Florida Parties note that while it is true that several utilities within the FRCC region have portions of their boundaries that do not correspond directly with county lines, there is a direct correlation between county lines and utility boundaries in many cases. Furthermore, many utilities in the FRCC region are small, local-based utilities whose service territories encompass multiple counties or parts of counties. A transmission line crossing county lines within such a utility's borders can only be characterized as local in nature, and thus it can be said that a project's crossing at least one county line is not only a requirement for consideration of being deemed regional in nature, but is indeed a bare minimum.[215]

117. Florida Parties state that that materially different requirement is necessary to protect project sponsors and the FRCC from having multiple similar projects submitted. This requirement protects the FRCC from having to evaluate multiple substantially similar projects and undermining the sponsorship model. Florida Parties assert that this provision will allow the FRCC to remove from consideration "project proposals that have minor technical departures from a project already in the regional plan, but would not provide a material difference justifying reconsideration of the existing project."[216] In response to arguments that the materiality threshold prohibits opportunities to create more efficiencies in regional transmission project proposals because a regional transmission project must be materially different than transmission projects already included in the regional transmission plan, Florida Parties state the revised tariff language clarifies that a materially different project involves materially different CEERTS projects and not a project in the local transmission plan. Florida Parties assert this provision also protects project sponsors by providing a degree of finality for approved CEERTS transmission projects. Although approved CEERTS projects are still subject to

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[213] *Id.* at 15.

[214] *Id.*

[215] *Id.*

[216] *Id.* at 16.

reevaluation as provided for in the OATT, Florida Parties state, the transmission developer is protected from another developer proposing an almost identical project.[217]

(2) Protests/Comments

118. The Florida Commission filed comments supporting Florida Parties' inclusion of the individual minimal threshold criteria.[218] The Florida Commission states that it would be confusing to stakeholders if different criteria were used, and that, under the Transmission Line Siting Act, these criteria have been in place since 1980 and have worked well.

119. FMPA/Seminole assert that Florida Parties have not met their burden in demonstrating that their proposed minimum threshold requirements are "not so limiting as to preclude from evaluation transmission projects that may provide regional benefits."[219]

120. Regarding the provision that a transmission facility must cross a county line, FMPA/Seminole argue that counties in Florida average over 950 square miles, and many have several electric utilities within their boundaries. For example, FMPA/Seminole state that Alachua and Polk Counties each have six separate electric utilities.[220] FMPA/Seminole also provide an example of a transmission project with regional benefits that would be excluded from consideration as a CEERTS project because it would be contained within a single county even though it would provide additional transmission capacity within the transmission constrained Central Florida region.[221] LS Power also

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[217] *Id*.

[218] Florida Commission Comments at 1.

[219] FMPA/Seminole Protest at 50 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 69).

[220] *Id.* at 45 (listing: (1) Florida Power & Light, Duke Energy, Gainesville Utilities, Central Florida Electric Cooperative, Withlacoochee Electric Cooperative, and Alachua Municipal System as part of Alachua County; and (2) Duke Energy, Tampa Electric, Lakeland Municipal System, Fort Meade Municipal System, Peace River Electric Cooperative, and Withlacoochee Electric Cooperative as part of Polk County).

[221] *Id.* at 46 (explaining how a 500 kV or 230 kV line from Duke Energy's substation located in northwest Polk County extends to a Tampa Electric substation in central Polk County over 19 miles away).

disagrees with the county line requirement and states that Florida Parties are the only region that included such a requirement.

121. LS Power agrees with Florida Parties that higher voltage and longer distance transmission lines are more likely to have regional benefits, but asserts that this is not the test under Order No. 1000. LS Power argues that under Order No. 1000 the issue is whether the transmission project provides regional benefits and is more efficient or cost-effective. LS Power provides an example of a six mile project in the PJM Interconnection, L.L.C. (PJM) region that solved a regional reliability issue and would replace the proposed 70 mile transmission line.[222]

122. Regarding limiting the exception to transmission lines to only a FACTS device, FMPA/Seminole argue that this exception is too limiting. FMPA/Seminole argue that there are other similar devices, such as series or shunt capacitors, large autotransformers and breakers, that, like FACTS devices, "increase the transmission network capacity of existing AC power lines without the construction of new transmission lines."[223] FMPA/Seminole argue that, like FACTS devices, these other non-transmission alternatives could provide regional benefits and should be eligible for consideration as a CEERTS project. FMPA/Seminole argue that Florida Parties failed to justify how limiting non-transmission alternatives to FACTS devices does not preclude consideration of other non-transmission alternatives which could provide regional benefits. FMPA/Seminole request that the Commission require Florida Parties to expand this exception to include "major substation equipment designed to operate at 230 kV or more."[224]

123. FMPA/Seminole argue that, contrary to Florida Parties' assertions in support of the minimum threshold criteria, Florida Parties have not largely adopted the criteria set forth in the Transmission Line Siting Act. FMPA/Seminole argue that the 15-mile and crossing county line criterion is not required for a transmission project to use the Transmission Line Siting Act process. FMPA/Seminole contend that transmission projects that are 15 miles or longer and cross a county line must use the Transmission Line Siting Act process, but transmission developers with projects below those thresholds can also apply for Transmission Line Siting Act certification. Under Florida Parties'

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[222] LS Power Protest at 15.

[223] FMPA/Seminole Protest at 47 (quoting Florida Power & Light Co., Transmittal at 15 whereby Florida Parties used this justification to support its inclusion of FACTS devises as a CEERTS eligible project).

[224] *Id.* at 47.

proposal, transmission projects that are less than 15 miles or do not cross a county line would be ineligible for consideration as a CEERTS project and regional cost allocation. Thus, the minimum thresholds proposed for a transmission project to be eligible for consideration as CEERTS projects are actually more restrictive than those applicable to transmission projects eligible for Transmission Line Siting Act approval. Consequently, FMPA/Seminole argue that Florida Parties have not met their burden of justifying why the proposed thresholds are not so limiting as to preclude from evaluation transmission projects that may provide regional benefits.[225]

124. Similarly, LS Power argues that the Transmission Line Siting Act requirements are not appropriate requirements for Order No. 1000 regional transmission planning requirements.[226] LS Power argues that the Transmission Line Siting Act was intended to determine what types of transmission facilities could raise siting and environmental concerns and not for determining what types of facilities would provide regional benefits. LS Power argues that the Transmission Line Siting Act requirements were enacted because longer lines that cross county lines involve different local governments and are more likely to need a single state government agency to be involved in the siting of such facilities.[227]

125. Finally, FMPA/Seminole argue that Florida Parties have also not justified their proposed materially different threshold. FMPA/Seminole assert that under the First Compliance Order, Florida Parties were required to clarify how a transmission project would be determined to be materially different and how that requirement would not exclude projects that may provide regional benefits from consideration as a CEERTS project. FMPA/Seminole note that according to the first sentence in the revised language, the overall "materially different" criterion compares a new CEERTS project to "projects already in the regional plan," while the ensuing explanation of what that supposedly means is that one CEERTS project "displaces a different project or projects" than another CEERTS project. In other words, the explanatory text describes a completely different test that compares pending CEERTS projects with each other versus a new CEERTS project with the existing regional transmission plan.[228]

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[225] FMPA/Seminole Protest at 49-50.

[226] LS Power Protest at 13.

[227] *Id.* at 14-15.

[228] FMPA/Seminole Protest at 51-52.

(3) Answer

126. Florida Answering Parties argue that, contrary to FMPA/Seminole's assertions, their compliance filing provided sufficient justification as to how the threshold criteria will increase the likelihood of projects that provide regional benefits.[229] Furthermore, Florida Answering Parties again assert that the materially different provision will ensure that proposed projects "provide a significant and quantifiable improvement."[230] Florida Answering Parties argue that the Commission has accepted similar minimum thresholds for other regions in Order No. 1000 compliance orders.[231] Florida Answering Parties argue that similar to these regions, the minimum thresholds proposed in Florida Parties' filings provide a reasonable way to identify regional transmission projects with regional benefits.

127. Florida Answering Parties argue that using similar threshold requirements as those contained in the Transmission Line Siting Act is appropriate.[232] Florida Answering Parties argue that the same characteristics of a transmission line more apt to receive significant siting challenges from local governments are the same characteristics that make the project more likely to provide regional benefits, namely length and voltage level.

128. Florida Answering Parties also assert that since a region must contain two separate transmission providers, a transmission project that provides regional benefits must benefit more than one transmission provider to be eligible as a regional transmission project.[233] Florida Answering Parties argue that, contrary to LS Power's concerns, they have sufficiently justified the 230 kV, 15 mile, and county line thresholds. Florida Answering Parties argue that the Commission has accepted other voltage requirements as an appropriate minimum threshold to ensure that the transmission projects being submitted provide regional benefits. Florida Answering Parties argue that the 15 mile requirement also helps ensure that only larger transmission projects, which provide regional benefits, will be considered.

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[229] Florida Answering Parties Answer at 32.

[230] *Id.* at 32.

[231] *Id.* at 33-34 (citing *Louisville Gas & Elec. Co.*, 144 FERC ¶ 61,054, at P 76 (2013); *Cal. Indep. System Operator Corp.*, 143 FERC ¶ 61,057, at P 104 (2013)).

[232] *Id.* at 46.

[233] *Id.* at 34.

129. Florida Answering Parties take issue with LS Power's argument that a shorter line could provide regional benefits.[234] Florida Answering Parties assert that LS Power mischaracterizes the Commission's position on minimum threshold requirements. According to Florida Answering Parties, the minimum threshold requirements "represent a reasonableness perspective and not an absolute test."[235] Florida Answering Parties assert that the 15 mile requirement is appropriate since many recently approved Transmission Line Siting Act projects exceed that distance and will help ensure that only meaningful transmission proposals will be considered. Florida Answering Parties argue that this low threshold will only exclude the smallest transmission projects, which are least likely to qualify as providing regional benefits.

130. Florida Answering Parties note that LS Power's example of a shorter transmission line in the PJM region is misleading since both LS Power and an incumbent proposed two versions of the same shorter line, one submarine, which was significantly more expensive and one overhead, which was roughly the same cost as the longer line.[236]

131. Florida Answering Parties also argue that, just like the 15 mile limitation, the county line threshold is appropriate since it encourages larger transmission projects while excluding few, if any, projects likely to provide regional benefits. Florida Answering Parties acknowledge that this threshold, like any minimum requirement, could exclude a regional transmission project from consideration. However, they argue that this is not the appropriate compliance measure adopted by the Commission. They argue that the appropriate review is whether the minimum requirement is a "reasonable way to identify transmission facilities that likely have regional benefits."[237] Florida Answering Parties state that the county line requirement serves that purpose by ensuring that longer transmission projects, which are more likely to provide regional benefits, will be included in the regional transmission planning process, while smaller, local transmission projects will not. Furthermore, Florida Answering Parties argue that FMPA/Seminole's example

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[234] *Id.* at 38.

[235] *Id.*

[236] *Id.* at 39.

[237] *Id.* at 41 (citing *Louisville Gas & Elect. Co.*, 144 FERC ¶ 61,054 at P 76 where, in discussing the minimum threshold requirements in that region, the Commission stated that "[m]inimum threshold requirements for determining whether a proposed transmission facility is eligible to be selected in the regional transmission plan for purposes of cost allocation may be a reasonable way to identify transmission facilities that likely have regional benefits.").

of a potential regional transmission project that would not cross a county line is inapplicable since that project would not be eligible for consideration as a CEERTS project since it is not replacing an existing transmission project. Florida Answering Parties also argue that the approved list of projects under the Florida Transmission Line Siting Act demonstrates that this requirement would not exclude larger transmission proposals.

132. Florida Answering Parties argue that contrary to FMPA/Seminole's arguments, limiting non-transmission alternatives exclusions to FACTS devices is appropriate.[238] Although Florida Answering Parties acknowledge that all types of substation equipment could provide system benefits, they distinguish FACTS devices because they can add capacity similar to new transmission lines. Therefore, Florida Answering Parties argue these devices are an appropriate exception to the minimum threshold criteria.

133. Regarding the materially different provision, Florida Answering Parties reiterate their claim this provision serves two purposes: (1) prevents the abuse of the regional planning process by allowing FRCC to weed out transmission projects that do not provide a material change from an existing project; and (2) provides finality to the regional transmission planning process.[239]

134. In response to Florida Answering Parties' answer, FMPA/Seminole argue that Florida Answering Parties fail to justify the minimum threshold requirements that include the county line requirement, the limitation of non-transmission alternatives to FACTS devices, and the materially different provision.[240] FMPA/Seminole dispute that Florida Answering Parties sufficiently justified that the county line requirement is necessary to ensure that projects of sufficient size are considered as CEERTS projects. FMPA/Seminole argue that Florida Answering Parties' reference to transmission projects approved under the Transmission Line Siting Act also demonstrates that several of those projects that meet the other requirements for a regional transmission project, also would fit within many individual Florida counties, and therefore would be disqualified from consideration.[241] FMPA/Seminole contend that since several Florida counties contain

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[238] *Id.* at 43.

[239] *Id.* at 44.

[240] FMPA/Seminole Answer at 29-33.

[241] *Id.* at 29.

multiple transmission providers, the crossing a county line requirement will exclude otherwise eligible regional transmission projects.[242]

135. Regarding the FACTS device exemption, FMPA/Seminole reassert that, similar to FACTS devices, major substation equipment do enhance transmission capacity and should similarly be exempted from the threshold criteria. FMPA/Seminole state that Florida Answering Parties failed to explain why these similar alternatives are treated differently.[243]

136. Finally, FMPA/Seminole argue that Florida Parties' materially different definition further demonstrates the deficiency in Florida Parties' proposal. FMPA/Seminole argue that Florida Parties' proposal inappropriately precludes from consideration any regional transmission project that does not replace an already planned transmission project regardless of the regional benefits the new project may provide.[244]

(4) <u>Commission Determination</u>

137. We find that Florida Parties' proposal regarding proposed minimum thresholds for CEERTS projects partially complies with Order No. 1000 and the First Compliance Order.

138. First, we note that, as required in the First Compliance Order, Florida Parties removed the reference to the Florida Transmission Line Siting Act, and have instead incorporated criteria directly into their Attachment Ks. We find that the proposed minimum threshold that requires a transmission project operate at a voltage of 230 kV or greater establishes a reasonable means to identify transmission facilities that likely have regional transmission benefits. We find that Florida Parties have adequately supported the requirement that a transmission project operate at a voltage of 230 kV or greater to be eligible for selection in the regional transmission plan for purposes of cost allocation. As Florida Parties explain, transmission facilities that operate at or above 230 kV are used to transfer power over greater distances and integrate loads and resources within the FRCC region, providing transmission with lower impedances and higher loadings than lower-

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[242] *Id.* at 30.

[243] *Id.* at 31-32.

[244] *Id.* at 32.

voltage facilities.[245] In addition, Florida Parties state that in the FRCC region, standard higher-voltage lines are 230 kV and 500 kV.[246]

139. We also accept Florida Parties' proposed criteria that require that a transmission project be 15 miles or longer. We agree with Florida Parties that the requirement that a proposed CEERTS project must be at least 15 miles long encourages transmission projects that provide increased transmission over a greater area, thereby increasing transmission capacity that benefits more areas of the transmission system, and excludes the smallest transmission projects, which are less likely to provide regional transmission benefits. While we agree with LS Power that it is possible that a transmission project that runs less than 15 miles could provide regional transmission benefits, that is not the requirement for adopting a minimum threshold requirement. Instead, the Commission stated in the First Compliance Order that in establishing minimum thresholds, a balance must be reached between "excluding clearly local transmission projects that are unlikely to provide regional benefits from being submitted for evaluation in the regional transmission planning process with the need to evaluate…those transmission facilities that are likely to provide regional transmission benefits."[247] We recognize that this balance is not an exact science and that there could be some transmission projects that do not meet the minimum threshold, but could still provide regional benefits. However, by limiting potential transmission projects to those that are likely to provide regional benefits, minimum thresholds establish clear and objective standards and avoid the need for the public utility transmission providers to expend resources on the consideration of transmission projects that are less likely to provide regional transmission benefits.

140. However, we reject the minimum threshold requiring a CEERTS project to cross a county line. While Florida Parties argue that this provision is necessary to ensure that only larger transmission projects that are more likely to have regional benefits will be considered, we find that Florida Parties' proposal to limit potential CEERTS projects to those that are 15 miles or longer fulfills this objective. Accordingly, we find that the crossing a county line requirement is redundant and unnecessary. Furthermore, we find that due to the varying geographic scopes of the counties in Florida, this requirement is an arbitrary threshold for determining whether a transmission project would provide regional benefits. Therefore, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings revising their OATTs to remove the minimum threshold requiring a

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[245] Florida Answering Parties Answer at 36.

[246] *E.g.*, Florida Power & Light Co. Transmittal at 14 n.12.

[247] First Compliance Order, 143 FERC ¶ 61,254 at P 67.

CEERTS project to cross a county line. Likewise, Orlando should also submit a further compliance filing to address this issue.

141. We disagree with FMPA/Seminole's argument that Florida Parties should consider non-transmission alternatives for selection in the regional transmission plan for purposes of cost allocation. In Order No. 1000, we noted that non-transmission alternative must be considered on a comparable basis with transmission solutions. We found, however, that cost allocation for non-transmission alternative is beyond the scope of Order No. 1000.[248] Thus, we do not require Florida Parties to revise the criteria for CEERTS projects to include the selection of non-transmission alternatives suggested by FMPA/Seminole.

142. Regarding Florida Parties' proposal that, to be eligible for possible selection in the regional transmission plan for purposes of cost allocation, a transmission project must be "materially different" than transmission projects already in the regional transmission plan, we conditionally accept this requirement and direct Florida Parties, as further discussed below, to provide stakeholders with an explanation detailing why a particular transmission project was deemed not "materially different" than a project already under consideration in the FRCC process. Contrary to FMPA/Seminole's arguments, we find that Florida Parties have sufficiently justified their proposal. We understand that there is a concern about the possibility of having to study substantially similar transmission projects. Furthermore, as Florida Parties point out, the materially different requirement provides finality, subject to the reevaluation provisions, and ensures transmission developers that their transmission projects are not at risk of replacement because another transmission project developer proposes a nearly identical project but drops the cost estimate by a trivial amount.[249] We also find that Florida Parties have provided a sufficient definition of "materially different," which includes "changes in equipment size, different terminal bus arrangement, or a slight change in route."[250]

143. However, to address the concern that incumbent transmission providers would have undue discretion to decide whether a proposal is "materially different," we require Florida Parties to make transparent any determination that a proposed transmission facility is not materially different than a project already under consideration.[251] To

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[248] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 738.

[249] *E.g.*, Florida Power & Light Co., Transmittal at 16; Florida Answering Parties Answer at 44.

[250] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 1.2.3B.

[251] *See, e.g.*, *So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 at P 89.

satisfy this requirement, Florida Parties must revise their Attachment Ks to require a posting be made for stakeholders in the regional transmission planning process of any determinations made by the transmission providers that a proposed transmission project is not "materially different," which also may include an explanation regarding cost estimates. This posting will provide affected stakeholders with an opportunity to challenge that decision through the region's dispute resolution procedures or before the Commission, if they so desire. Such a requirement is consistent with Order No. 1000's requirement that public utility transmission providers provide to stakeholders "a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation."[252] We direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings revising their OATTs with this change. Likewise, Orlando should also submit a further compliance filing to address this issue.

iii. Merchant Transmission Developers

(a) First Compliance Order

144. In the First Compliance Order, the Commission found that Florida Parties' compliance filings did not comply with the requirement that public utility transmission providers in each transmission planning region identify the information and data a merchant transmission developer must provide to the regional transmission planning process to allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.[253] While Florida Parties' Attachment Ks noted that a merchant transmission developer must provide such information and data related to its proposed project that is necessary for the FRCC Planning Committee and affected transmission providers to assess the potential reliability and operational impacts of the proposed project on the region's transmission system, they did not specify the types of information or data that a merchant transmission developer must provide. The Commission directed Tampa Electric, Florida Power, and Florida Power & Light to provide in another compliance filing the specific information and data a merchant transmission developer must provide

[252] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328.

[253] First Compliance Order, 143 FERC ¶ 61,254 at P 72 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298).

to the regional transmission planning process.[254] The Commission also required Tampa Electric, Florida Power and Florida Power & Light to set forth in their OATTs the timeframe for provision of such information and data rather than allowing the FRCC Planning Committee to establish the timeframe. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

(b) Summary of Compliance Filings

145. In compliance with the directives, Florida Parties state they have revised this provision to include the types of information and data that a merchant developer must submit, which have been previously approved by the Commission.[255] Specifically, Florida Parties propose to require a merchant developer to submit, along with its interconnection request, "transmission project timing, scope, network terminations, load flow data, stability data, HVDC data (as applicable), and other technical data necessary to assess potential impacts."[256]

(c) Commission Determination

146. We find that Florida Parties' compliance filing complies with Order No. 1000's requirement that public utility transmission providers in each transmission planning region propose what information and data a merchant transmission developer must provide to the regional transmission planning process to allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region. We find that Florida Parties achieve this by appropriately proposing to require merchant transmission developers to submit, along with its interconnection request, "transmission project timing, scope, network terminations, load flow data, stability data, HVDC data (as applicable), and other technical data necessary to asses potential impacts."[257]

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[254] *Id.* at P 72.

[255] *E.g.*, Florida Power & Light Co., Transmittal at 17 (referencing *Louisville Gas & Elec. Co.*, 144 FERC ¶ 61,054 at P 86).

[256] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 4.5.

[257] *Id.* § 4.5.

d. Consideration of Transmission Needs Driven by Public Policy Requirements

147. Order No. 1000 required public utility transmission providers to amend their OATTs to include procedures for the consideration of transmission needs driven by Public Policy Requirements in both the local and regional transmission planning processes.[258] Public Policy Requirements are requirements established by local, state or federal laws or regulations (i.e., enacted statutes passed by the legislature and signed by the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).[259]

148. The Commission in Order No. 1000 explained that, to consider transmission needs driven by Public Policy Requirements, public utility transmission providers must adopt procedures to (1) identify transmission needs driven by Public Policy Requirements and (2) evaluate potential solutions to meet those identified needs.[260] More specifically, public utility transmission providers must adopt procedures in their local and regional transmission planning processes for identifying transmission needs driven by Public Policy Requirements that give all stakeholders a meaningful opportunity to provide input and to offer proposals regarding what they believe are transmission needs driven by Public Policy Requirements.[261] Each public utility transmission provider must explain how it will determine at both the local and regional level, the transmission needs driven by Public Policy Requirements for which solutions will be evaluated[262] and must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that were identified for evaluation for potential solutions in the local and regional transmission planning processes and (2) why other proposed transmission needs driven by Public Policy Requirements were not selected for further evaluation.[263]

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[258] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

[259] *Id.* P 2. Order No. 1000-A clarified that Public Policy Requirements included local laws and regulations passed by a local governmental entity, such as a municipal or county government. Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

[260] *Id.* P 205.

[261] *Id.* PP 206-209; Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

[262] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 208-209.

[263] *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

149. Order No. 1000 also required public utility transmission providers, in consultation with stakeholders, to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements, including transmission facilities proposed by stakeholders.[264] The evaluation procedures must give stakeholders the opportunity to provide input and enable the Commission and stakeholders to review the record created by the process.[265]

i. Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process

(a) First Compliance Order

150. In the First Compliance Order, the Commission found that Florida Parties partially complied with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements. The Commission found Florida Parties' proposed definition of a public policy requirement in the regional transmission planning process as a requirement that is "reflected in state, federal, or local law or regulation (including an order of a state, federal, or local agency)"[266] to be consistent with the definition of public policy requirements in Order No. 1000.

151. However, the Commission found that Florida Parties' proposal to limit the consideration of transmission needs driven by public policy requirements to those not readily met through existing approved requests for new transmission service or planned transmission facilities did not fully comply with Order No. 1000's requirement to consider transmission needs. The Commission noted that while Order No. 1000 does not require that public utility transmission providers identify any particular set of transmission needs driven by public policy requirements for evaluation,[267] the Commission was concerned that Florida Parties' compliance proposal categorically precluded Florida Parties from considering whether a regional transmission solution may meet transmission needs driven by public policy requirements more efficiently or cost-effectively than one or more local transmission projects. The Commission stated that

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[264] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211 & n.191.

[265] Order No. 1000-A, 139 FERC ¶ 61,132 at PP 320-321.

[266] First Compliance Order, 143 FERC ¶ 61,254 at P 85 (citing Florida Power & Light Co., FPL OATT, Attachment K § 11.1).

[267] *Id.* P 86 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 210).

even if a transmission need driven by public policy requirements is already being met through an existing approved request for new transmission service or planned transmission facilities, there may be another more efficient or cost-effective transmission solution to that need that should be considered. Therefore, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to remove this provision from their Attachment Ks.[268] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

152. Regarding the identification of transmission needs driven by public policy requirements, the Commission found that Florida Parties did not describe in their respective Attachment Ks whether the opportunity to submit potential transmission needs driven by public policy requirements is open to all stakeholders. The Commission also found that Florida Parties did not describe in their Attachment Ks when and how stakeholders can provide input and offer proposals to the FRCC regarding transmission needs they believe are driven by public policy requirements in the regional transmission planning process such that the process for doing so is transparent to all interested stakeholders. Therefore, the Commission found that Florida Parties' first compliance proposal did not comply with Order No. 1000's requirement that each public utility transmission provider establish procedures in the regional transmission planning process to identify transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by public policy requirements.[269] The Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to establish procedures in the regional transmission planning process to identify transmission needs driven by public policy requirements, including a description of when and how stakeholders can submit what the stakeholders believe are transmission needs driven by public policy requirements.[270] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

153. The Commission found that Florida Parties also did not propose a just and reasonable and not unduly discriminatory process by which they will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated, as required by Order No. 1000, and directed Tampa Electric, Florida Power, and Florida Power & Light to revise their

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[268] *Id.* P 86.

[269] *Id.* P 87 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 206-208).

[270] *Id.* P 87 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 335).

Attachment Ks to include such a process.[271] The Commission stressed that it and stakeholders must be able to review the record that is created by the process to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential[272] and noted that the Commission will review the proposed evaluation procedures to ensure they comply with the objective of meeting the identified transmission needs more efficiently or cost-effectively.[273] The Commission stated that, if the intent of Florida Parties was that the FRCC will evaluate *all* potential transmission needs driven by public policy requirements identified by stakeholders, then this should be clearly stated in the further compliance filings. In addition, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to comply with Order No. 1000's requirement that each public utility transmission provider post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential solutions in the regional transmission planning process; and (2) why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation.[274] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

154. The Commission also found that Florida Parties did not describe in their Attachment Ks: (1) how potential transmission solutions to identified transmission needs driven by public policy requirements will be evaluated; (2) who may propose such solutions, as well as when and how they may do so; and (3) when and how stakeholders may provide input during the evaluation of potential transmission solutions to identified transmission needs driven by public policy requirements. Accordingly, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to establish procedures to evaluate at the regional level potential transmission solutions to identified transmission needs driven by public policy requirements.[275] The Commission clarified that the procedures must both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need

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[271] *Id.* P 88 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209).

[272] *Id.* P 88 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 321).

[273] *Id.* P 88 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211).

[274] *Id.* P 88 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325).

[275] *Id.* P 89 (*see supra* Part IV.B.1.c for further discussion of the evaluation process).

driven by public policy requirements and allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs.[276] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

(b) Requests for Rehearing or Clarification

(1) Summary of Requests for Rehearing or Clarification

155. Duke Energy argues that the Commission erred in eliminating language intended to limit the obligation to identify transmission needs driven by public policy to those needs not readily met through existing approved requests for new transmission service or planned transmission facilities, and that the impact of this error will be duplicative planning processes that are facially inefficient and thus arbitrary and capricious.[277] Duke Energy states that Florida Parties proposed to limit the consideration of transmission needs driven by public policy requirements to those not readily met through existing approved requests for new transmission service or planned transmission facilities because there already is: (1) a process for such need to be met; and (2) a process for a regional evaluation of the combined set of local solutions for all transmission needs to try and locate more efficient alternatives.[278]

156. Duke Energy argues that the flaw identified by the Commission – that Florida Parties would be precluded from performing a "second look" review of local transmission projects – is not in fact precluded because such a second look was mandated by the Commission.[279] Duke Energy asserts that the Commission places an obligation on

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[276] *Id.* P 89.

[277] Duke Energy Rehearing at 6.

[278] *Id.* at 15.

[279] Duke Energy Rehearing at 16 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 54). Duke Energy quotes the Commission's statement that "[i]t is not sufficient for a transmission planning region to merely "roll-up" local transmission plans without analyzing whether the region's transmission needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution." *Id.*

Florida Parties to look for more efficient and cost-effective facilities to replace *all* types of local transmission projects.[280]

157. Duke Energy argues that the alleged flaw simply does not exist[281] and that on rehearing, the Commission should address the First Compliance Order's failure to recognize that the proposed language did not in fact "categorically preclude them from considering whether a regional transmission solution may meet transmission needs driven by public policy requirements more efficiently or cost-effectively than one or more local transmission projects."[282] Duke Energy also asserts that the Commission should clarify why there is a need to create two entirely separate second-look review processes, i.e., one second-look process for local transmission projects driven by public policy needs and one second-look for all local transmission projects, and that otherwise the Commission's action is arbitrary in that it creates wasteful, duplicative processes. Moreover, Duke Energy states, it is unclear how the transmission providers would even know which local transmission projects are driven by public policy requirements and that the process of sorting out which local transmission projects are public policy projects would be time-consuming and wasteful.[283]

(2) <u>Commission Determination</u>

158. We deny Duke Energy's request for rehearing with respect to this issue. We continue to find that Florida Parties' proposal in the first compliance filing to limit consideration of transmission needs driven by public policy requirements to those not readily met through existing approved requests for new transmission service or planned transmission facilities does not comply with Order No. 1000.[284] As the Commission

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[280] *Id.* at 15.

[281] *Id.* at 16. Duke Energy states that it recognizes that the Commission found in the First Compliance Order, 143 FERC ¶ 61,254 at P 54, that Florida Parties do not actually analyze "whether the region's transmission needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution." Duke Energy believes that this holding is based on a misunderstanding of the planning process and that the Order No. 890 process included such an evaluation. Duke Energy also states that it and the other Florida Parties will clarify this fact and, to the extent necessary, add additional detail about this process in order to satisfy the Commission.

[282] *Id.* at 16 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 86).

[283] *Id.* at 16-17.

[284] First Compliance Order, 143 FERC ¶ 61,254 at P 86.

explained in the First Compliance Order, Florida Parties' proposal would have precluded Florida Parties from considering whether a regional transmission solution may meet transmission needs driven by public policy requirements more efficiently or cost-effectively than one or more local transmission projects.[285] Furthermore, the fact that Florida Parties must comply with the affirmative obligation to plan does not in turn satisfy the requirement in Order No. 1000 that the public utility transmission providers in the transmission planning region consider transmission needs driven by public policy requirements, including those proposed by stakeholders. Order No. 1000 requires public utility transmission providers to establish procedures for identifying those transmission needs driven by public policy requirements for which potential transmission solutions will be evaluated, but does not require that every proposed transmission need driven by public policy requirements be evaluated for transmission solutions.[286] Thus, Florida Parties may not bar a potential transmission need driven by public policy requirements from being proposed based on the existence of underlying transmission service requests or planned transmission facilities. However, we note that Florida Parties may, as part of the process to identify transmission needs driven by public policy requirements for which transmission solutions will be evaluated, consider whether a proposed transmission need driven by public policy requirements is already being addressed or otherwise being evaluated in the then-current planning cycle.[287]

(c) Compliance

(1) Summary of Compliance Filing

159. Florida Parties state that they have revised their Attachment Ks to be explicit that the regional planning analysis will include consideration of potential transmission solutions to transmission needs driven by public policy requirements, and that all the provisions for stakeholder involvement and input pursuant to Florida Parties' OATT

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[285] *Id.* P 86 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 210).

[286] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 207, 209.

[287] *See Louisville Gas & Elec. Co.*, 147 FERC ¶ 61,241 at P 201 (finding that the proposal to consider whether a transmission need driven by public policy requirements is already being addressed or otherwise being evaluated in the then-current planning cycle does not categorically bar consideration of more efficient or cost-effective regional transmission solutions).

provisions related to CEERTS projects overall are fully applicable to potential transmission solutions to transmission needs driven by public policy requirements.[288]

160. Under their proposal, Florida Parties' Attachment Ks provide that if a stakeholder identifies a transmission need that is driven by a public policy requirement prior to January 1st of the first year of the biennial regional transmission planning cycle, it can submit a description of the need for consideration in regional transmission planning during that planning cycle.[289] Florida Parties propose that the description of the need should: (1) identify the state, federal, or local law or regulation that contains the public policy requirement; (2) identify the type of entity in the region to which the public policy requirement applies; (3) identify the subset of entities in the region subject to the public policy requirement that have a transmission need driven by the public policy requirement; and (4) describe the type and nature of the transmission service needed from the transmission providers by such subset of entities to meet that transmission need.[290]

161. In addition, Florida Parties have revised their Attachment Ks to state that any stakeholder submitting a potential public policy transmission need may, but is not required to, propose a transmission project to meet such a need along with its description of the need. Florida Parties state that all submissions will be posted for public comment and will be reviewed to determine if a public policy requirement is driving a transmission need for which a solution is required.[291] Florida Parties propose that the FRCC Planning Committee, under the oversight of the FRCC Board, may seek, on a voluntary basis, additional information from entities identified as having potential needs and then will evaluate the submittals and any additional information to make a decision as to whether a public policy requirement is driving a transmission need for which a solution is required. Florida Parties propose that the FRCC Planning Committee will post this determination on the FRCC website prior to March 1st of the first year of the biennial regional transmission planning cycle, along with an explanation and record of that determination, including a negative determination.[292] Florida Parties state that if a public policy

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[288] *E.g.*, Florida Power & Light Co., Transmittal at 19; Florida Power & Light Co., FPL OATT, Attachment K § 1.2.1.

[289] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 11.1.

[290] *Id.* § 11.1.

[291] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 11.1.

[292] *Id.* § 11.1.

transmission need is identified for which a solution is required, CEERTS and local transmission projects shall be proposed to address such a need.[293]

162. Florida Parties have removed from their Attachment Ks the provision stating that a public policy requirement must drive a transmission need that is not readily met through existing, approved requests for new transmission service and/or already planned transmission facilities.

(2) <u>Protests/Comments</u>

163. FMPA/Seminole argue that Florida Parties' OATT revisions only partially address the Commission's directives to: (1) remove the restriction that categorically precludes Florida Parties from considering whether a regional transmission solution may meet transmission needs driven by public policy requirements more efficiently or cost-effectively than one or more local transmission projects; (2) establish a just, reasonable, and not unduly discriminatory process for identifying, out of the larger set of transmission needs proposed by stakeholders, those needs for which transmission solutions will be evaluated; and (3) explain how Florida Parties will evaluate potential solutions.[294]

164. FMPA/Seminole state that Florida Parties fail to describe a just, reasonable, and not unduly discriminatory process for identifying which of those transmission needs driven by public policy requirements will move forward in the regional transmission planning process for identification and evaluation of solutions.[295] FMPA/Seminole assert that Florida Parties' proposal for the FRCC Planning Committee to "make a decision as to whether a public policy requirement is driving a transmission need for which a solution is required," indicates that the FRCC Planning Committee will pick and choose among the stakeholder-proposed transmission needs driven by public policy requirements, but provide no criteria on which they will base their decisions.[296]

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[293] *Id.* § 11.1.

[294] FMPA/Seminole Protest at 20-21 (citing First Compliance Order, 143 FERC ¶ 61,254 at PP 86, 88, 89, and 195).

[295] *Id.* at 21 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 88; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; Order No. 1000-A, 139 FERC ¶ 61,132 at P 335).

[296] *Id.* at 21-22 (citing Florida Power & Light Co., FPL OATT, Attachment K § 11.1).

165. FMPA/Seminole point out that the Commission ruled that Florida Parties' proposal that stakeholder proposed needs would be reviewed to identify those for which solutions would be evaluated, but did not specify criteria for that identification, – was inadequate.[297] FMPA/Seminole assert that, consistent with the Commission's previous directives,[298] Florida Parties should be required to clarify the basis for determining which stakeholder-proposed transmission needs will be deemed "a transmission need for which a solution is required," and demonstrate that those criteria are just, reasonable, and non-discriminatory.[299]

166. FMPA/Seminole contend that there is a strong indication that Florida Parties' Attachment Ks give Florida Parties too much discretion to reject stakeholder-proposed public transmission needs driven by policy requirements while favoring their own. They assert that because the process for evaluating transmission needs driven by public policy requirements is opaque and inadequately explained, Florida Parties' Attachment Ks fail to provide a just, reasonable, and not unduly discriminatory process by which Florida Parties will identify, out of the larger set of needs proposed by stakeholders, those transmission needs driven by public policy requirements for which transmission solutions will be evaluated.[300]

(3) <u>Answer</u>

167. Florida Answering Parties assert that they have provided a just and reasonable and not unduly discriminatory process for identifying the transmission needs driven by enacted public policy requirements for which solutions will be evaluated in the regional transmission planning process.[301] Florida Answering Parties argue that all qualified transmission needs will be selected in response to FMPA/Seminole's assertion that it is unclear what transmission needs will be selected. Florida Answering Parties clarify that the FRCC Planning Committee does not have discretion to "pick and choose" among qualified transmission needs, and explain that the FRCC Planning Committee is dominated by public power entities. Florida Answering Parties explain that the vast majority of the FRCC Planning Committee representatives, 37 out of 47, are public

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[297] *Id.* at 22 (citing *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 172).

[298] *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 172.

[299] FMPA/Seminole Protest at 22.

[300] *Id.* at 23.

[301] Florida Answering Parties Answer at 19.

power representatives, and that voting is by sector, paralleling the voting of the FRCC Board which has been reviewed and accepted by the Commission.[302]

168. FMPA/Seminole assert that Florida Parties have failed to satisfy the Commission's directive to develop regional transmission planning processes that are coordinated, open, and transparent.[303] FMPA/Seminole point out Florida Parties' statement explaining their Attachment Ks are clear because "all qualified transmission needs will be selected [for identification of a solution]."[304] FMPA/Seminole argue that Florida Parties do not clarify what it means for a transmission need to be "qualified," as opposed to not "qualified." FMPA/Seminole also argue Florida Parties do not respond to FMPA/Seminole's concern[305] that Florida Parties' Attachment Ks state the FRCC Board will "make a decision as to whether a public policy requirement is driving a transmission need for which a solution is required."[306] FMPA/Seminole explain that no criteria are provided for that decision and that Florida Parties simply assert that their proposal is compliant,[307] failing to distinguish the Commission's prior ruling that similar language was non-compliant.[308]

(4) <u>Commission Determination</u>

169. We find that Florida Parties' proposed revisions to the regional transmission planning process partially comply with the directives in the First Compliance Order concerning the consideration of transmission needs driven by public policy requirements.

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[302] *Id.* at 19 (citing Florida Power & Light Order No. 890 Compliance Filing, Docket No. OA08-29-000 (August 17, 2009), and FERC acceptance of this compliance filing by Letter Order issued May 12, 2010 (FRCC Board Filing and Acceptance)).

[303] FMPA/Seminole Answer at 18 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 87; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 151, 328; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 268, 452).

[304] *Id.* at 18 (citing Florida Answering Parties Answer at 19; Florida Power & Light Co., FPL OATT, Attachment K § 11.1).

[305] FMPA/Seminole Answer at 18 (citing FMPA/Seminole Protest at 21-22).

[306] *Id.* at 18 (citing Florida Power & Light Co., FPL OATT, Attachment K § 11.1).

[307] *Id.* at 18 (Florida Answering Parties Answer at 19).

[308] *Id.* at 18 (citing *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 172).

170. First, we find that Florida Parties partially comply with the directive in the First Compliance Order to establish procedures in the regional transmission planning process to identify transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by public policy requirements. Florida Parties have revised their Attachment Ks to clarify that a stakeholder may submit a description of a transmission need driven by public policy requirements that it has identified prior to January 1 of the first year of the biennial transmission planning cycle for consideration during that transmission planning cycle. In addition, Florida Parties have revised their Attachment Ks to state that the description of the need should identify: (1) the state, federal, or local law or regulation that contains the public policy requirement; (2) the type of entity or entities in the region to which the public policy requirement applies; (3) the subset of entities in the region subject to the public policy requirement that have a transmission need driven by the public policy requirement; and (4) the type and nature of the transmission service that such entities need from the transmission providers to meet the transmission need. We find that it is reasonable for Florida Parties to require a stakeholder to provide such information when identifying a transmission need driven by public policy requirements because it will help to inform the FRCC Planning Committee's decision if a public policy requirement is driving a transmission need for which a transmission solution is required.

171. Florida Parties state that they have revised their OATTs to include a process for stakeholders to identify transmission needs driven by public policy requirements in the regional transmission planning process. However, we find the proposed language unclear. For example, as explained by Florida Parties, "if a stakeholder identifies a transmission need that is driven by a public policy requirement prior to January 1st of the first year of the biennial regional projects planning cycle, it can submit a description of the need for consideration in regional planning during that planning cycle."[309] It is not clear whether a stakeholder must submit a description of an identified transmission need driven by public policy requirements by January 1 of the first year of the biennial transmission planning cycle to be considered during that transmission planning cycle nor is it clear to whom a stakeholder would submit a description. As the Commission explained in the First Compliance Order, "the Commission and stakeholders must be able to review the record that is created by the process to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential."[310] Accordingly, we require Tampa Electric, Florida Power, and Florida

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[309] Florida Power & Light Co., FPL OATT, Attachment K § 11.1.

[310] First Compliance Order, 143 FERC ¶ 61,254 at P 76 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 321).

Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings that revise their OATTs to specify the deadline, if any, by which a stakeholder must submit a description of a transmission need driven by public policy requirements for that need to be considered during a given biennial transmission planning cycle, as well as the process for submitting that description (e.g., to whom it should be submitted). Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

172. We find that Florida Parties comply with the Commission's directives in the First Compliance Order that they revise their Attachment Ks to (1) include a just and reasonable and not unduly discriminatory process by which they will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated and (2) provide for a posting on the FRCC website of an explanation of those transmission needs driven by public policy requirements that have been identified for evaluation for potential solutions in the regional transmission planning process and why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation. With respect to the former directive, Florida Parties propose that all stakeholder submissions of transmission needs driven by public policy requirements will be posted for public comment. In addition, Florida Parties propose that the FRCC Planning Committee, under the FRCC Board's oversight, may seek additional information from the entities identified as having potential needs, and will then evaluate the submittals and any additional information to determine whether a public policy requirement is driving a transmission need for which a transmission solution is required. To comply with the latter directive, Florida Parties propose that the FRCC Planning Committee will post this determination on the FRCC website prior to March 1 of the first year of the biennial transmission planning cycle, with an explanation and record of that determination, including applicable negative determinations.

173. We disagree with FMPA/Seminole's contention that Florida Parties must include in their Attachment Ks the criteria that the FRCC Planning Committee will use to identify the transmission needs driven by public policy requirements for which transmission solutions will be evaluated to comply with the requirements of Order No. 1000. Florida Parties' proposed process is just and reasonable and not unduly discriminatory because it allows for public comment on proposed transmission needs driven by public policy requirements and provides transparency through the posting of an explanation and record of the resulting determination on the FRCC website. We are not requiring Florida Parties to provide the criteria under which the transmission providers will determine which proposed transmission needs driven by public policy requirements will be identified for evaluation. Rather, we require public utility transmission providers to have a transparent

process where stakeholders can provide input and offer proposals to the FRCC regarding transmission needs they believe are driven by public policy requirements.[311] Furthermore, as noted in the preceding paragraph, Florida Parties have complied with the requirement to post on the FRCC website an explanation of those transmission needs driven by public policy requirements that have been identified for evaluation for potential solutions in the regional transmission planning process and why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation. Given the openness and transparency of Florida Parties' proposed process for determining the transmission needs driven by public policy requirements for which transmission solutions will be evaluated, we find that it is unnecessary for Florida Parties to include in their Attachment Ks a list of the criteria that the FRCC Planning Committee will use to make its determination.

174. We find that Florida Parties comply with the Commission's directive in the First Compliance Order that they establish procedures to evaluate at the regional level potential transmission solutions to identified transmission needs driven by public policy requirements. Florida Parties have described how potential transmission solutions to identified transmission needs driven by public policy requirements will be evaluated by revising their Attachment Ks to state that the regional analysis shall include consideration of such transmission solutions. Moreover, Florida Parties have described who may propose transmission solutions to identified transmission needs driven by public policy requirements, as well as when and how they may do so, by revising their Attachment Ks to (1) clarify that the regional transmission planning process for CEERTS projects applies to such transmission solutions and (2) state that any stakeholder submitting a potential transmission need driven by public policy requirements may propose a transmission project to meet that need along with its description of the need. Florida Parties also describe when and how stakeholders may provide input during the evaluation of potential transmission solutions to identified transmission needs driven by public policy requirements by revising their Attachment Ks to state the OATT provisions for stakeholder involvement and input in the regional transmission plan apply to such transmission solutions. However, as we explain in the Evaluation Process for Transmission Proposals Selected in the Regional Transmission Plan for the Purposes of Cost Allocation section of this order, Florida Parties must make certain compliance filings with regard to the evaluation process itself to be consistent with Order No. 1000.

175. Finally, we find that Florida Parties' proposal to delete the provision in their Attachment Ks that states that a public policy requirement must drive a transmission need that is not readily met through existing, approved requests for new transmission service

[311] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 320-321.

and/or already planned transmission facilities complies with the directive in the First Compliance Order.[312]

ii. Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Local Transmission Planning Process

(a) First Compliance Order

176. In the First Compliance Order, the Commission found that Florida Parties did not address in their compliance filings how they have incorporated the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements in their local transmission planning processes. The Commission directed Tampa Electric, Florida Power, and Florida Power & Light to file further compliance filings explaining how the local transmission planning process complies with the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.[313]

(b) Summary of Compliance Filing

177. Florida Parties propose to revise their Attachment Ks to comply with the requirement to consider transmission needs driven by public policy requirements in their local transmission planning process. In addition to Florida Parties' proposal stating that if a public policy transmission need is identified, CEERTS and local projects may be proposed to address such a need,[314] Florida Parties propose to include references to public policy requirements in the local transmission planning process. Specifically, Florida Parties' Attachment Ks propose that the Transmission Provider will, in advance of initial local transmission planning meeting(s), with sufficient time for customer and stakeholder review, provide to customers and stakeholders a proposed study schedule, the NERC and FRCC Reliability Standards that will apply to the study, and/or guidelines that will apply to the study and Transmission Provider developed criteria that will apply to the study, including public policy requirements.[315] Further, Florida Parties propose to

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[312] First Compliance Order, 143 FERC ¶ 61,254 at P 86.

[313] *Id.* P 93.

[314] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 11.1.

[315] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, Appendix 1§ D.

include public policy requirements as one of the study requirements that will be reviewed and validated during the initial local transmission planning meeting.[316]

(c) Commission Determination

178. We find that Florida Parties' proposed revisions do not comply with the Commission's directive in the First Compliance Order because Florida Parties have not revised their Attachment Ks to incorporate the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements in their local transmission planning processes.[317]

179. First, Order No. 1000 defines public policy requirements to include federal or state laws or regulations, which are enacted statutes and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level.[318] Order No. 1000-A further clarifies that this includes local laws and regulations passed by a local governmental entity, such as a municipal or county government.[319] While Florida Parties' Attachment Ks include a definition of public policy requirements in the regional transmission planning process that the Commission has found to be consistent with the definition of public policy requirements in Order No. 1000,[320] Florida Parties do not include a definition of the term for use in their respective local transmission planning processes. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings that revise their OATTs to include a definition of the term "public policy requirements" for use in their local transmission planning processes. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

180. Florida Parties also do not comply with Order No. 1000's requirement that each public utility transmission provider establish procedures in the local transmission planning process to identify transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input and to offer proposals regarding the

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[316] *Id.*

[317] *See, e.g.*, *So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 at P 109.

[318] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2.

[319] Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

[320] First Compliance Order, 143 FERC ¶ 61,254 at P 85.

transmission needs they believe are driven by public policy requirements.[321] Florida Parties propose that the transmission provider will provide potential transmission solutions to transmission needs driven by public policy requirements to customers and stakeholders in advance of initial local transmission planning meeting(s), with sufficient time for customer and stakeholder review.[322] While this provision indicates that stakeholders will be given the opportunity to review transmission needs driven by public policy requirements that may be considered in the local transmission planning process, we find that Florida Parties' Attachment Ks do not describe how or when stakeholders can provide input and offer proposals regarding the transmission needs they believe are driven by public policy requirements in Florida Parties' local transmission planning processes such that the process for doing so is transparent to all interested stakeholders. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings that revise their OATTs to establish procedures in their respective local transmission planning processes to identify transmission needs driven by public policy requirements, including a description of when and how stakeholders can submit what the stakeholders believe are transmission needs driven by public policy requirements.[323] Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

181. In addition, we find that Florida Parties have not complied with Order No. 1000's requirement that public utility transmission providers, in consultation with stakeholders, establish a just and reasonable and not unduly discriminatory process by which they will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated in their respective local transmission planning processes.[324] We also find that Florida Parties have not complied with Order No. 1000's requirement that each public utility transmission provider post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential solutions in the local transmission planning process; and (2) why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation.[325] Accordingly, we direct Tampa Electric, Florida Power, and

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[321] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 206-208.

[322] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, Appendix 1§ D.

[323] Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

[324] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

[325] *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to comply with these two requirements of Order No. 1000. Likewise, Orlando should submit revisions to its Attachment K consistent with this directive.

182. Finally, we find that Florida Parties have not complied with Order No. 1000's requirement that public utility transmission providers establish procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements that both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements and allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs.[326] Florida Parties propose to include public policy requirements as one of the study requirements that will be reviewed and validated by the Transmission Provider during the initial local transmission planning meeting,[327] but do not describe in their Attachment Ks how they will evaluate potential transmission solutions to identified transmission needs driven by public policy requirements in their respective local transmission planning processes. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to include procedures to evaluate at the local level potential solutions to identified transmission needs driven by public policy requirements, including those proposed by stakeholders, that provide stakeholders an opportunity to provide input.[328] Likewise, Orlando should submit revisions to its Attachment K consistent with this directive.

3. Nonincumbent Transmission Developer Reforms

183. In Order No. 1000, the Commission adopted a framework of reforms to ensure that nonincumbent transmission developers have the opportunity to participate in the transmission development process. In particular, public utility transmission providers must eliminate federal rights of first refusal from Commission-jurisdictional tariffs and agreements and develop not unduly discriminatory qualification criteria and processes governing the submission and evaluation of proposals for new transmission facilities.

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[326] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 211, 220.

[327] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, Appendix 1§ D.

[328] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 211, 220.

a. Federal Rights of First Refusal

184. Order No. 1000 required each public utility transmission provider to remove provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider for transmission facilities selected in a regional transmission plan for purposes of cost allocation.[329] The requirement to eliminate a federal right of first refusal does not apply to local transmission facilities,[330] or to the right of an incumbent transmission provider to build, own, and recover costs for upgrades to its own transmission facilities, regardless of whether an upgrade has been selected in the regional transmission plan for purposes of cost allocation.[331] In addition, the requirement does not remove, alter, or limit an

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[329] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. In Order No. 1000-A, the Commission clarified that the phrase "a federal right of first refusal" refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

[330] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 258, 318. Order No. 1000 defined local transmission facilities as transmission facilities located solely within a public utility transmission provider's retail distribution service territory or footprint that are not selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63. The Commission clarified in Order No. 1000-A that a local transmission facility is one that is located within the geographical boundaries of a public utility transmission provider's retail distribution service territory, if it has one; otherwise the area is defined by the public utility transmission provider's footprint. In the case of an RTO or ISO whose footprint covers the entire region, local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owing members. Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

[331] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

incumbent transmission provider's use and control of its existing rights-of-way under state law.[332]

i. First Compliance Order

185. In the First Compliance Order, the Commission found that Florida Parties' proposed provisions complied, in part, with Order No. 1000's requirement to eliminate provisions in their Attachment Ks that establish a federal right of first refusal for an incumbent transmission provider for transmission facilities selected in a regional transmission plan for purposes of cost allocation.[333] The Commission found Florida Parties' definition of local transmission projects to be consistent with Order No. 1000 as well as the provision stating that nothing in Florida Parties' Attachment Ks affected a transmission provider's rights under state law with regard to its real property.[334]

186. In their First Compliance Filings, Florida Parties' proposed to allow an incumbent transmission provider to retain a federal right of first refusal for those portions of a CEERTS project that are upgrades to transmission facilities owned by the incumbent transmission provider.[335] The Commission found that Florida Parties' proposal partially complied with Order No. 1000, noting that Florida Parties' proposed Attachment Ks revisions did not include a definition of upgrades consistent with Order No. 1000. The Commission further noted that Florida Parties did not object to defining upgrades consistent with the definition the Commission adopted in Order No. 1000.[336] Therefore, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to include a definition of upgrade in their OATTs, consistent with the definition that the Commission adopted in Order No. 1000-A, which Florida Parties agreed to make.[337] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

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[332] *Id.* P 319.

[333] First Compliance Order, 143 FERC ¶ 61,254 at P 104.

[334] *Id.* PP 107, 108.

[335] First Compliance Order, 143 FERC ¶ 61,254 at P 105.

[336] *Id.* P 106 (quoting the definition of upgrades adopted in Order No. 1000-A, 139 FERC 61,132 at P 426, which states that "[t]he term upgrade means an improvement to, addition to, or replacement of, an existing transmission facility. The term does not refer to an entirely new transmission facility.").

[337] *Id.* P 106.

187. Furthermore, the Commission found that Florida Parties' proposed construction and cost recovery provisions were unclear and appeared to designate "Transmission Owners" to construct expansions to their own transmission system and receive cost recovery for these expansions, regardless of whether the project is a local project or a CEERTS project that has been selected in the regional transmission plan for the purposes of cost allocation.[338] Accordingly, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their construction and cost recovery provisions to exclude CEERTS projects for which the transmission owner is not the project developer. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

ii. Summary of Compliance Filings

188. To comply with the Commission's directives in the First Compliance Order, Florida Parties propose to revise their Attachment Ks to state that the term "upgrade" means an improvement to, addition to, or replacement of, an existing transmission facility; the term does not refer to an entirely new transmission facility.[339] They also propose to revise the construction and cost recovery provisions for transmission owners to make clear that they do not apply to CEERTS projects for which the transmission owner is not the project developer.[340]

iii. Commission Determination

189. We find that Florida Parties' proposed definition of upgrades partially complies with Order No. 1000. Order No. 1000-A defines an upgrade as "an improvement to, addition to, or replacement of a part of, an existing transmission facility," and provides that the term "does not refer to an entirely new transmission facility."[341] Florida Parties' proposed definition is inconsistent with the definition in Order No. 1000-A because it would include as an upgrade the replacement of an entire transmission facility rather than the replacement *of a part* of an existing transmission facility. We therefore direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date

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[338] *Id.* P 105 (citing, *e.g.*, Florida Power & Light Co., FPL OATT, Attachment K §§ 9.3.1, 9.3.3, and 9.3.4).

[339] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 1.2.10.A.

[340] *E.g.*, Florida Power & Light Co Transmittal at 20; Florida Power & Light Co., FPL OATT, Attachment K §§ 9.3.1, 9.3.3, and 9.3.4.

[341] Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

of issuance of this order, further compliance filings that revise their Attachment Ks to modify the definition of upgrades so that only the replacement of part of an existing transmission facility can be considered an upgrade. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

190. With respect to the Commission's directive in the First Compliance Order that Florida Parties revise the construction and cost recovery provisions to exclude CEERTS projects for which the transmission owner is not the transmission project developer, we find that Florida Parties have complied with this directive.

b. Qualification Criteria

191. Order No. 1000 required each public utility transmission provider to revise its OATT to establish appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation.[342] These criteria must not be unduly discriminatory or preferential when applied to either an incumbent transmission provider or a nonincumbent transmission developer.[343] In addition, public utility transmission providers must adopt procedures for timely notifying transmission developers of whether they satisfy the region's qualification criteria and allowing them to remedy any deficiencies.[344]

192. Order No. 1000-A clarified that it would be an impermissible barrier to entry to require a transmission developer to demonstrate, as part of the qualification criteria, that it has, or can obtain, state approvals necessary to operate in a state to be eligible to propose a transmission facility.[345]

i. Technical Criteria

(a) First Compliance Order

193. In the First Compliance Order, the Commission found that Florida Parties' proposed technical qualification criteria partially complied with the requirements of

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[342] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

[343] *Id.* P 323.

[344] *Id.* P 324.

[345] Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

Order No. 1000.[346] While the Commission found many of the technical qualification criteria complied with Order No. 1000, such as considering whether the transmission developer will be able to operate and maintain a CEERTS project consistent with the Good Utility Practice and applicable reliability criteria for the life of the project,[347] it also required certain modifications.

194. Specifically, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to submit OATT revisions to describe: (i) when a prospective transmission developer must submit information to demonstrate that it satisfies the qualification criteria; (ii) when the FRCC Board will make a determination whether a prospective transmission developer satisfies the qualification criteria so that the developer may propose a transmission project for selection in the regional transmission plan for purposes of cost allocation; (iii) that the FRCC Board will make such determination before a prospective transmission developer may propose a transmission project; and (iv) when the FRCC Board will inform an entity whether it has met the qualification criteria. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

195. In addition, the Commission rejected Florida Parties' proposal to exempt transmission developers proposing reliability-based transmission projects within their own service territories from having to satisfy the qualification criteria.[348] The Commission noted that while Order No. 1000 allowed for the possibility that an existing public utility transmission provider already satisfied the qualification criteria, an incumbent transmission owner may not be exempt from having to meet the qualification criteria if it is proposing a transmission facility for selection in the regional transmission plan for purposes of cost allocation.[349] Therefore, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their Attachment Ks to describe how they comply with Order No. 1000's requirement that each public utility transmission provider establish procedures that provide fair and not unreasonably stringent qualification criteria that apply to both incumbent transmission owners and

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[346] First Compliance Order, 143 FERC ¶ 61,254 at P 128.

[347] *Id.* P 129.

[348] *Id.* P 130 (citing Florida Power & Light Co., FPL OATT, Attachment K § 9.2).

[349] *Id.* P 130 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324).

nonincumbent transmission developers. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.[350]

196. Finally, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their Attachment Ks to remove the requirement that a project developer demonstrate it is "physically" capable of completing and operating CEERTS facilities, which Florida Parties had agreed to make.[351] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

(b) Requests for Rehearing or Clarification

(1) Summary of Requests for Rehearing or Clarification

197. LS Power argues that it is unclear, under the accepted provisions, how Florida Parties will evaluate a transmission developer's capability to operate and maintain a CEERTS project for the life of the project.[352] LS Power therefore requests that the Commission clarify that, although it determined that requiring a transmission developer to demonstrate it has the necessary financial resources and technical expertise to operate and maintain a transmission project for the life of the project is an appropriate qualification criterion, Florida Parties' further compliance filings should include additional information on the mechanism for judging the ability of a developer to do so. Absent this clarification, LS Power argues that the Commission cannot be assured that Florida Parties' evaluation of whether a prospective transmission developer meets this qualification criterion is fair and not unreasonably stringent.[353]

(2) Commission Determination

198. We deny LS Power's request for clarification. The Commission has previously found it reasonable for a transmission planning region to consider whether the transmission developer's existing resources and commitments provided sufficient assurance that the transmission developer would be able to operate and maintain a

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[350] *Id.* P 130.

[351] *Id.* P 134.

[352] LS Power Protest at 3.

[353] *Id.* at 2-3.

transmission facility for the life of the project.[354] We continue to find that it is reasonable for Florida Parties to consider whether a potential transmission developer is technically and financially capable of completing the CEERTS project in a timely and competent manner and operating and maintaining the CEERTS facilities consistent with Good Utility Practice and applicable reliability criteria for the life of a regional transmission project selected in a regional transmission plan for purposes of cost allocation.[355] Additionally, if the FRCC Board determines that the qualification criteria have not been met, the FRCC Board will notify the transmission developer of the qualification deficiencies and provide a 30-day period for the transmission developer to cure the deficiencies. If a transmission developer does not agree with the FRCC Board determination, then the dispute resolution procedures are available for the transmission developer's use. We also find that the qualification criteria are sufficiently clear as to the specific information that potential transmission developer must submit to demonstrate that they satisfy the qualification criteria. Accordingly, we deny LS Power's request for clarification.

(c) Compliance

(1) Summary of Compliance Filings

199. In response to the Commission's directive to make the qualification criteria apply to both incumbent transmission owners and nonincumbent transmission developers, Florida Parties propose OATT revisions to define the circumstances under which incumbent transmission owners would be deemed to satisfy the qualification criteria. Specifically, Florida Parties propose that:

> [i]f the project developer is an entity that is obligated under state law to provide, directly or indirectly …, electric service to retail customers within its service territory and thereby obligated, expressly or by implication, to construction transmission facilities as necessary to serve such retail customers, the project developer shall be deemed to satisfy the qualification criteria with regard to reliability-based projects in its service territory that will interconnect to its existing facilities. This provision does not apply to a project

[354] *See, e.g., ISO New England, Inc.*, 143 FERC ¶ 61,150 at P 273. *See also Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,198 at P 106.

[355] First Compliance Order, 143 FERC ¶ 61,254 at PP 129, 133.

> developer to the extent that it is proposing to build transmission facilities outside of its service territory.[356]

200. Florida Parties argue that this provision reflects a fair distinction between traditional electric utilities with service obligations under state law to construct such projects and other entities. Florida Parties also assert that their proposed provision is similar to the one Midcontinent Independent System Operator (MISO) proposed in its second round compliance filing.[357] Florida Parties assert that the justification MISO provided to support MISO's provision also applies to the circumstances in the FRCC region.[358]

201. Florida Parties also propose to add a timeline for the FRCC's review of a project developer's qualifications. Under the proposed timeline, the qualification process is a one-time process for each developer, subject to the attestation review process, which is either biennial or more often if there are material changes.[359] By January 1 of the first year of a biennial planning cycle, a potential transmission developer must submit its qualifications and biennial attestations to the FRCC. By April 1, the FRCC Board will inform developers whether they have met the qualification criteria or will identify deficiencies in the qualifications, which potential developers must cure by April 30. FRCC Board will reexamine the modified qualifications and attestations and make final determinations and notifications between May 1 through May 31.[360] Florida Parties also

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[356] *E.g.*, Florida Power & Light Co., Attachment K, § 1.2.11.A.

[357] *E.g.*, Florida Power & Light Co., Transmittal at 21 (citing MISO July 22, 2013 compliance filing submitted in Docket No. ER13-187-002 at 20).

[358] MISO argued that the provision is consistent with the statement in Order No. 1000 that the qualification criteria should allow for the possibility that an existing public utility transmission provider already satisfies the criteria. MISO also argued that an existing entity's current transmission owner status in a given pricing zone is sufficient evidence that the transmission owner is already qualified to submit proposals involving facilities that will connect to the transmission owner's own facilities. Furthermore, MISO asserted that the provision is narrowly tailored to those situations where the new facilities will interconnect to the incumbent's existing system. Florida Power & Light Co., Transmittal at 21 (citing MISO July 22, 2013 compliance filing submitted in Docket No. ER13-187-002 at 20).

[359] *E.g.*, Florida Power & Light Co., Attachment K, § 1.2.11.C.

[360] *Id.* § 1.2.11.D.

propose to revise the process to make clear that an independent consultant will review the qualifications.[361]

202. Finally, Florida Parties propose to delete "physically" from the proposed qualification criterion that a prospective transmission developer must meet to complete and operate a CEERTS project.[362]

(2) Protests/Comments

203. FMPA/Seminole argue that under the proposed timeline, a transmission developer may not be notified that it is qualified until one day before its CEERTS application is due. FMPA/Seminole explain that, where there are deficiencies, a developer shall be notified no later than May 31, but that CEERTS applications are due by June 1. FMPA/Seminole argue that for the proposal to be not unduly discriminatory, Florida Parties must adjust the timeline so a developer has an opportunity to cure identified deficiencies and submit a CEERTS project proposal.[363] FMPA/Seminole also assert that a developer should have an opportunity to qualify later should it have an interest in developing a regional transmission project proposed on June 1 by stakeholders or identified through Florida Parties' look for regional projects. It argues that it does not make sense to require developers to qualify only at the start of the regional transmission process.[364]

(3) Answer

204. In response to FMPA/Seminole's protest, Florida Answering Parties assert that nothing forecloses a potential transmission developer from submitting an application on or before June 1 on the premise that it will be deemed qualified on or before May 31. Florida Answering Parties also disagree with FMPA/Seminole that a potential transmission developer should have an opportunity to qualify after January 1 of the first year of the biennial transmission planning cycle. They note that the qualification process is not burdensome and argue that it would be distracting to have multiple qualification processes running throughout the transmission planning cycle.[365]

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[361] *E.g.*, Florida Power & Light Co., Attachment K, § 1.2.11.C.

[362] *E.g.*, Florida Parties' Transmittal at 21.

[363] FMPA/Seminole Protest at 76-77.

[364] *Id.* at 77.

[365] Florida Answering Parties' Answer at 52-53.

(4) Commission Determination

205. We find that Florida Parties' revisions to the technical criteria of its developer qualification process partially comply with the directives in the First Compliance Order. Florida Parties provided sufficient detail regarding when the transmission developer submits its application, when the FRCC Board will make a determination whether the transmission developer satisfies the criteria, and will make that the determination before the transmission developer must submit a regional transmission project. We disagree with FMPA/Seminole that the proposed timeline is unduly discriminatory. The transmission developer that is seeking to cure the deficiencies in its application has until April 30 to do so, and the FRCC Board will notify the transmission developer of its final determination by May 31. Thus, we find that the proposed timeline provides sufficient time for the transmission developer to submit an application and cure any deficiencies prior to submitting a regional transmission project for potential selection in the regional transmission plan for purposes of cost allocation.[366] We also note that, once a transmission developer is found to qualify, it need only provide an attestation stating that the previously submitted information remains correct and has not materially changed.[367] Additionally, we find that the January 1 deadline for a transmission developer qualification application is reasonable and corresponds with the ongoing regional transmission planning process. We also find Florida Parties' deletion of the term "physically" from the proposed qualification criterion that a prospective transmission developer must meet is acceptable.

206. However, we find that Florida Parties have not complied with the requirement in the First Compliance Order to revise their Attachment Ks to describe how they comply with Order No. 1000's requirement that each public utility transmission provider establish procedures that provide fair and not unreasonably stringent qualification criteria that apply to both incumbent transmission owners and nonincumbent transmission developers. Florida Parties' revisions continue to exempt an incumbent transmission owner from having to demonstrate that it satisfied the qualification criteria if the transmission project the incumbent transmission owner proposes for potential selection in the regional transmission plan for purposes of cost allocation is a reliability-based projects in its service territory that will interconnect to its existing facilities. Florida Parties rely on justification MISO provided in its second compliance filing to support a

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[366] However, while we accept the part of the timeline associated with transmission developer qualification, we require changes to other parts of the timeline in the General Evaluation section of this order.

[367] *E.g.*, Florida Power & Light Co., Attachment K, Appendix 3, § 2.

similar provision, which the Commission rejected,[368] and we do so here as well. Specifically, we find Florida Parties' proposal to exempt an incumbent transmission owner from having to meet the qualification requirements with regard to reliability-based projects in its service territory that will interconnect to its existing facilities unduly discriminatory.[369] Although Order No. 1000 states that qualification criteria should allow for the possibility that an existing public utility transmission provider already satisfies the criteria,[370] this does not mean that Florida Parties can exempt an incumbent transmission owner from having to demonstrate that it meets the qualification criteria if it is proposing a transmission facility for selection in the regional transmission plan for purposes of cost allocation.[371] The Commission stressed that, "appropriate qualification criteria should be fair and not unreasonably stringent when applied to either the incumbent transmission owner or nonincumbent transmission developers."[372] Further, these criteria must not be unduly discriminatory or preferential and must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.[373] We are not persuaded by the argument that an incumbent transmission owner already has demonstrated its qualification to develop and maintain a new transmission facility simply because it has constructed and maintained the system to which the new transmission facility will be connected. Thus, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs so that both incumbent transmission owners and nonincumbent transmission developers must demonstrate that they meet the qualification criteria in order to propose a transmission project for potential selection in the regional transmission plan for purposes of cost allocation. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

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[368] *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 at P 294.

[369] Florida Power & Light Co., Attachment K, § 1.2.11.A.

[370] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324.

[371] The Commission also rejected a similar proposal to exempt incumbent transmission owners from having to meet the qualification requirements in the ISO-NE transmission planning region. *See ISO New England, Inc.*, 143 FERC ¶ 61,150 at P 270.

[372] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324.

[373] *Id.* P 323.

ii. Financial Criteria

(a) First Compliance Order

207. In the First Compliance Order, the Commission found that Florida Parties' proposed financial criteria for CEERTS project developers met the requirements of Order No. 1000, subject to certain modifications.[374] The Commission found that, as modified in the order, Florida Parties' proposed financial qualification criteria established a fair and not unreasonably stringent, or unduly discriminatory or preferential process where each potential transmission developer is afforded the opportunity to demonstrate that it has the necessary financial resources to develop, construct, own, operate, and maintain transmission facilities.[375] However, the Commission also found that additional revisions and clarification were necessary regarding Florida Parties' proposed financial qualification criteria.[376]

208. The Commission found that, with the requirement that it apply to both incumbent transmission owners and nonincumbent transmission developers, Florida Parties' proposal to require potential transmission developers to make a one-time deposit of $50,000 for outside consultants to review each potential transmission developer's qualifications complied with Order No. 1000.[377] However, the Commission required Florida Parties to modify their transmission developer deposit requirements to provide: (i) to each transmission developer a description of which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied; (ii) a refund of interest on the excess deposited funds where the payment is refunded; and (iii) a provision that any disputes regarding the accounting for a specific deposit be addressed under Florida Parties' dispute resolution process. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.[378]

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[374] First Compliance Order, 143 FERC ¶ 61,254 at P 145.

[375] *Id.* P 145 (citing Florida Power & Light Co., FPL OATT, Attachment K Appendix 3).

[376] The Commission noted that the compliance directives with respect to the technical qualification criteria also apply to the financial qualification criteria. First Compliance Order, 143 FERC ¶ 61,254 at P 146 & nn.241-242.

[377] First Compliance Order, 143 FERC ¶ 61,254 at PP 147, 149.

[378] *Id.* P 153.

209. In addition, the Commission found Florida Parties' proposed financial qualification criterion that a prospective transmission developer demonstrate that it can obtain the necessary licensing in applicable cities, counties, and states, was inconsistent with Order No. 1000-A.[379] Therefore, the Commission required Florida Parties to remove the proposed criterion. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with this directive. The Commission also required Tampa Electric, Florida Power, and Florida Power & Light to explain why their proposal that a prospective transmission developer must demonstrate its ability to assume liability for major losses resulting from any failure of transmission facilities is necessary and not unduly discriminatory when transmission developers are already required to demonstrate their financial resources or remove this financial qualification criterion from their OATTs. Likewise, the Commission noted that Orlando should provide further justification for this provision, or remove this provision from its Attachment K, consistent with this directive.[380]

210. Furthermore, the Commission found unclear what is intended by Florida Parties' proposed qualification criterion that a transmission developer must demonstrate that its credit, investment, or other financing arrangements comply with applicable legal and regulatory requirements and restrictions. Specifically, the Commission found that Florida Parties had not explained what "applicable legal and regulatory requirements and restrictions" to which this qualification criterion refers such that it is clear how a prospective transmission developer would make the required demonstration.[381] The Commission further directed Tampa Electric, Florida Power, and Florida Power & Light to clarify how electric utilities that rely on affiliated utilities for credit, investment or other financing arrangements can demonstrate that these arrangements "comply with applicable legal and regulatory requirements and restrictions" or, in the alternative, to remove this qualification criterion from their OATTs. Likewise, the Commission noted that Orlando should provide further justification for this provision, or remove this provision from its Attachment K, consistent with this directive.[382]

211. Finally, the Commission required Tampa Electric, Florida Power, and Florida Power & Light to delete the qualification criterion that would require a transmission developer to demonstrate its cost containment capability, including any binding

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[379] *Id.* P 150 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 441).

[380] *Id.* P 151.

[381] *Id.*

[382] *Id.*

agreement to accept a cost cap, and move it to the information requirements. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with this directive.[383]

(b) Summary of Compliance Filings

212. Florida Parties propose to add to their Attachment Ks that the FRCC will use the $50,000 deposit to fund the internal FRCC labor cost for application review, which it will document, and the independent consultant's review.[384] Florida Parties propose to add that any unexpended amounts of the deposit, including interest, will be refunded to the project developer. In addition, any disputes related to the accounting for specific deposits will be addressed using the dispute resolution procedures.[385] In addition, Florida Parties propose to require developers that already have qualified must submit an attestation to maintain their qualification. If the FRCC determines that there are sufficient changes in the attestation from a previously-qualified developer, then the developer must provide a further $10,000 deposit. Florida Parties propose to handle this deposit in a similar manner as the $50,000 deposit.[386] We note that Florida Parties propose to add similar language to the provision requiring a $100,000 information deposit for each CEERTS project that a transmission developer proposes,[387] and that there are similar requirements and issues related to the information deposit and qualification deposits. We note throughout this section where the issues overlap, and address those issues in this section. We address the issues of whether the information deposit amount is reasonable and whether Florida Parties complied with the requirement to add a provision that Florida Parties will provide each transmission developer a description of which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied in the Information Requirements section of this order.

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[383] *Id.* P 152.

[384] Florida Power & Light Co., Attachment K, § 1.2.11.B.

[385] *Id.*

[386] *Id.*

[387] *Id.* § 1.2.4.D. Florida Parties propose to revise the provision to explain that the deposit will be used for FRCC internal labor costs for analysis of the project and that unexpended amounts will be refunded with interest. In addition, Florida Parties propose to provide an accounting of the actual costs of the CEERTS project analysis to the project sponsor after the analysis is completed and that any disputes will be addressed through the Dispute Resolution Procedures in Appendix 6. *Id.*

213. Florida Parties also propose to remove the financial qualification criteria that required a transmission developer to demonstrate: (1) it can obtain the necessary professional business and/or construction licensing in the applicable cities, counties, and states; (2) if it is an electric utility that relies on an affiliated transmission and distribution utility for credit, investment, or other financial arrangements that the arrangement complies with applicable legal and regulatory requirements and restrictions; (3) its ability to assume liability for major losses resulting from failure of facilities; and (4) its cost containment capability, including any binding agreement to accept a cost cap.

214. Florida Parties propose to add a new qualification criterion that requires a potential transmission developer to provide the total amount of CEERTS estimated project(s) cost up to which the project developer wants to be deemed qualified.[388] In addition, Florida Parties propose to add a new qualification criterion that requires a potential transmission developer to demonstrate its financial strength by providing one of the following: (1) that the total dollar amount of the estimated CEERTS project costs that the project developer wants to be qualified for does not exceed 30 percent of the total capitalization of the project developer or its parent guarantor; or (2) a performance bond from an insurance/surety company acceptable to the FRCC in an amount equal to the total amount the project developer wants to be qualified for, including financing cost, and a 30 percent contingency.[389]

(c) <u>Protests/Comments</u>

215. LS Power argues that Florida Parties failed to justify the $50,000 deposit amount. LS Power asserts that the one-time deposit of $50,000 is higher than other Order No. 1000 transmission planning regions.[390] As a result, LS Power requests that the Commission require Florida Parties to provide further justification for this requirement.[391] It further argues that Florida Parties fail to provide a clear and transparent process to return the unused portions of the study evaluation deposit.[392] In addition, FMPA/Seminole argue that Florida Parties' use of the term "interest" as it is applied in the context of payment of interest on deposits for the qualification criteria and study costs is undefined. Thus, FMPA/Seminole request that the Commission require

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[388] Florida Power & Light Co., Attachment K, Appendix 3 § 1.B.

[389] *Id.* § 1.C.

[390] LS Power Protest at 25-26.

[391] *Id.* at n.30.

[392] *Id.* at 25-26 (noting that PJM, CAISO and NTTG have no qualification deposit and that SPP requires a $6,000 deposit, while MISO requires $20,000).

Florida Parties calculate interest on the qualification and information deposits in accordance with section 35.19(a)(2) of the Commission's regulations.[393]

216. LS Power also objects to the qualification criterion that requires (1) the applicant or its parent guarantor to demonstrate that the estimated CEERTS project costs do not exceed 30 percent of the total capitalization; or (2) a performance bond from an insurance/surety company in an amount equal to the total cost of the qualification request, including financing costs, and a 30 percent contingency. LS Power explains that using a hypothetical $300 million regional transmission project, Florida Parties' proposal would require either $1 billion capitalization or a $390 million performance bond with the qualification request for the hypothetical regional transmission project. LS Power states that it cannot support any part of the proposed criterion as reasonable and requests that the Commission strike the proposed provision.[394] LS Power states that it would support Florida Parties instead using the financial qualification criteria that New York Independent Transmission System Operator, Inc. (NYISO) proposed.[395]

217. Finally, LS Power states that it is unclear why the FRCC Board makes the qualification determinations. LS Power states that in other regions of the country, qualification decisions do not reach the board level. LS Power is also concerned that the FRCC Board members are active employees of competitors and will be evaluating highly confidential information regarding every aspect of their competition. LS Power asserts that Florida Parties have not identified a mechanism to ensure that information handled by the Board is not used to advance competitive agendas or to protect the confidentiality of qualification materials submitted, especially financials.[396]

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[393] FMPA/Seminole Protest at 81-84.

[394] LS Power Protest at 29. LS Power also notes that this criterion is largely similar to the information requirement proposed by Southwest Power Pool, Inc. (SPP). LS Power asserts that SPP uses the information to evaluate a specific proposal rather than as a qualification criteria. LS Power also notes that SPP's requirement includes information related to the "parent Guarantor" requirement as well as an alternative option of a bank letter of reference that it would issue a bond rather than an actual issuance of a bond. *Id.* at 29-30.

[395] *Id.* at 30-32.

[396] *Id.* at 26.

(d) Answer

218. Florida Answering Parties dispute LS Power's assertion that a one-time $50,000 qualification application deposit is too high for a transmission developer seeking to develop transmission projects costing tens or hundreds of millions of dollars. To the contrary, Florida Answering Parties respond that the one-time deposit ensures that FRCC does not incur uncovered costs during the application review process.[397] Further, Florida Parties argue that the Commission approved the amount of the deposit, even though it required other changes to how Florida Parties handle the deposit.

219. Florida Answering Parties also disagree with FMPA/Seminole's claim that the interest rate for unexpended qualification and information deposits should be specified as the Commission interest rate in 18 C.F.R. section 35.19a(a)(2). Florida Answering Parties explain that the deposits are paid to and held by the FRCC, which is a not-for-profit entity. Thus, they argue that the FRCC should be allowed to make refunds on the basis of actual interest earned on unexpended amounts, such that it does not operate at a loss or gain a windfall.[398] They further note that, if FRCC were to earn less actual interest than it was required to pay at the Commission interest rate then the members of the FRCC would have to absorb the loss.

220. Florida Answering Parties state that they have reviewed LS Power's suggested changes to the parent guarantee and the performance bond option and agree to delete the new qualification criterion they proposed that requires a potential transmission developer demonstrate: (1) that the total dollar amount of the estimated CEERTS project costs that the project developer wants to be qualified for does not exceed 30 percent of the total capitalization of the project developer or its parent guarantor; or (2) a performance bond from an insurance/surety company acceptable to the FRCC in an amount equal to the total amount the project developer wants to be qualified for, including financing cost, and a 30 percent contingency. Florida Answering Parties also propose additional new financial qualification criteria, which they state, as suggested by LS Power, are modeled after the criteria proposed by NYISO.[399] Specifically, Florida Answering Parties propose that a potential transmission developer must demonstrate its current and expected capability to finance, or arrange financing for the transmission facilities by providing the following: (1) evidence of its demonstrated experience financing or arranging financing for transmission facilities, including a description of such projects (not to exceed ten)

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[397] Florida Answering Parties Answer at 54-55.

[398] *Id.* at 57.

[399] *Id.* at 56.

over the previous ten years, the capital costs and financing structure of such projects, a description of any financing obtained for these projects through rates approved by the Commission or state regulatory agency, the financing closing date of such project, and whether any of the projects are in default; (2) its audited financial statements from the most recent three years and its most recent quarterly financial statement, or equivalent information; and (3) such other evidence that demonstrates its current and expected capability to finance a CEERTS project.

221. Florida Answering Parties propose to maintain the requirement for a transmission developer to provide: (1) current credit ratings from Moody's Investor Service and Standard & Poor's, if available; (2) a summary of any history of bankruptcy, dissolution, merger, or acquisition of the project developer or any predecessors in interest for the current calendar year and the five calendar years immediately preceding its submission of information related to affiliated entities; and (3) a summary of outstanding liens against the developer(s). Florida Answering Parties also propose a provision that states the project developer must identify the portions of this financial data that would need to be treated as confidential information in accordance with the FRCC confidentiality practices and subject to disclosure only to those that have signed a confidentiality agreement.

222. Finally, Florida Answering Parties assert that the FRCC Board is comprised of a balanced representation of stakeholder interests. Florida Answering Parties also note that, in the First Compliance Order, the Commission approved the FRCC Board as having the ultimate authority to determine whether a transmission developer meets the qualification criteria for proposed transmission developers. Florida Answering Parties further note that no one objects to the ability of the FRCC Board to act impartially on CEERTS projects proposed for inclusion in the regional transmission plan. They argue that it is not appropriate to raise a new objection to a provision that was not objected to before and that the Commission has accepted.[400]

(e) Commission Determination

223. We find that Florida Parties' revisions to the financial criteria of its transmission developer qualification process partially comply with the directives in the First Compliance Order. First, in removing the financial qualification criteria that required a transmission developer to demonstrate that: (1) it can obtain the necessary professional business and/or construction licensing in the applicable cities, counties, and states; (2) if it is an electric utility that relies on an affiliated transmission and distribution utility for credit, investment, or other financial arrangements that the arrangement complies with applicable legal and regulatory requirements and restrictions; (3) its ability to assume

[400] *Id.* at 55.

liability for major losses resulting from failure of facilities; and (4) its cost containment capability, including any binding agreement to accept a cost cap, Florida Parties have addressed the Commission's concerns about those provisions.

224. Regarding the qualification and information deposits, we find that Florida Parties complied with the requirement in the First Compliance Order to add a provision that any disputes regarding the accounting for specific deposits be addressed under Florida Parties' dispute resolution process.[401] We also find that Florida Parties have met the requirement in the First Compliance Order to modify the qualification and information requirements to provide a refund of interest on the excess deposited funds where the payment is refunded. We disagree with FMPA/Seminole that the FRCC should calculate interest in accordance with section 35.19(a)(2) of the Commission's regulations. We agree with Florida Answering Parties that it is reasonable that the FRCC make refunds on the basis of actual interest earned on unexpended qualification and information deposits.

225. However, we find that, for the qualification deposit, Florida Parties partially complied with the requirement to modify their transmission developer qualification deposit requirements to provide a description of which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied. In their second compliance filings, Florida Parties propose to add language to their OATT that explains that the deposits will be used to fund internal labor costs and costs for independent consultants.[402] While this language explains what the FRCC will use the deposits for, it does not meet the requirement in the First Compliance Order that Florida Parties specify in their Attachment Ks that they will provide the transmission developer with an accounting of the actual costs and how the costs were calculated. Therefore, we require Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise the proposed OATT language to specify that this information will be provided to the transmission developer. Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

226. In response to LS Power's assertion that Florida Parties have not justified a qualification deposit of $50,000, we note that the Commission accepted the amount of the deposit in the First Compliance Order.[403] In any event, we find that, with the additional provisions Florida Parties propose to comply with the First Compliance Order and our

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[401] *See, e.g.*, Florida Power & Light Co., Attachment K, §§ 1.2.11.B; 1.2.4.D.

[402] *Id.* § 1.2.11.B; 1.2.4.D.

[403] First Compliance Order, 143 FERC ¶ 61,254 at PP 147, 149.

compliance requirement herein, including the description of what the deposit will pay for and the requirement to refund with interest any excess deposited funds, the concern about the amount of the deposit has been addressed. These revisions ensure that each transmission developer will understand which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied.

227. We also find reasonable Florida Parties' proposal to require an additional $10,000 deposit if the FRCC determines, based on the annual attestation a previously qualified developer must submit, that additional review is needed. The $10,000 is subject to the same provisions, including the refunding of excess deposits with interest, that apply to the initial $50,000 deposit.

228. We find appropriate Florida Parties new financial qualification criterion requiring a transmission developer to provide the total dollar amount of CEERTS estimated project(s) cost up to which the potential transmission developer wants to be deemed qualified. However, we note that, in response to concern raised by LS Power, Florida Answering Parties propose in their answer to remove the proposed provision requiring the transmission developer to maintain a certain level of capitalization or to provide a performance bond.[404] We accept this proposal and direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to remove this provision from their OATTs. Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

229. In addition, Florida Parties propose in their answer additional new financial qualification criteria. Florida Parties propose that a potential transmission developer must demonstrate its current and expected capability to finance, or arrange financing for the transmission facilities by providing evidence of its demonstrated experience in financing or arranging financing for transmission facilities, including a description of such transmission projects over the previous ten years, capital costs and financing structure of such projects, descriptions of any financing obtained for these projects, and other provisions. Florida Parties also propose that a potential transmission developer must include audited financial statements from the most recent three years and its most recent quarterly financial states, or equivalent information, as well as other evidence that demonstrates its current and expected capability to finance a CEERTS project. Florida Parties state that a potential transmission developer must identify the portions of this financial data that would need to be treated as confidential information in accordance with the FRCC confidentiality practices and subject to disclosure only to those that have

[404] Florida Power & Light Co., Attachment K, Appendix 3 § 1.C.

signed a confidentiality agreement.[405] However, these additional provisions were not included in Florida Parties' compliance filings. We direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings that include these proposed tariff changes, and the Commission will evaluate the revised tariff provisions at that time. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

230. We reject LS Power's protest regarding the FRCC Board's role in qualification determinations as an out-of-time rehearing request of a prior Commission determination. The First Compliance Order included several directives with respect to the qualification criteria, but did not require any further compliance filings with respect to the FRCC Board's role in qualification determinations.[406] Pursuant to section 313(a) of the FPA, an aggrieved party must file a request for rehearing within thirty days after the issuance of the Commission's order.[407] Because LS Power failed to timely raise this challenge, it is barred by the FPA from raising it here.

c. Information Requirements

231. Order No. 1000 required each public utility transmission provider to identify in its OATTs the information that a prospective transmission developer must submit in support of a transmission project proposed in the regional transmission planning process.[408] The information requirements must be sufficiently detailed to allow a proposed transmission project to be evaluated comparably to other transmission facilities proposed in the regional transmission planning process. The information requirements must be fair and not be so cumbersome as to effectively prohibit transmission developers from proposing transmission facilities, yet not be so relaxed that they allow for relatively unsupported proposals.[409] Order No. 1000 also required each public utility transmission provider to identify in its OATTs the date by which a transmission developer must submit

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[405] Florida Answering Parties Answer at 56, Appendix 3 to Attachment K. Florida Parties note that these provisions are similar to what the Commission approved in NYISO.

[406] First Compliance Order, 143 FERC ¶ 61,254 at PP 128-135, 145-153.

[407] 16 U.S.C. § 825k(a) (2012); *see also* 18 C.F.R. § 713(b) (2013) (requiring that a request for rehearing "be filed not later than 30 days after issuance of any final decision . . .").

[408] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

[409] *Id.* P 326.

information on a proposed transmission project to be considered in a given transmission planning cycle.[410]

i. First Compliance Order

232. In the First Compliance Order, the Commission conditionally accepted Florida Parties' proposed information requirements for CEERTS projects, subject to further compliance and clarification.

233. While the Commission found that the information requirements appropriately apply to all potential transmission developers, the Commission also found that they apply to any entity that proposes a CEERTS project, regardless of whether the entity intends to develop the transmission project. Therefore, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to clarify that the proposed information requirements apply only to transmission developers proposing a CEERTS project in the regional transmission planning process for selection in the regional transmission plan for purposes of cost allocation. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.[411]

234. In addition, the Commission rejected Florida Parties' proposal to require that transmission developers provide: (1) a reliability impact assessment; (2) a load flow analysis; (3) an identification of transmission projects in the regional transmission plan that would be affected or avoided, as well as any additional transmission projects that may be required; and (4) a demonstration through a technical evaluation process that the CEERTS project is equal to or superior to avoided transmission projects from the current regional transmission plan. The Commission also rejected Florida Parties' proposal to require the transmission developer to fully assess why its proposed transmission facility is a more cost-effective or efficient regional transmission solution. The Commission found these information requirements provisions unreasonable and that they could be so cumbersome that they effectively prohibit transmission developers from proposing transmission projects.[412] The Commission concluded that such detailed studies are more appropriately performed by the public utility transmission providers in the regional transmission planning process to determine whether to select a proposed transmission project in the regional transmission plan for purposes of cost allocation. The Commission explained that, while the information requirements should permit a

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[410] *Id.* P 325.

[411] First Compliance Order, 143 FERC ¶ 61,254 at P 167.

[412] *Id.* P 168.

transmission developer to submit any studies and analysis it performed to support its proposed transmission project, the public utility transmission providers in a transmission planning region must conduct the studies and analysis that they will use to evaluate proposed transmission projects as part of the regional transmission planning process, Consequently, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to remove these information requirements from their OATTs or to clarify that such studies are not required, but are permitted to the extent the transmission developer voluntarily performed studies supporting its proposed transmission project's selection as a more efficient or cost-effective solution. Likewise, the Commission found that Orlando also should submit further revisions to its Attachment K consistent with this directive.

235. In addition, the Commission found that Florida Parties had not justified the use of a project evaluation deposit of between $100,000 and $500,000 and the associated step function that increases with estimated project costs. However, the Commission recognized that it had approved a variety of project study costs deposits or fees for other regions, and therefore directed Tampa Electric, Florida Power, and Florida Power & Light to clarify why the full deposit is required in the initial stages of the project review process rather than once a transmission project is selected and clarify the timing at which the deposit would apply and whether deposit milestones might be more appropriate. To the extent that Florida Parties opted to retain a study deposit, the Commission required Florida Parties to provide each transmission developer with a description of which costs the deposit would be applied to, how those costs would be calculated, and an accounting of the actual costs to which the deposit is applied. The Commission further required Florida Parties to modify their transmission developer qualification review process to provide for the refund of interest on the excess deposited funds where that payment is refunded to a proposed transmission developer and provide that disputes regarding the accounting be addressed through the dispute resolution procedures.[413]

236. Regarding the specific deadlines for the various milestones in the CEERTS process, the Commission found reasonable Florida Parties' proposal to require June 1 as the date by which information in support of a transmission project must be submitted to FRCC in order to be considered in a given transmission planning cycle.[414]

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[413] *Id.* PP 170-171.

[414] *Id.* P 166.

ii. Requests for Rehearing or Clarification

(a) Summary of Requests for Rehearing or Clarification

237. Duke Energy argues that the Commission's decision that Florida Parties must remove the requirement that transmission developers provide certain studies and information will lead to inefficiencies in the transmission planning process. It asserts that the Commission's decision is contrary to its statement in Order No. 1000 that the information requirements did not have to be "so relaxed that they allow for relatively unsupported proposals"[415] because the Commission's decision in the First Compliance Order eliminates all requirements other than path, voltage, estimated cost, and identification of the developers and contractors. In particular, Duke Energy argues that the Commission is effectively allowing a transmission developer to propose a CEERTS project without knowing the impacts of its proposed project or the transmission needs that the project would address. Furthermore, Duke Energy states, absent the requirement that the transmission developer make some showing that its proposed transmission project is equal to or superior to avoided projects from the current regional transmission plan, Florida Parties will not know which local projects to even compare such a CEERTS project to for cost-effectiveness purposes. Finally, it asserts that transmission developers should have the information needed by participating in the process as stakeholders.

(b) Commission Determination

238. We deny Duke Energy's request for rehearing. We affirm the finding in the First Compliance Order that it is unreasonable to require that a prospective transmission developer provide, as part of its submission of a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation, planning studies and a reliability impact assessment, load flow analysis demonstrating performance utilizing the FRCC load flow model, and identification of projects in the regional transmission plan that would be affected or avoided as well as any additional projects that may be required.[416] Order No. 1000 requires that the regional transmission planning process, not transmission developers, identify transmission solutions that more efficiently or cost-effectively meet the transmission planning region's needs.[417]

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[415] Duke Energy Rehearing at 32 (quoting Order No. 1000, FERCD Stats. & Regs. ¶ 31,323 at P 326).

[416] First Compliance Order, 143 FERC ¶ 61,254 at PP 168-169.

[417] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 4, 6, 11.

Accordingly, it is appropriate that detailed studies necessary to evaluate whether a proposed transmission project is a more efficient or cost-effective solution to the region's transmission needs be performed as part of the regional transmission planning process, and it would be inappropriate to prevent a transmission developer from proposing a transmission solution into the regional transmission planning process unless it has first performed that analysis and provided it to the regional transmission planning process. As Florida Parties note, all transmission developers that want to propose a transmission project for potential selection in the regional transmission plan for purposes of cost allocation should have some of the information needed to perform certain transmission planning studies by participating in the process as stakeholders. A transmission developer will also likely have performed an analysis based on this information when deciding whether to submit a transmission project for potential selection and has an incentive to provide as much information as possible to assist the region in determining whether its proposed transmission project will be a more efficient or cost-effective solution. For this reason, the Commission found in the First Compliance Order that Florida Parties may revise their Attachment Ks to permit a transmission developer to submit any detailed studies and technical analysis it performed to support a proposed transmission project if the transmission developer chooses to do so.[418] However, Order No. 1000 places the obligation to conduct a regional transmission planning process that produces a regional transmission plan that identifies the more efficient or cost-effective solutions to regional transmission needs on the public utility transmission providers.

iii. Compliance

(a) Summary of Compliance Filings

239. Florida Parties propose various revisions to the information requirements that a prospective transmission developer must submit in support of a transmission project proposed in the regional transmission planning process. To address the Commission's directive that the proposed information requirements apply only to transmission developers that propose a CEERTS project for selection in the regional transmission plan for purposes of cost allocation, Florida Parties propose a set of "bare bones" information requirements that a project sponsor that does not also intend to develop the project must provide.[419] Specifically, a project sponsor that does not also intend to be a project developer must submit: (1) a general description of the transmission facilities being

[418] First Compliance Order, 143 FERC ¶ 61,254 at P 169.

[419] *E.g.*, Florida Power & Light Co., Transmittal at 23-24.

proposed; (2) the general path of the transmission lines; and (3) the transmission system that would interconnect with the proposed CEERTS project.[420]

240. Florida Parties also propose to revise their Attachment Ks so that a transmission developer may submit the transmission planning studies and information voluntarily. Specifically, a transmission sponsor that intends to develop a transmission project it proposes *may* submit any studies and analysis it performed to support the proposed CEERTS project, including: a reliability impact assessment; a load flow analysis; identification of transmission projects in the regional transmission plan that would be affected or avoided, as well as any additional transmission projects that may be required; and a demonstration through a technical evaluation process that the CEERTS project is equal to or superior to avoided transmission projects from the current regional transmission plan.[421]

241. As discussed in the Qualification Criteria section, with respect to the Commission's directive to provide additional detail in their Attachment Ks about the information deposit that Florida Parties will use to evaluate proposed CEERTS projects, Florida Parties now propose to reduce the deposit amount to a flat amount of $100,000. To the extent the deposit amount remains unspent, the unexpended funds will be refunded to the project sponsor, with interest. In addition, under the revised Attachment Ks, FRCC shall provide an accounting of the actual costs of the CEERTS project analysis to the project sponsor after the analysis is complete. Further, Florida Parties propose that any disputes regarding the accounting for specific deposits will be addressed through the dispute resolutions procedures.[422] In support of the proposed deposit, Florida Parties state that the sponsorship of regional transmission projects will result in incremental costs to the FRCC. Florida Parties thus argue that the deposit will not only ensure that Florida Parties' costs for processing a CEERTS project are not imposed on FRCC members and Florida consumers, but will also discourage frivolous applications.[423] Florida Parties also note that a significant amount, if not all, of the evaluation work will have to be performed within the FRCC transmission planning process before the FRCC would be able to determine if the transmission project should be selected for the regional transmission plan

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[420] *E.g.*, Florida Power & Light Co., Attachment K, § 1.2.4.A.

[421] *E.g.*, Florida Power & Light Co., Transmittal at 24.

[422] *E.g.*, Florida Power & Light Co., Attachment K, § 1.2.4.D.

[423] *E.g.*, Florida Power & Light Co., Transmittal at 24.

for purposes of cost allocation. Therefore, Florida Parties argue that it is appropriate to require a single deposit to be submitted with the original project proposal.[424]

242. As part of the information requirement to provide a cost estimate of the regional transmission project, Florida Parties propose to include an option for a developer to submit a demonstration of its cost containment capabilities, including any binding agreement to accept a cost cap for the regional transmission project if it is selected as a CEERTS project.[425] Florida Parties also make revisions so that, rather than being an optional information requirement as originally proposed, a transmission developer *must* identify who will own, operate, and maintain the CEERTS project and the arrangements that would be made for such purpose.[426]

243. Florida Parties also included additional details regarding the timing of the review of project information submittals. Florida Parties propose that during the 30-45 days following the submission of transmission project proposals, the FRCC Planning Committee shall review the project sponsor submittals and ensure they meet the project threshold criteria and minimum requirements.[427] Further, Florida Parties revised their Attachment Ks to state that at the next FRCC Board meeting following the project submittal review, the FRCC Planning Committee shall provide an update to the FRCC Board related to all projects that have been submitted and deemed complete and will also post this information on the FRCC website (subject to any posting restrictions to protect Critical Energy Infrastructure Information (CEII) or other confidential information).[428]

(b) <u>Protests/Comments</u>

244. LS Power argues that the $100,000 project study cost deposit is excessive and unsupported.[429] LS Power states that Florida Parties provide no factual support for the assertion that the deposit amount is based on actual cost expectations.

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[424] *Id.* at 24.

[425] *E.g.*, Florida Power & Light Co., Attachment K, § 1.2.4.B.2.

[426] *Id.* § 1.2.4.B.3.

[427] *Id.* § 1.2.5.

[428] *Id.* § 1.2.6.

[429] LS Power Protest at 20.

245. FMPA/Seminole also object to Florida Parties' proposal to require the identification of who will own, operate, and maintain the CEERTS project. It argues that it is premature to require this sort of information, although it agrees that a project sponsor should be permitted to provide this information if available. FMPA/Seminole assert that the emphasis should be on gathering meaningful technical data rather than on gathering facts that are relevant after a project is determined to be technically feasible.[430] FMPA/Seminole assert that, in response to comments it made before Florida Parties submitted this second compliance filing, Florida Parties stated that the requirement to identify who will own, operate, and maintain a project "merely requires a high-level summary relating to a project's ownership and [operation and maintenance]," and that Florida Parties then give some examples (such as, "a developer might indicate that the project will be owned by a yet-to-be formed, wholly-owned subsidiary limited liability company of the parent company") and note that "it would be acceptable to state 'the owner expects to contract out [operations and maintenance] work to a third party that has not yet been identified."[431] FMPA/Seminole assert, however, that the proposal can be read to require much more specificity than Florida Parties indicated and may, inappropriately, be a basis for disqualification of a potential CEERTS project. FMPA/Seminole argue, therefore, that the requirement should be amended to be permissive, or clarified to make clear that all that is required is the high level summary that Florida Parties have indicated is their intent.[432]

(c) Answer

246. Florida Answering Parties explain that the $100,000 project study cost deposit is appropriate and in line with what other transmission planning regions are proposing in the industry. Florida Answering Parties state that they have experience with interconnection and transmission studies and made a good faith estimate of an amount that would be needed to analyze CEERTS proposals.[433]

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[430] FMPA/Seminole Protest at 78.

[431] FMPA/Seminole Protest at 79 (quoting Florida Parties December 17, 2013 response to FMPA/Seminole's comments, *available at* https://www.frcc.com/order1000/Shared%20Documents/Sponsor%20Documents/Seminole%20Comments%20on%20Revised%20Regional%20Planning%20Tariff%20Language-Fl%20Sponsors%20Response-Final.pdf).

[432] *Id.* at 79.

[433] Florida Answering Parties Answer at 61-62.

247. Florida Answering Parties respond to FMPA/Seminole's protest regarding the requirement to identify who will own, operate and maintain the project by explaining that, as FMPA/Seminole correctly explain, the intent of the requirement is that a developer provide a high-level summary of who the developer would be and how it expects to operate and maintain the project. Florida Parties state this is what the requirement requires as written and needs no revision. Florida Answering Parties argue that the Commission approved this information requirement in the First Compliance Order, and that they need the information if for no other reason than to confirm developer qualifications and enable communication during the project review process.[434]

(d) Commission Determination

248. We find that Florida Parties have complied with the directive to revise their Attachment Ks so that a transmission developer may, but is not required to, submit planning studies and other analysis to support a transmission project submitted for potential selection in the regional transmission plan for purposes of cost allocation.

249. We also find that that Florida Parties have justified the proposed $100,000 deposit requirement and provided appropriate detail regarding the accounting of the $100,000 deposit.[435] We agree with Florida Parties assertion that requiring the study deposit when transmission projects are submitted is reasonable given that FRCC will perform the studies prior to selecting a transmission project in the regional transmission plan for purposes of cost allocation. Although LS Power argues the deposit is unreasonable, we note that Florida Parties state that they made a good faith effort to estimate the cost FRCC will incur to perform the studies required to evaluate a proposed transmission project. In addition, we find that Florida Parties complied with the requirement in the First Compliance Order to provide an accounting of the actual costs of studying the CEERTS project to each project sponsor after the study has been completed. The revisions ensure that each transmission developer will understand which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied.[436]

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[434] *Id.* at 53 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 166).

[435] We addressed the requirement to add a provision that any disputes regarding the accounting for specific deposits be addressed under Florida Parties' dispute resolution process and the requirement to provide for interest on the excess deposited funds in the Qualification Criteria section of this order.

[436] *So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 at P 175.

250. In addition, we agree with FMPA/Seminole that the requirement for a transmission developer to identify who will own, operate, and maintain a proposed CEERTS project, and what arrangements would be made for such purpose, must be clarified. Florida Answering Parties state that, as FMPA/Seminole correctly state in their protest, the intent of the requirement is for a transmission developer to provide a high-level summary of who the developer will be and how it expects to operate and maintain the CEERTS project.[437] However, we agree with FMPA/Seminole that the requirement can be read to require more than this high-level summary and, therefore, we find that the requirement as written is not consistent with Florida Answering Parties' stated intent. For example, as FMPA/Seminole note in their protest, prior to making the second compliance filing, Florida Parties responded to concerns about this provision by stating that it would be sufficient for a transmission developer to indicate that a CEERTS project will be owned by a yet-to-be formed, wholly owned subsidiary limited liability company of the parent company and to state that a transmission developer expects to contract out operation and maintenance work to a third party that has not yet been identified.[438] Accordingly, to make the OATT language consistent with Florida Parties' stated intent, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to make clear that a transmission developer need only provide a high-level summary of who will own, operate, and maintain a proposed CEERTS project and that the identity of such parties must only be provided if available. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

251. Finally, we accept Florida Parties revisions to their Attachment Ks that provide a minimum set of information that a project sponsor that does not also intend to develop the project must provide. This enables an interested stakeholder to propose a project idea without having to meet the detailed information requirements a transmission developer must meet to propose a transmission project it intends to develop.

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[437] Florida Answering Parties Answer at 53.

[438] FMPA/Seminole Protest at 79 (citing Florida Parties December 17, 2013 response to FMPA/Seminole's comments, *available at* https://www.frcc.com/order1000/Shared%20Documents/Sponsor%20Documents/Seminole%20Comments%20on%20Revised%20Regional%20Planning%20Tariff%20Language-Fl%20Sponsors%20Response-Final.pdf).

d. Evaluation Process for Transmission Proposals Selection in the Regional Transmission Plan for Purposes of Cost Allocation

252. Order No. 1000 required each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.[439] The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.[440] In addition, the evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.[441]

i. First Compliance Order

253. In the First Compliance Order, the Commission found that Florida Parties' proposed method of evaluating proposed transmission projects did not comply with the requirements of Order No. 1000. Florida Parties' Attachment Ks provided only limited detail about how the FRCC regional transmission planning process will evaluate a transmission facility for selection in the regional transmission plan for purposes of cost allocation. Florida Parties' Attachment Ks also did not make clear that the FRCC regional transmission planning process will identify and evaluate transmission solutions other than those proposed by qualified transmission developers, and how the region will consider the relative efficiency and cost-effectiveness of any proposed transmission solution. The Commission noted that Florida Parties' Attachment Ks must include detail as to how the FRCC regional transmission planning process will determine, through analysis, potentially more efficient or cost-effective transmission solutions to regional transmission needs. Accordingly, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to file further compliance filings that describe in their OATTs, a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the FRCC regional transmission plan for purposes of cost allocation.[442] In addition, the Commission required Tampa Electric,

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[439] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

[440] *Id.* P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

[441] *Id.* P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

[442] First Compliance Order, 143 FERC ¶ 61,254 at P 195.

Florida Power, and Florida Power & Light, in the further compliance filing, to: (1) propose OATTs revisions providing how the FRCC will consider the relative efficiency and cost-effectiveness of proposed transmission solutions, as part of its evaluation of transmission solutions proposed in the regional transmission planning process; and (2) explain how the FRCC will ensure its evaluation of transmission solutions proposed in the regional transmission planning process will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected as a more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation. Likewise, the Commission stated that Orlando also should submit further revisions to its Attachment K consistent with these Commission's directives.[443]

254. The Commission found that Florida Parties' proposal to allow the Florida Commission to select the transmission developer or the regional transmission project in certain situations did not comply with Order No. 1000. The Commission explained that Order No. 1000 requires public utility transmission providers in a region to make the decision as to which developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. The Commission stated that Florida Parties must therefore include a developer selection process whereby the public utility transmission providers in the region ultimately decide which transmission developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation, as well as a process whereby the public utility transmission providers in the region select the transmission project to be included in the regional transmission plan. Thus, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to eliminate provisions in their OATTs that allowed a state to select a transmission facility in the regional transmission plan for purposes of cost allocation or to select the transmission developer for such transmission facility. Likewise, the Commission stated Orlando also should submit further revisions to its Attachment K consistent with this directive.[444]

255. In addition, the Commission found Florida Parties' proposal that "a [CEERTS] project that would otherwise cause unmitigated costs, including any abandonment costs that would otherwise have been recoverable, may go forward if project beneficiaries agree to mitigate the otherwise unmitigated costs of the adversely affected Transmission Provider, and the mitigation costs will be included in the CEERTS project cost" was

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[443] *Id.* P 196.

[444] *Id.* PP 197-198.

unclear.[445] The Commission stated that, for example, it was unclear whether the mitigation costs would be related to local transmission projects. The Commission also interpreted Florida Parties' proposal to include in the evaluation stage of a proposed CEERTS project any abandonment costs related to transmission facilities that would be displaced by that CEERTS project and that would otherwise have been recoverable as abandonment costs. The Commission stated that, should Florida Parties to retain this language in their Attachment Ks, they must clarify this language to explain, for example, how "project beneficiaries agree[ing] to mitigate the otherwise unmitigated costs of the adversely affected Transmission Provider" is related to Florida Parties' proposed cost allocation method and how this proposal complies with Order No. 1000.[446]

256. The Commission also found that Florida Parties' proposed evaluation of CEERTS projects lacked a clear timeline and failed to specifically state when a CEERTS project is ultimately selected in the regional transmission plan for purposes of cost allocation. Moreover, the Commission found that it was unclear whether the transmission developer was required to have "reliability, operational, tariff, cost recovery, liability, and contract provisions [sic] in place, or reasonably planned for"[447] before the CEERTS project is selected in the regional transmission plan for purposes of cost allocation. Accordingly, the Commission directed Florida Parties to clarify when a CEERTS project is selected in the regional transmission plan for purposes of cost allocation. The Commission further noted that it would determine the appropriateness of the provisions included in section 1.2.13 of their OATTs after Tampa Electric, Florida Power, and Florida Power & Light made their subsequent compliance filings. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives. [448]

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[445] *Id.* P 199 (citing Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.B.1).

[446] *Id.* P 199. The Commission also noted that, regarding the recovery of any abandonment costs in particular, a public utility transmission provider must file a petition for declaratory order or request under section 205 of the FPA to obtain Commission approval before recovering any abandoned plant costs. *Id.*

[447] *Id.* P 200 (citing Florida Power & Light Co., Attachment K, § 1.2.13).

[448] *Id.* P 200.

ii. Requests for Rehearing or Clarification

(a) Summary of Requests for Rehearing or Clarification

257. The Florida Commission asserts that Florida law provides it with express authority to make decisions concerning the selection of a transmission developer and a transmission project.[449] The Florida Commission asserts that due to its geography, Florida is unique. It states that the bulk transmission grid has connections only to the north with the Southern Company along the state's northern border with Georgia and the 3,600 MW transmission import limit represents only about 7.3 percent of total peak demand in peninsular Florida. Moreover, the Florida Commission asserts that the current integrated resource planning process provides that the majority of additional resources in the FRCC region will come from the construction of additional generation and the associated fuel delivery infrastructure, and not through the transmission of purchased power from other regions.[450] The Florida Commission states that, thus, in spite of its statutory authority over transmission planning, the First Compliance Order relegates the Florida Commission to a mere stakeholder role.[451] The Florida Commission asserts that Order No. 1000 encouraged transmission providers to find a role for state authorities, and the First Compliance Order greatly diminishes the Florida Commission's role.[452]

258. Additionally, the Florida Commission states that Order No. 1000 stipulated that the Commission will not intrude on state authority over transmission siting. However, the Florida Commission states that by undermining the Florida Commission's role over the ten-year site planning process, the Commission infringes on Florida's authority over siting. The Florida Commission notes that the ten-year site plan process identifies transmission line projects, which would ultimately be subject to the Florida Commission's siting authority under Florida statute.[453]

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[449] Florida Commission Protest at 7.

[450] *Id.* at 7.

[451] *Id.* at 7 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 197).

[452] *Id.* at 7 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 688; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 290, 337).

[453] *Id.* at 8 (citing FLA. STAT. § 186.801).

(b) Commission Determination

259. We deny the Florida Commission's request for rehearing. In the First Compliance Order, the Commission rejected Florida Parties' proposal to allow the Florida Commission to select the transmission developer or the regional transmission project in certain situations. For the reasons discussed therein, we affirm the First Compliance Order's directive that "public utility transmission providers must ultimately decide which transmission developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation, as well as select the transmission project to be included in the regional transmission plan."[454] As we discussed in the First Compliance Order, Order No. 1000 requires public utility transmission providers in a transmission planning region to make the decision as to which transmission developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation.[455]

260. That said, we understand the concerns presented by the Florida Commission regarding the role of state authorities in the regional transmission planning process. We reiterate that, "if it so chooses, a state commission may take an active role in that process, and can have a role in advising the public utility transmission providers on its views of the relative merits of proposed transmission projects or recommend particular proposals."[456]

261. Furthermore, as we explain above in the Affirmative Obligation to Plan section of this order, consideration of potential transmission solutions at the regional level is not inconsistent with state-level integrated resource planning processes. The Commission has found that to be just and reasonable under the FPA, a regional transmission planning process must consider transmission facilities that are driven by transmission needs associated with maintaining reliability, addressing economic considerations, and

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[454] First Compliance Order, 143 FERC ¶ 61,058 at P 197.

[455] *See, e.g., So. Carolina Elec. & Gas Co.*, 143 FERC ¶ 61,058 at P 197.

[456] *So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 at P 187; *Louisville Gas & Elec. Co.*, 147 FERC ¶ 61,241 at P 378 (finding the proposal to consider in the evaluation process any recommendation provided by state jurisdictional and/or governance authorities was consistent with statements in Order No. 1000 that a state commission may have a role in advising the public utility transmission providers on its view of the relative merits of proposed transmission projects or recommend particular proposals); *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at PP 293-295.

associated with public policy requirements and provide a means for allocating the costs of each type of transmission facility to beneficiaries.[457] The transmission needs and benefits of multiple transmission providers are considered in the regional transmission planning process and, therefore, Florida Parties and stakeholders may be able to identify needs and benefits not otherwise considered in its integrated resource planning process or associated with long-term firm transmission requests under the OATT, or identify transmission solutions to regional needs and benefits that are more efficient and cost-effective than those identified in an individual local transmission planning process.

iii. Compliance

(a) General Evaluation Process

(1) Summary of Compliance Filings

262. On compliance, Florida Parties state that they are proposing substantial changes to the evaluation process to: (1) make it more transparent and less potentially discriminatory; and (2) add specificity to the process such that stakeholders can more readily determine why a given project was or was not selected in the regional transmission plan for purposes of cost allocation.[458]

263. As discussed earlier in the Overview of the Regional Transmission Planning Process section of this order, Step 1 and Step 2 of the FRCC regional transmission planning process includes review of transmission projects that have been sponsored for potential selection in the regional transmission plan for purposes of cost allocation and an update to the FRCC Board related to all transmission project proposals that the FRCC Planning Committee has deemed complete.[459]

264. In Step 3, Florida Parties propose that the FRCC Planning Committee, together with an independent consultant, will conduct a technical analysis for the purpose of either developing or validating CEERTS project information and analysis provided by the sponsor. Florida Parties propose that the development/validation process will either develop the needed CEERTS project parameters or validate the information and analysis provided by the project sponsor. The analysis will examine transmission project technical information including: (1) a description of the transmission facilities being

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[457] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 689.

[458] *E.g.*, Florida Power & Light Co., Transmittal at 25.

[459] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.25-1.26.

proposed (e.g., voltage levels), the general path of the transmission lines, and interconnection points with the existing transmission system; (2) load flow analysis that demonstrates adequate NERC Reliability Standards performance utilizing the FRCC load flow model; (3) whether it can be demonstrated through a technical evaluation process that the CEERTS project is equal to or superior to avoided projects from the current regional transmission plan; (4) the identification of projects in the regional transmission plan for purposes of cost allocation that would be affected or avoided as well as any additional projects that may be required (the FRCC Planning Committee shall request that the entities responsible for the existing transmission project(s) that could be impacted by the proposed CEERTS project, or entities who would be required to implement additional local projects provide cost information to the FRCC Planning Committee to be used in their analysis); (5) a cost estimate for the proposed CEERTS project; and (6) the in-service date for the project.[460] The FRCC Planning Committee will provide a report to the FRCC Board that includes the FRCC Planning Committee's findings from this technical analysis and a recommendation as to whether the proposed CEERTS project should proceed to the next evaluation step.[461]

265. In Step 4, Florida Parties propose that over a period of two to three months from receipt of the FRCC Planning Committee report, the FRCC Board will review the FRCC Planning Committee report, as well as any comments on the report that may be submitted by the CEERTS sponsor. The FRCC Board will determine if the CEERTS project should proceed to the next evaluation step.[462]

266. In Step 5, Florida Parties propose that over a period of four to six months from the FRCC Board approval of the continuation of the CEERTS project evaluation in Step 4, the FRCC Planning Committee will continue the evaluation process under the direction of the FRCC Board.[463] For reliability and economic CEERTS projects, this aspect of the evaluation process includes a cost-benefit analysis performed by an independent consultant.[464] If the result of this analysis is a benefit-cost ratio of greater than 1.00, the CEERTS project will move forward in the process.[465] For a proposed public policy

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[460] *Id.* § 1.2.7(A).

[461] *Id.* 1.2.7(C).

[462] *Id.* § 1.2.8.

[463] *Id.* § 1.2.9.

[464] *Id.* §§ 1.2.9.B.1 & 1.2.9.C.

[465] *Id.* § 1.2.9(B)(1).

project, the FRCC Planning Committee will determine whether the proposed CEERTS project meets the public policy transmission needs identified.[466] If the FRCC Planning Committee verifies the benefits of a proposed public policy CEERTS project, then an independent consultant will calculate the estimated public policy CEERTS project costs.[467] Subsequently, the FRCC Planning Committee provides a report to the FRCC Board of its recommendation based upon its review of the analysis performed by the independent consultant.[468] The FRCC Board will then review the FRCC Planning Committee report as well as comments on the report to determine, using the applicable criteria, if the proposed CEERTS project should continue in the evaluation process.[469]

267. In Step 6, Florida Parties propose that over a period of three to four months following a decision that a CEERTS project should move forward in Step 5, the FRCC Board will conduct the final transmission developer and project selection process.[470] Florida Parties maintain the provision that states that, if a single project sponsor/developer is identified for a given CEERTS project, then that is the project sponsor/developer by default.[471] Florida Parties also maintain the provision that states that, if there are multiple project developers for the same CEERTS project or different proposed CEERTS projects to address the same need, then the FRCC Board will facilitate, if requested, an opportunity for the project sponsor/developers to collaborate with each other to determine how each of the project developers may share responsibility for portions of the CEERTS project.[472] Florida Parties propose that, if agreement is reached, then these project sponsors/developers will be selected (subject to review of the project developer's qualifications).[473]

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[466] *Id.* § 1.2.9.B.2.

[467] *Id.* §§ 1.2.9.B.2 & 1.2.9.C.3.

[468] *Id.* § 1.2.9.D.

[469] *Id.* § 1.2.9.E. Although included here for completeness, we discuss the evaluation process for proposed public policy CEERTS projects separately later in this section.

[470] *Id.* § 1.2.10.

[471] *Id.* § 1.2.10(B).

[472] *Id.* § 1.2.10(C)(1).

[473] *Id.* § 1.2.10(C)(2).

268. However, Florida Parties revised their Attachment Ks to state that if there is no agreement among multiple project developers, then the FRCC Board will select the project developer and the project (to the extent there are different CEERTS projects to address the same need(s)). This selection will be based on a comparative analysis of competing project developers under the qualification criteria, and a comparative analysis of competing transmission projects based on the technical analysis performed in Step 3 of the evaluation process and the independent consultant's cost-benefit analysis. Filing Parties also propose that the FRCC Board will engage an independent consultant to assist with the selection(s). The FRCC Board will notify the project developers as to the results of the evaluation process within 10 business days after selecting the approved project developer(s), and transmission project(s), for a needed transmission solution. The FRCC Board will also post on the FRCC website a report regarding the selection of the approved project developer(s) and transmission project(s). The report will provide the results of the comparative analysis undertaken by the FRCC Board's independent consultant and the reasons for the project developer and transmission project decision(s) that were made.[474] Further, Florida Parties state that the Florida Commission role in selecting among competing transmission developers and projects has been removed from their Attachment Ks.[475]

269. Florida Parties note that they have also revised their Attachment Ks to clarify the stage at which a project is considered approved and the developer notified accordingly.[476] Specifically, Florida Parties propose that at the next FRCC Board meeting after successful completion of the items contained in the transmission project evaluation and selection process, the FRCC Board will notify the project developer to proceed with the project as it has been approved for inclusion in the regional transmission plan for purposes of cost allocation. It is at this point that any transmission projects currently in the regional transmission plan that are being avoided due to the new CEERTS project will be removed from the regional transmission plan. The selected transmission project developer(s) shall then proceed with obtaining the necessary approvals and/or permits required to construct, own and operate the project including certification under the Transmission Line Siting Act.[477]

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[474] *Id.* § 1.2.10(C)(3).

[475] *E.g.*, Florida Power & Light Co., Transmittal at 25.

[476] *Id.* at 26.

[477] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.12(A).

(2) Protests

270. LS Power and FMPA/Seminole state that the timeline to evaluate regional transmission needs and transmission projects seeking cost allocation adds unnecessary delay to stretch the process in an attempt to justify a biennial process.[478] For example, LS Power notes Step 2 of the evaluation process is simply a report to the FRCC Board and then a posting of transmission projects. But LS Power notes that there is no set time for completion of Step 2, only that it is at the next FRCC Board meeting following Step 1.[479] However, LS Power points out that Step 3 cannot begin until after the FRCC Board meeting in Step 2. At the close of Step 3, which is slated to take five to seven months, LS Power and FMPA/Seminole assert that the "FRCC Planning Committee will provide a report to the FRCC Board that includes its findings from the technical analysis and a recommendation as to whether the proposed CEERTS project should proceed to the next evaluation step."[480] The FRCC Board then has "a period of two to three months" to review the report and determine whether the project should proceed to the next evaluation stage, and LS Power states that Florida Parties offer no insight as to why it requires two to three months for the FRCC Board to review the recommendation of the FRCC Planning Committee. According to LS Power, Florida Parties then provide another four to six months to evaluate the cost aspects of the proposals but Florida Parties offer no indication why the cost aspects of the projects are not evaluated while the technical aspects are being evaluated. LS Power adds that throughout the evaluation process there is excessive time provided both for evaluation and FRCC Board review, which FMPA/Seminole state increases incumbent opportunities to discriminate against the competing CEERTS projects. FMPA/Seminole note that because the FRCC Board meets only four times a year, Florida Parties' proposed timeline adds as much as seven to eight months to the period when a local project remains in the regional plan and eligible for incumbent incurrence of displaced project costs.[481]

271. FMPA/Seminole assert that Florida Parties did not sufficiently justify or explain the evaluation criteria, including how they will apply them in a non-discriminatory manner. FMPA/Seminole assert that Florida Parties still include FRCC Board determinations that are not bounded by criteria, inviting discrimination and ensuring unnecessary delay. FMPA/Seminole state that nothing in the Attachment Ks specifies the

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[478] LS Power Protest at 21; FMPA/Seminole Protest at 74.

[479] FMPA/Seminole Protest at 21.

[480] *Id.* at 56-58.

[481] *Id.* at 56-58.

criteria that the FRCC Board must apply in making the critical determination as to whether consideration of a proposed CEERTS project may proceed to the next step in the evaluation process. Moreover, FMPA/Seminole argue that this section does not require a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected, as required by Order No. 1000. FMPA/Seminole also describe the FRCC Board review as an unnecessary and time-consuming detour. Again, FMPA/Seminole argue that FRCC Board review and determination may bog down the process even longer, depending on when the FRCC Planning Committee report is issued, because the FRCC Board meets only four times a year.[482]

272. LS Power asserts that the proposed selection process is vague and inconsistent with Order No. 1000. LS Power states that Florida Parties failed to meet the mandate in the First Compliance Order to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the FRCC regional transmission plan for purposes of cost allocation. For transmission projects that have multiple sponsors, LS Power argues that Florida Parties' proposal to use project developer qualification criteria as a comparative tool to select the project sponsor is inappropriate.[483] According to LS Power, the purpose of the qualification criteria is to determine whether an entity is financially and technically capable of developing a project it sponsors; the criteria are not designed to be a qualitative measure of one project proposal against another. LS Power states that if Florida Parties believe that qualifications can be measured, they are required to quantify "the measuring stick" so that the Commission can determine whether the alleged distinctions are relevant to ratepayer savings or simply barriers to entry.[484] Likewise, LS Power notes that the comparative analysis of competing projects using the technical analysis in Step 3 of the evaluation process and the independent consultant's cost-benefit analysis in Step 5 provide no basis to differentiate among projects, other than on a cost basis. LS Power explains that many of the items in these sections are threshold items that a proposed transmission project either meets or does not. Thus, LS Power believes that Florida Parties' proposal is vague and identifies no items, other than cost, upon which to differentiate among projects. For this reason, LS Power asserts that this proposal should be rejected since it fails to comply with the Commission directive to explain how FRCC

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[482] *Id.* at 74-76.

[483] LS Power Protest at 24 (citing, for example, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.10.C.iii).

[484] *Id.* at 24-25.

will ensure its evaluation of transmission solutions will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected as the more efficient or cost effective solution.[485]

(3) Answer

273. In response to FMPA/Seminole's argument that the evaluation process still includes FRCC Board determinations that are not bounded by criteria, inviting discrimination and ensuring unnecessary delay, Florida Answering Parties state that FMPA/Seminole's fundamental issue is with FRCC governance, which requires FRCC Board approval to make changes to the previous FRCC Board-approved regional plan. Florida Answering Parties state that the FRCC Board is a balanced stakeholder board with a structure that has been reviewed and accepted by the Commission. Florida Answering Parties argue that FMPA/Seminole also ignore the fact that the project evaluation process is an FRCC process that includes all stakeholders, FMPA/Seminole among them, and includes reports with recommendations to the FRCC Board on whether to proceed based on the detailed criteria specified in the OATT.[486] Additionally, Florida Answering Parties state that the FRCC Planning Committee report provided to the FRCC Board will contain all of the information needed to make an informed decision, including the technical performance of the proposed projects, cost estimates for the proposed projects, as well as cost information on projects in the regional plan that would be affected or avoided.

274. According to Florida Answering Parties, it is appropriate for the FRCC Board to make a decision to proceed before moving on to the detailed cost-benefit analysis that painstakingly determines costs and benefits by the transmission provider. Florida Answering Parties assert that this detailed analysis by the independent consultant would be a wasted effort if the project did not make sense based on technical performance and overall cost effectiveness.

275. Florida Answering Parties state that LS Power misunderstands their proposal for situations where there are multiple developers.[487] Florida Answering Parties state that this process covers only the selection of developers, not projects, because by this stage in the process the FRCC Board has already selected the project. Florida Answering Parties

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[485] *Id.* at 25.

[486] Florida Answering Parties Answer at 63.

[487] *Id.* at 65 (citing Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.10.C.iii).

state that LS Power fails to acknowledge that this section of the OATT provides for an independent consultant to assist with the developer selection, prompt notification of developer selection (within 10 business days), and posting on the FRCC website of a report that will provide the results of the comparative analysis and the reasons for the project developer and project decisions that were made.[488]

276. Florida Answering Parties disagree with arguments that the timeline for CEERTS projects is prolonged. Florida Answering Parties state that the two-year process proposed is not prolonged, as the Commission has approved biennial regional planning cycles in other regions. Moreover, Florida Answering Parties state that the proposed milestones are not vague since they are defined in the OATT.[489]

277. Responding to Florida Answering Parties, FMPA/Seminole assert that Florida Parties do not address their concerns regarding the elongated planning process. FMPA/Seminole state that Florida Parties make no attempt to address the specific concerns raised FMPA/Seminole about unnecessary delays built into the proposed timeline that enhance the opportunity for discrimination against CEERTS projects. For example, argue FMPA/Seminole, Florida Parties do not address the months needlessly added to the process by deferring the final project selection to wait for an additional FRCC Board meeting (which meetings occur only four times a year). Nor do they justify the unnecessary detour to the FRCC Board, which allows for rejection of a CEERTS proposal with no criteria and no required explanation.[490]

(4) <u>Commission Determination</u>

278. We find that Florida Parties' compliance filings partially comply with the directive in the First Compliance Order to both explain and justify the proposed evaluation criteria, including how they will apply in a not unduly discriminatory manner to sponsored transmission projects, transmission projects proposed by stakeholders, and transmission projects identified in the FRCC regional transmission planning process. We find that certain aspects of the evaluation process are reasonable and comply with the directives in the First Compliance Order. Specifically, Florida Parties have revised their Attachment

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[488] *Id.* at 65 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 197, where the Commission required that the transmission providers, and not the Florida Public Service Commission, have the decisional role in identification and evaluation of transmission projects).

[489] *Id.* at 69.

[490] *Id.* at 34-35.

Ks to explain a six-step evaluation process and provide stakeholders an opportunity to provide input at several points. In addition, Florida Parties have included in their Attachment Ks the information the FRCC Planning Committee will use in Step 3 of the regional transmission planning process to conduct the initial technical analysis to determine if the FRCC Board should allow a transmission project to continue in the evaluation process. Florida Parties have also revised their Attachment Ks to explain the cost-benefit analysis that the independent consultant will perform in Step 5, which the FRCC Board also will use to determine whether to select a transmission project in the regional transmission plan for purposes of cost allocation.

279. However, while the FRCC Planning Committee will provide a report to the FRCC Board to explain the FRCC Planning Committee's findings about the technical analysis performed in Step 3, the Attachment Ks state that these reports will be provided only to the CEERTS project sponsor, only the CEERTS project sponsor will be given an opportunity to comment on the report, and that, in Step 4, the FRCC Board will only review comments from the CEERTS project sponsor in making its determination whether a transmission project should continue on in the evaluation process.[491] Similarly, the Attachment Ks state that the FRCC Planning Committee provides its reports with recommendations based on the cost-benefit analysis performed in Step 5 only to the CEERTS project sponsor, that only the CEERTS project sponsor will be given an opportunity to comment on the FRCC Planning Committee's recommendations, and that the FRCC Board will review comments from only the CEERTS project sponsor when determining if a transmission project is a more efficient or cost-effective solution.[492] We find that this aspect of the proposal does not comply with the requirement that the evaluation process provide an opportunity for meaningful stakeholder input.[493] Although Florida Answering Parties state that stakeholders have the right to be present and participate at the FRCC Board meeting that addresses, for example, the FRCC Planning Committee report about the technical analysis performed in Step 3,[494] stakeholders must be allowed to review the reports and recommendations (subject to any CEII or

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[491] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.2.7(C) & 1.2.8.

[492] *Id.* §§ 1.2.9(D) & 1.2.9(E).

[493] Order No. 1000-A, 139 FERC ¶ 61,132 at P 267. *See also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 153 (finding that the regional transmission planning process must provide for the timely and meaningful input and participation of stakeholders in the development of regional transmission plans).

[494] Florida Answering Parties Answer at 63.

confidential information protections) prior to the relevant FRCC Board meeting and be able to provide input in advance for the FRCC Board to consider. In addition, the FRCC Board must review input from *all* stakeholders when making any decisions in the evaluation process. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to: (1) provide stakeholders an opportunity to review and provide input on the FRCC Planning Committee report about the technical analysis performed in Step 3 and the report about the cost-benefit analysis in Step 5; and (2) make clear that the FRCC Board will consider input from all stakeholders when deciding in Step 4 whether a transmission project can move on in the evaluation process and when deciding whether a transmission project is a more efficient or cost-effective solution to regional needs in Step 6. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

280. Notwithstanding FMPA/Seminole's concern, we find that the OATT is sufficiently clear about how the FRCC Board will decide in Step 4 whether a transmission project can continue in the evaluation process. First, the Florida Parties' Attachment Ks provide that, in Step 4, the FRCC Board will review the FRCC Planning Committee report on the technical analysis performed in Step 3. Next, the FRCC Board provides an opportunity for comments on that report from the CEERTS project sponsor to determine whether the transmission project can proceed to the next evaluation step.[495] We find that, by referring to the FRCC Planning Committee report about the technical analysis performed in Step 3, the OATT is clear that the FRCC Board's decision in Step 4 about whether a transmission project can proceed in the evaluation process will be based on the technical analysis in Step 3. We also note that stakeholders will be provided additional information about the FRCC Board's decision because Florida Parties have revised their Attachment Ks to state that, at the end of Step 6, the FRCC Board will post on the FRCC website a report regarding the selection of CEERTS projects in the regional transmission plan for purposes of cost allocation, which will provide the results of the comparative analysis undertaken by the FRCC Board's independent consultant and the reasons the FRCC Board made its selection.[496] We find that these revisions comply with the requirement from the First Compliance Order requiring Florida Parties to explain how the FRCC will ensure its evaluation of transmission solutions proposed in the regional transmission planning process will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected

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[495] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.8.

[496] *Id.* § 1.2.10(C)(3).

or not selected as a more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation.

281. We note that Florida Parties have proposed a sponsorship model,[497] and under such a model, the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation is eligible to use the regional cost allocation method associated with the transmission project.[498] We find, however, that one aspect of Florida Parties' proposal must be revised to make this clear. Specifically, the Attachment Ks state that, if there is more than one transmission developer for the same CEERTS project *or if there are different proposed CEERTS projects to address the same need*, then the FRCC Board will select both the project *and* the project developer.[499] Thus, even when a transmission project that has been selected in the regional transmission plan for purposes of cost allocation has only one qualified transmission developer sponsor, the proposal would allow the FRCC Board in certain cases to select a transmission developer for the selected project that is different than the developer that sponsored it. Not only is this inconsistent with a sponsorship model, but the ability for the FRCC Board to choose a transmission developer for a selected transmission project other than the developer that sponsored the project also appears to conflict with another provision in the Attachment Ks, which states that, if a single transmission developer sponsors a CEERTS project, then that transmission developer is accepted by default (subject to review of the its qualifications).[500] Given this provision and the fact that Florida Parties have proposed a sponsorship model, our understanding is that, where different qualified transmission developers each sponsor different CEERTS projects to address the same need, each of the proposed CEERTS projects is associated with a single transmission developer. Thus, a qualified transmission developer that sponsors a CEERTS project will be eligible to use the regional cost allocation method if the CEERTS project the transmission developer sponsored is selected in the regional transmission plan for purposes of cost allocation. To avoid any confusion about the proposal and consistent with the determination here, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings revising their OATTs to make clear that a qualified transmission developer that sponsors a CEERTS project that is selected in the regional transmission plan for purposes of cost allocation is

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[497] *See, e.g.*, Florida Power & Light Co., Transmittal at 16 (noting that a sponsorship model has been adopted).

[498] *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

[499] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.10(C)(3).

[500] *Id.* § 1.2.10(B).

eligible to use the regional cost allocation for that project, even if more than one CEERTS project was proposed to meet the same need. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

282. For a proposed CEERTS project that has more than one developer associated with it, the FRCC Board will select both the transmission project and the project developer.[501] Where there is more than one transmission developer for the same CEERTS project and the non-developer project sponsor and potential project developers cannot reach agreement, then the FRCC Board will select the project developer based on a comparative analysis of competing project developers under the developer qualification criteria.[502]

283. We find that, where there is more than one transmission developer interested in developing a transmission project being sponsored by a non-developer, it is appropriate for the FRCC Board, with the help of an independent consultant, to choose the project developer based on a comparative analysis of the developers' qualifications. However, Florida Parties do not explain how and on what basis they will use the developer qualification criteria to conduct a comparative analysis of transmission developers that have already had to satisfy those criteria. In addition, it is unclear when Florida Parties will choose the developer for a transmission project that has been sponsored by a non-developer. For example, Florida Answering Parties state that developer selection occurs only after a project has been selected in the regional transmission plan for purposes of cost allocation,[503] but the Attachment Ks are not clear about the timing of the developer decision. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings revising their OATTs to provide how the FRCC Board will use the qualification criteria to choose among competing transmission developers for a transmission project that is being sponsored by a non-developer, as well as the timing of when that choice will occur. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

284. We disagree with LS Power and FMPA/Seminole that Florida Parties' two-year transmission planning process is unnecessarily long or unreasonable. However, while Florida Parties propose a biennial planning cycle that begins on January 1 of every other year, the timeline in the Attachment Ks would allow the evaluation process to go beyond

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[501] *Id.* § 1.2.4.A.

[502] *Id.* § 1.2.10.C.

[503] Florida Answering Parties Answer at 65.

the end of the second year of the two-year process. As discussed earlier in the Technical Criteria and Information Requirements sections of this order, the Commission accepts the proposed timeline for the first six-months of the FRCC transmission planning process, with CEERTS project proposals due on June 1 of the first year of the planning cycle. The Attachment Ks then provide up to 21 months to evaluate those proposals.[504] While the Attachment Ks state that this evaluation process may be shorter for some CEERTS projects,[505] we find it inconsistent with the proposed biennial planning cycle for the evaluation process to go beyond the end of the second year. In addition, as FMPA/Seminole note in its protest, it may take even longer than 21 months for the evaluation process because certain steps in that process cannot occur until after an FRCC Board meeting.[506] Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings revising their OATTs so that the evaluation process and final selection of transmission projects in the regional transmission plan for purposes of cost allocation occur within the proposed two-year planning cycle and to provide more detail about when the referenced FRCC Board meetings will occur. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

285. Finally, we note Florida Parties use the phrase "more efficient *and* cost effective" in their Attachment Ks[507] in reference to the standard used to evaluate proposed CEERTS projects, instead of the "more efficient *or* cost-effective" criterion established by Order No. 1000.[508] We therefore direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their respective OATTs so the standard they use in the evaluation process is to identify the more efficient *or* cost-effective transmission solutions to regional needs.

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[504] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.2.5 – 1.2.10.

[505] *Id.* § 1.2.14.

[506] *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.6. The OATTs do not state when or how often the FRCC Board meetings will occur.

[507] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K §1.2.9.

[508] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148 (requiring that public utility transmission providers evaluate, through the regional transmission planning process, "alternative transmission solutions that might meet the needs of the transmission planning region more efficiently *or* cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process" (emphasis added)).

Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

(b) Cost-Benefit Analysis

(1) Summary of Compliance Filings

286. Florida Parties propose that, for reliability and economic transmission projects, an independent consultant will be retained to perform a cost-benefit analysis and will issue a written report of findings. The independent consultant will determine if the sum of the total estimated avoided project cost benefit and total estimated transmission line loss value benefit divided by the estimated CEERTS project cost is greater than 1.0. Such analysis will consider estimated costs and benefits for the period of the planning horizon that is used to prepare the regional transmission plan under development at the time the analysis is prepared.[509]

287. The estimated avoided project cost benefit for each enrolled transmission provider in the FRCC that has one or more projects being displaced by a CEERTS project will be determined by the independent consultant as follows: (a) each transmission provider that has one or more projects being displaced will develop an original installed capital cost estimate for each project being displaced and indicate in what year each such project would be projected to be in service; (b) the independent consultant will review each transmission provider's cost estimate and may determine to use it for further calculations, or may determine that the estimate is unreasonable and issue a revised cost estimate. If the original cost estimate is not used, justification for its rejection will be described in the independent consultant's report; (c) the independent consultant will calculate a comprehensive annual transmission revenue requirement associated with the original or revised cost estimate, depending on which will be used for further calculations, for each year that the displaced project would have been expected to be in service during the planning horizon, but for the CEERTS project. In calculating such an estimated revenue requirement, the independent consultant will take into account relevant factors and assumptions such as: the transmission provider's current Commission-approved rate of return on equity (if any); commitments regarding incentive rates; weighted average cost of capital; and on-going capital and operating expenses. The independent consultant will describe any relevant factors and assumptions used in the report; and (d) the net present value of the estimated annual revenue requirements for each project will be determined using the average discount rate of enrolled transmission providers weighted by their total capitalization (Enrolled Transmission Provider Discount Rate). The transmission provider will provide its discount rate and total capitalization to the independent

[509] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9(C).

consultant for purposes of this calculation. Such net present value will be the transmission provider estimated avoided project cost benefit for the transmission provider's displaced project(s). The independent consultant will sum all such transmission provider estimated avoided project cost benefits to determine the total estimated avoided project cost benefit.[510]

288. Under the proposal, the independent consultant will calculate the total estimated transmission line loss value benefit for each enrolled transmission provider. However, the FRCC Planning Committee will first determine the change in transmission losses caused by the CEERTS project. To do so, the FRCC Planning Committee will run simulations of the approved transmission plan with all proposed and existing transmission projects to establish base transmission losses for each transmission provider represented in the plan over the planning horizon. The FRCC Planning Committee will determine base case losses for the years during which the CEERTS project is expected to be in service during the planning horizon, under both peak and off-peak conditions. The FRCC Planning Committee will then modify the approved transmission plan to include a proposed CEERTS project and remove all displaced projects (after verifying that all reliability requirements are met) with the appropriate in-service dates. The modified plan is then analyzed for losses. The FRCC Planning Committee determines the CEERTS case losses for each transmission provider represented in the plan for the years during which the CEERTS project is expected to be in service during the planning horizon, at both peak and off-peak conditions. Finally, Florida Parties propose that FRCC Planning Committee determines the change in losses (whether negative or positive) in each year that the CEERTS project is in service for the planning horizon for each transmission provider.[511]

289. Florida Parties propose that, after the FRCC Planning Committee determines the change in losses caused by the CEERTS project, the independent consultant determines the value of the change in losses for each transmission provider. The independent consultant will use fuel cost and heat rate data from the U.S. Energy Information Administration to value losses. The independent consultant will then determine the net present value of the value of losses for each transmission provider using the Enrolled Transmission Provider Discount Rate.[512] Such net present value will be the transmission

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[510] *Id.* § 1.2.9(C)(1).

[511] *Id.* § 1.2.9(2).

[512] The Enrolled Transmission Provider Discount rate is the average discount rate of enrolled transmission providers weighted by their total capitalization. *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9(3).

provider estimated transmission line loss value benefit. The independent consultant sums the value for each transmission provider to determine the total estimated transmission line loss value benefit.[513]

290. The estimated CEERTS project cost is determined by adding together estimated developer cost, total estimated related local project costs, and total estimated displacement costs.[514]

291. The independent consultant will also determine the estimated developer cost for each CEERTS project. First, the developer of a CEERTS project will provide an original installed capital cost estimate for the developer's project and indicate which year the project is expected to be in service. The independent consultant will review the developer's original cost estimate and may determine to use it for further calculations, or may determine that the estimate is unreasonable and issue a revised cost estimate. If the original cost estimate is not used, justification for its rejection will be described in the independent consultant's report. The independent consultant will then calculate a comprehensive annual transmission revenue requirement associated with the original or revised cost estimate for the developer's project, depending on which will be used for further calculations, for the years during which the CEERTS project is expected to be in service during the planning horizon. In calculating such an estimated revenue requirement, the independent consultant will take into account relevant factors and assumptions such as: (1) the rates of return on equity approved by the Commission for the developer or its affiliates (if any); (2) commitments regarding incentive rates; proposed weighted average cost of capital; and (3) on-going capital and operating expenses. The independent consultant will describe any relevant factors and assumptions used in the report. Finally, the independent consultant will determine the net present value of the estimated annual revenue requirements using the Enrolled Transmission Provider Discount Rate. The net present value of these estimated annual revenue requirements shall be the estimated developer cost.[515]

292. The independent consultant will determine the total estimated related local project cost as follows. First, each enrolled transmission provider that will need to construct a local project to implement the CEERTS project will develop an original installed capital cost estimate for each such related local project and indicate what year such project is projected to be in service. The independent consultant will review the transmission

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[513] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9(C)(2).

[514] *Id.* § 1.2.9(C)(3).

[515] *Id.* § 1.2.9(C)(3).

provider's cost estimate and may determine to use it for further calculations, or may determine that the estimate is unreasonable and issue a revised cost estimate. If the original cost estimate is not used, justification for its rejection will be described in the independent consultant's report. The independent consultant then will calculate a comprehensive annual transmission revenue requirement associated with the original or revised cost estimate for each year that the local project is expected to be in service during the planning horizon. In calculating such an estimated revenue requirement, the independent consultant will take into account relevant factors and assumptions such as: the transmission provider's current Commission-approved rate of return on equity (if any); commitments regarding incentive rates; weighted average cost of capital; and ongoing capital and operating expenses. The independent consultant will describe any relevant factors and assumptions used in the independent consultant report. The net present value of the estimated annual revenue requirement for each local project will be determined using the Enrolled Transmission Provider Discount Rate. Such net present value will be the transmission provider estimated avoided project cost for the displaced project. The independent consultant will sum all local project costs to determine the total estimated related local project cost.[516]

293. The independent consultant will calculate total estimated displacement cost as follows. First, any enrolled transmission provider that has incurred, or expects to incur, costs associated with a project that is being displaced by a CEERTS project will provide an accounting to the independent consultant as to the level of its actual and expected expenditure on any displaced projects and any planned mitigation of such expenditures. The independent consultant will review the displacement cost estimate and determine the level of displacement costs that the CEERTS developer must pay each transmission provider that has expended funds on a displaced project. The net present value of such amount shall be calculated using the Enrolled Transmission Provider Discount Rate. Such net present value will be the estimated displacement cost and the independent consultant will sum all such costs to determine the total estimated displacement cost.[517] Florida Parties also note that they have removed the provision that allowed for proposed CEERTS projects to move forward if project beneficiaries agree to mitigate the otherwise unmitigated costs of the adversely affected Transmission Provider. Florida Parties state that the independent consultant will determine sunk costs, if any, of projects displaced by a CEERTS project, added to the overall CEERTS project cost, and reimbursed to each affected transmission provider in the event the CEERTS project goes forward. Florida

[516] *Id.* § 1.2.9(C)(3).

[517] *Id.* § 1.2.9(C)(3).

Parties state that this will account for costs that are sunk, or expected to become sunk, by virtue of a CEERTS project.[518]

(2) Protests/Comments

294. FMPA/Seminole state that Florida Parties' sole innovation—the addition of an independent consultant role—does not eliminate the incentive and opportunity for incumbents to use the proposal to include the costs that an incumbent transmission owner has already spent, or plans to spend, on a local transmission project that may be displaced as part of the cost of a regional transmission project. FMPA/Seminole asserts that including these costs will weigh the process against selection of the CEERTS project. While the independent consultant is to review the incumbents' "actual and expected expenditure on any displaced projects and any planned mitigation of such expenditures," the tariff does not authorize the consultant to disallow claimed displacement costs as unreasonable, so long as they are expended, or expected to be expended, during the CEERTS review process.[519] FMPA/Seminole further state that Florida Parties' provision for the independent consultant to review "planned mitigation" does not appear to include any obligation on the incumbent to plan or implement any mitigation; no adverse consequences apply if the incumbent elects not to mitigate expenditures on its local project, or even chooses to accelerate them during the CEERTS review process. Moreover, FMPA/Seminole note, Florida Parties still require the CEERTS project developer to reimburse those costs.[520] LS Power and FMPA/Seminole argue that the evaluation process Florida Parties propose inappropriately inflates the cost of a regional project by adding costs incurred on locally planned projects prior to those local projects being selected as the more efficient or cost-effective solution. LS Power states that if a regional project is determined to be more efficient or cost-effective than the local project and selected to move forward, Florida Parties would nevertheless recover the costs they incurred for the local project by adding those costs to the regional project. LS Power asserts this is accomplished by adding the total displacement costs to estimated developer costs and total estimated local project costs. LS Power notes that Order No. 1000 permits incumbent transmission owners to develop projects in their own territory and recover the costs from their own ratepayers so long as they do not seek regional cost recovery, but that Florida Parties seek to have it both ways. Their proposal would tilt the scale in favor

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[518] *E.g.*, Florida Power & Light Co., Transmittal at 25.

[519] FMPA/Seminole Protest at 55-56 (citing Tampa Electric Attachment K, § 1.2.9.C.3).

[520] FMPA/Seminole Protest at 53-54 (citing to a cost recovery provision, § 9.4.5.4).

of their local projects, but if a regional project still is determined to be more efficient and cost effect than the local project and selected to move forward, Florida Parties would nevertheless recover the costs they incurred for the local project by pinning those costs to the regional project. LS Power accepts that Florida Parties are, of course, required to conduct local planning and to determine the projects that they would construct on a local basis. However, their choice to proceed with those projects prior to a determination whether there are more efficient or cost effective regional projects should be at their risk, not ratepayers.[521]

295. FMPA/Seminole assert that during the approximately two-year CEERTS review period (assuming dispute resolution is not required), incumbents can add costs to the competing CEERTS project by incurring costs on the local projects that could be displaced by the CEERTS project.[522] FMPA/Seminole note that Florida Parties should not be permitted, through their sleight of hand, to ensure 100 percent cost recovery for expenditures on local projects displaced by a CEERTS project without a project-specific showing that all costs to be recovered were prudent and reasonable.[523] LS Power provides two hypothetical examples of two $60 million local projects that could be displaced by a $100 million regional project saving ratepayers $20 million. LS Power states that in the first, in the 12-18 months before the evaluation of the cost benefit of the CEERTS project, each incumbent transmission developer spends $15 million in development of its local project, despite the fact that it has never been determined to be more efficient or cost effective. LS Power continues that the $100 million regional project that would have saved ratepayers $20 million does not meet the cost benefit threshold, not because its cost changed, but because the incumbent transmission owners spent $30 million developing the more expensive projects without a determination that the project was more efficient or cost-effective. LS Power states that Florida Parties would count those costs as costs of the regional project, making its new price tag $130 million. In its second example, LS Power states that rather than incumbent transmission owners spending $15 million developing their local projects, assume that the incumbent owners only spent $8 million each. LS Power argues that under Florida Parties' proposal, the "cost" of the regional project would be $116 million, making it more efficient and cost-effective, but the incumbent transmission owners would have spent all of the potential ratepayer savings. Thus, LS Power states that the Commission should reject

[521] LS Power Protest at 11.

[522] FMPA/Seminole Protest at 55.

[523] FMPA/Seminole Protest at 63.

Florida Parties' effort to make their transmission development a "no-lose" proposition while saddling ratepayers with costs that should have been avoided.[524]

296. Additionally, FMPA/Seminole state that Florida Parties' proposal that the displacement cost added to the CEERTS project would be adjusted (i.e., increased) to reflect a "tax gross-up" would increase the assumed costs.[525] FMPA/Seminole argue that the "tax gross-up" would recognize that the transmission provider that receives payment for any displacement costs will need to treat that payment as taxable income, and, to be made whole, would need to be compensated for the tax consequences of receiving that income. Thus, according to FMPA/Seminole, the addition of the "tax gross-up" to the displacement costs included in CEERTS project costs for the cost-benefit analysis would make it even more unlikely that a CEERTS project would get selected.[526] In addition, FMPA/Seminole claim the cost-benefit calculation is distorted because Florida Parties do not include in the calculation of the cost of a proposed CEERTS project the additional costs associated with the proposal to allow incumbent transmission owners to recover the costs of CEERTS project through a contribution in aid of construction (CIAC) that has been grossed-up for income taxes.[527]

297. FMPA/Seminole also raise concerns about the proposal to calculate the costs using a cost-benefit analysis that is based on different time periods within the 10 year planning horizon.[528] FMPA notes that, contrary to Florida Parties' explanation, costs and benefits are not determined for the period of time that the CEERTS project is expected to be in service during the planning horizon. Rather Florida Parties propose to use, for each element included in the cost-benefit analysis, the period within the ten-year planning horizon when that particular element is expected to be in service. They note that the expected in-service date for the various elements may be different and application of a discount rate to these variously timed costs and benefits disables the analysis from

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[524] LS Power Protest at 12-13.

[525] FMPA/Seminole Protest at 59 (citing, for example, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.C).

[526] *Id.* at 59.

[527] *Id.* at 64-67.

[528] *Id.* at 67-68.

providing a non-discriminatory assessment as to whether a proposed project is more efficient or cost effective.[529]

298. FMPA/Seminole state that even assuming the calculation focused consistently on the costs incurred during the portion of the ten-year planning horizon that the CEERTS project was in service, that period would be too limited to capture the costs and benefits of a proposed CEERTS project. FMPA/Seminole note that by restricting the calculation to the portion of the ten-year planning horizon when the CEERTS project is expected to be in service, Florida Parties would capture only a tiny fraction of the benefits of the proposed CEERTS project. Given the long CEERTS evaluation process and CEERTS eligibility criteria that restrict such projects to major projects that will take significant time for permitting and construction, it is unlikely that more than a few years at the end of the ten-year planning horizon will be reflected in the net present value calculation. Thus, FMPA/Seminole assert that constraining to such a narrow window the assessment of transmission projects (whose economic value would typically be expected to grow as load grows over their forty year useful lives) all but ensures economic projects will not be shown cost-effective, defeating a key purpose of Order No. 1000.[530]

299. Moreover, FMPA/Seminole is concerned that restricting the cost-benefit analysis to the ten-year planning horizon also fails to adequately take account of the impact of ongoing costs. FMPA/Seminole acknowledge that Florida Parties' revised methodology incorporates a component for projected on-going capital and operating expenses for the planning horizon of the regional transmission plan under development in addition to the initial capital costs of such projects. While FMPA/Seminole agree that the inclusion of this ongoing component for cost-benefit analysis purposes is appropriate, FMPA/Seminole has serious concerns as to the efficacy of using the ten-year planning horizon as the timeframe for such analysis of the impact of these ongoing costs. FMPA/Seminole note in addition to the problem of mismatched in-service dates failing to capture equivalent periods of operation, a ten-year analysis period likely would not capture any meaningful differences in the projects being compared as to on-going capital costs, because it would be reasonable to expect that this component of cost would be minimal during the first ten years of service life of any given project. Thus, FMPA/Seminole state that limiting the analysis to a ten-year planning horizon will result in all ongoing expected costs not likely being captured, distorting the cost-benefit analysis.[531] FMPA/Seminole state that a benefit-cost analysis that spans a minimum of

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[529] *Id.* at 68-69.

[530] *Id.* at 70.

[531] *Id.* at 70-71.

20 years would better reflect the anticipated project costs over the lives of the projects being compared.

(3) <u>Answer</u>

300. Florida Answering Parties note that the issue of including displaced project costs as part of the CEERTS project cost is largely a red herring, as the provision is not intended to be invoked with any regularity. Florida Answering Parties anticipate that CEERTS projects will be major transmission projects with relatively long lead times such that displaced projects will not be far along, if beyond the initial planning stages, at all. They further claim that the proposed FRCC regional transmission planning process should minimize any impacts to displaced transmission projects where funds have already been expended. But, according to Florida Answering Parties, if those funds have been expended, then the transmission provider(s) whose projects are being displaced should be made whole for the investment that they have made. Florida Answering Parties also note that any disagreements over displacement costs could go through the dispute resolution process.[532]

301. Florida Answering Parties also argue that FMPA/Seminole's concern that these steps provide opportunity to incur displacement costs is largely unfounded as a practical matter. They explain that CEERTS projects will most likely involve planning several years in advance of the required in-service date and generally would displace smaller local projects with shorter lead times; thus, it is not likely that large displacement costs on smaller local projects would be incurred prior to the time that the CEERTS project is approved. In any event, Florida Answering Parties claim that there is no reasonable alternative to the possible incurrence of displacement costs given that a NERC-compliant transmission plan must always be in effect and projects required under the plan must move forward to meet in-service dates unless/until they are superseded by an approved CEERTS project.[533] Florida Answering Parties explain that that the inclusion of such costs in the costs of a CEERTS project is fully compliant with Order No. 1000 in that, if a transmission provider, for example, has spent several million dollars on a local project that will be displaced, the determination of whether the CEERTS project is more cost-effective than the displaced projected cannot be made without taking into account what has already been spent on the displaced project.[534]

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[532] Florida Answering Parties Answer at 68-69.

[533] *Id.* at 64.

[534] *Id.* at 67.

302. In response to concerns about the provision that allows the FRCC Board to choose among project developers, Florida Answering Parties state that this is a developer selection issue where the project already has been selected. Florida Answering Parties also note that an independent consultant will assist with the developer selection, prompt notification of developer selection (within 10 business days), and posting on the FRCC website of a report that will provide the results of the comparative analysis and the reasons for the project developer and project decisions that were made.[535]

303. Regarding the concern that the 10-year planning horizon may not be long enough to capture the costs and benefits of a proposed CEERTS project Florida Answering Parties propose to revise the period for the cost-benefit calculations to a 20-year period.[536] Florida Answering Parties state that they are willing to use the approach suggested by FMPA/Seminole of comparing levelized annual costs (e.g., ongoing capital, ongoing non-capital costs) and benefits for each of the projects being assessed over such 20-year period, recognizing that the projects being assessed may not be installed for the full 20-year period. Florida Answering Parties propose to make various changes to their Attachment Ks to implement this modification and state that they will submit such changes with their third regional compliance filing.[537]

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[535] *Id.* at 65.

[536] Florida Answering Parties note, however, that the 10-year planning horizon used in the regional transmission planning process will not change. *Id.* at 72 n.154.

[537] *Id.* at 72. Specifically, Florida Answering Parties propose to: (1) change the 2nd paragraph of section 1.2.9.C to read: "Such analysis will consider estimated costs and benefits for the 10-year period of the planning horizon that is used to prepare the regional transmission plan under development at the time the analysis is prepared plus an additional 10-year period (the '20-year period'). Levelized annual costs and benefits to determine the appropriate revenue requirements will be used and deemed appropriate"; (2) change the references to "the planning horizon" to read "the 20-year period" in the paragraphs describing the calculation of comprehensive annual transmission revenue requirements in sections 1.2.9.C.1 and 1.2.9.C.3; and (3) change the 5th paragraph of section 1.2.9.C.2 to read "The change in losses for year 10 of the planning horizon will be held constant for years 11-20 of the 20-year period. The change in losses (whether positive or negative) in each year that the CEERTS project is in service for the 20-year period is determined for each transmission provider."

(4) <u>Commission Determination</u>

304. We find that Florida Parties' proposed cost-benefit portion of the evaluation process partially complies with the requirement in the First Compliance Order to revise their Attachment Ks to explain how they will consider the relative efficiency and cost-effectiveness of proposed transmission solutions, as part of the evaluation of transmission solutions proposed in the regional transmission planning process. Overall, we find that, with the changes we require below, the proposed cost-benefit analysis will allow the FRCC regional transmission planning process to identify potentially more efficient or cost-effective transmission solutions to regional transmission needs.

305. We disagree with FMPA/Seminole's concerns regarding the proposal that the cost-benefit analysis use costs based on when a specific element is expected to be in service rather than calculating the cost of all elements based on the period when the CEERTS project is expected to be in service. It is appropriate for the cost-benefit analysis to include a comparison of costs that is based on a specific element's expected in-service date because it allows the analysis to capture additional costs and/or additional benefits based on when certain elements are expected to actually go into service. However, Florida Parties do not specify the time period over which the estimated displacement costs are calculated. Florida Parties' Attachment Ks specify that the annual transmission revenue requirement associated with the cost estimate for a CEERTS project or a local transmission project that an enrolled transmission provider will need to construct to implement a CEERTS project will be calculated for the years during which the project is expected to be in service during the planning horizon.[538] Moreover, Florida Parties propose to measure the benefits of a CEERTS project by calculating the annual transmission revenue requirement associated with the cost estimate for each transmission project displaced by the CEERTS project for each year that the displaced transmission project would have been expected to be in service during the planning horizon,[539] as well as the change in losses in each year that the CEERTS project will be in service for the planning horizon.[540] Florida Parties' Attachment Ks, however, lack such specificity with respect to the time period over which estimated displacement costs will be calculated. We find that this information is necessary to ensure that all of the benefits and all of the costs of proposed CEERTS projects are being calculated over the same time horizon. Therefore, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings

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[538] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.C.3.

[539] *Id.* § 1.2.9.C.1.

[540] *Id.* § 1.2.9.C.2.

revising their OATTs to specify that estimated displacement costs will be calculated based on the annual transmission revenue requirement associated with the costs incurred, or expected to be incurred, for a transmission project that is being displaced by a CEERTS project for each year during the planning horizon. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

306. In addition, the concern about the period of time the costs will be considered is mitigated by the proposal in Florida Answering Parties' answer to change the length of time the cost-benefit analysis will consider from 10 years to 20 years. We find that using a 20-year period to calculate costs in the cost-benefit analysis will more accurately account for the costs and benefits because various elements used in the analysis are calculated based on the expected in-service date, which may cover different periods. Thus, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs so that the cost-benefit analysis uses a 20-year period rather than a 10-year period. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

307. We find it appropriate for the cost-benefit analysis to consider the actual and expected expenditure on any displaced projects and any planned mitigation of such expenditures when performing the cost-benefit analysis that is part of the evaluation process to determine whether a transmission project should be selected in the regional transmission plan for purposes of cost allocation.[541] If an incumbent transmission provider has already incurred, or expects to incur, expenses related to a transmission project that will be displaced by a potential CEERTS project, it is reasonable to consider those costs in the cost-benefit analysis because the transmission provider may have incurred them on the displaced transmission project while working towards satisfying identified transmission needs. We note that, under Florida Parties' proposal, the incumbent transmission provider must provide an accounting of actual and expected expenditures for the relevant transmission project that may be displaced, as well as any planned mitigation of such expenditures, and the independent consultant will review that information to determine which costs are appropriate to include in the cost-benefit analysis.[542] All such estimates will also be reviewed by the FRCC Planning Committee

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[541] However, as discussed below in the Cost Allocation Method for Reliability, Economic, and Public Policy Transmission Projects section, we reject Florida Parties' proposal to allow transmission providers to automatically recover all displaced transmission project costs from a transmission developer without having to make a further filing at the Commission.

[542] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.C.3.

and will be open to review and comment by stakeholders prior to the FRCC Board making a final decision on whether to select a transmission project in the regional transmission plan for purposes of cost allocation.[543] We find this review process and transparency mitigates FMPA/Seminole's concern with respect to the discretion transmission providers have regarding their own expenditures.

308. We disagree with FMPA/Seminole's assertion that it is not appropriate that displacement cost added to the CEERTS project in the cost-benefit analysis would be adjusted (i.e., increased) to reflect a tax gross-up. As the Commission found in the First Compliance Order in response to a similar concern regarding a gross up for income taxes related to CIAC payments, we find that it is just and reasonable to consider the tax burden when evaluating the total project costs of a proposed CEERTS project.[544]

309. Regarding FMPA/Seminole's concern that Florida Parties propose to require payments associated with CIACs to be grossed up for income taxes but that the cost-benefit analysis does not include the additional costs associated with this tax gross-up, we note that Florida Answering Parties propose to revise the Attachment Ks to remove the requirement that CIAC payments be grossed-up for income taxes. We find this proposal addresses the concern because it makes the treatment of CIACs in the cost-benefit analysis consistent with how CIAC payments are required to be made. Therefore, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings revising their OATTs to remove the requirement that CIAC payments be grossed-up for income taxes.[545] Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

(c) Evaluation of Transmission Needs Driven by Public Policy

(1) Summary of Compliance Filings

310. For a proposed public policy project, the FRCC Planning Committee will determine whether the proposed CEERTS project meets the public policy transmission needs identified.[546] If the FRCC Planning Committee verifies the benefits of a proposed

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[543] *Id.* § 1.2.9.D & § 1.2.9.E.

[544] First Compliance Order, 143 FERC ¶ 61,254 at P 286.

[545] We also address the treatment of CIACs below in the Cost Allocation section of this order.

[546] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.B.2.

public policy CEERTS project, then an independent consultant will calculate the estimated public policy CEERTS project costs using the method outlined in the cost-benefit analysis.[547] Subsequently, the FRCC Planning Committee provides a report to the FRCC Board of its recommendation based upon its review of the analysis performed by the independent consultant.[548] The FRCC Board will then review the FRCC Planning Committee report as well as comments on the report to determine, using the applicable criteria, if the proposed CEERTS project should continue in the evaluation process.[549]

(2) Protests

311. FMPA/Seminole assert that Florida Parties must clarify how solutions to public policy needs will be studied and evaluated in the regional planning process. FMPA/Seminole state that it is unclear which provisions describe the evaluation process and what studies Florida Parties will use to analyze proposed public policy projects. FMPA/Seminole note that, for example, Florida Parties propose new language providing that "[t]he regional analysis shall include consideration of potential transmission solutions to transmission needs driven by public policy requirements," but neither describes what that regional analysis will entail, nor identifies the provisions explaining the regional analysis required for potential public policy projects.[550] FMPA/Seminole also note that another part of the Attachment K points to section 11 as the source of Florida Parties' "process" for "identify[ing]" a "proposed public policy project."[551] But, according to FMPA/Seminole, that cannot be correct because section 11 focuses only on identification of public policy *needs* and does not describe any process for identifying or evaluating potential *projects* to address those needs.[552]

312. FMPA/Seminole state that, in response to comments it made before Florida Parties submitted this second compliance filing, Florida Parties indicated that the same

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[547] *Id.* §§ 1.2.9.B.2 & 1.2.9.C.3.

[548] *Id.* § 1.2.9.D.

[549] *Id.* § 1.2.9.E.

[550] FMPA/Seminole Protest at 24 (citing, for example, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.1).

[551] *Id.* at 24 (citing, for example, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.B.2).

[552] *Id.* at 24.

evaluation process that applies to reliability and economic CEERTS project will apply to public policy CEERTS projects.[553] FMPA/Seminole assert that as currently drafted, the evaluation process only addresses displacement projects (i.e., regional projects that will displace local projects contained in the roll-up regional plan) and must be modified to appropriately address the regional analysis required for public policy projects. FMPA/Seminole cite, as an example, that the proposed cost-benefit analysis includes costs of avoided and affected projects, which is irrelevant to evaluating whether a regional solution may meet transmission needs driven by public policy requirements. FMPA/Seminole claim that, if not modified, project sponsors may have to pay for analyses that have no bearing on the selection criteria applicable to their proposed projects. FMPA/Seminole assert, therefore, that the Commission should direct Florida Parties to revise the different steps of the proposed evaluation process so that: (1) they address public policy projects, as well as displaced projects; and (2) the information and studies required for public policy projects are tied to the selection criteria for that type of project.[554]

313. FMPA/Seminole state Florida Parties should also be directed to clarify the proposal that "[i]f the benefit of a CEERTS public policy project has been verified, then the project will move forward in the process."[555] FMPA/Seminole argue that the Attachment K does not provide any criteria for measuring or "verify[ing]" the "benefit" of a CEERTS public policy project. In addition, FMPA/Seminole note that this provision does not provide a methodology for determining whether the benefits of a public policy project outweigh its costs, nor does the proposed language include criteria for selecting among the alternative public policy projects that may be proposed to address identified public policy needs. As a result, FMPA/Seminole assert that the proposal for the FRCC Board to determine whether a proposed public policy is a cost-effective or more efficient solution to regional transmission needs, lacks adequate criteria to guide decision makers.[556]

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[553] *Id.* at 24-25.

[554] *Id.* at 26.

[555] *Id.* at 27-28 (citing, for example, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.B.2).

[556] FMPA/Seminole Protest at 28 (citing, for example, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.E).

(3) <u>Answers</u>

314. Florida Answering Parties disagree that the process for identifying and evaluating potential CEERTS projects to address public policy needs is unclear. Florida Answering Parties note that that their Attachment Ks state that, "If a public policy transmission need is identified for which a solution is required, CEERTS and local projects shall be proposed to address such a need."[557] They state, therefore, that there is no special process for developing solutions to needs that are public policy in nature; if a public policy need is identified, a solution is developed just as it would be for any type of need.[558]

315. Florida Answering Parties agree with FMPA/Seminole that certain aspects of the identification and evaluation process regarding avoided transmission projects is irrelevant to a potential public policy transmission project.[559] Florida Answering Parties assert, however, that those provisions will not apply to public policy CEERTS projects and that the presence of these provisions in no way disqualifies public policy projects from review. In response to FMPA/Seminole's concern that public policy project sponsors might be required to pay for unnecessary studies, Florida Answering Parties assert that it is not their intent that inapplicable studies be conducted of potential public policy projects, and they do not believe that this is mandated under the proposed tariff provisions.[560]

316. Florida Answering Parties state that FMPA/Seminole assert that there are no adequate criteria for approval of a public policy project, and no cost-benefit analysis. However, Florida Answering Parties assert FMPA/Seminole do not appear to fully apprehend the public policy planning construct, since the least-cost project necessary to meet an otherwise unmet public policy need discovered through the section 11 process, has met the criteria for approval (assuming that the transmission need is confirmed by sufficient transmission service commitments). Florida Answering Parties state that there is no cost-benefit analysis other than validation of the project as the least-cost solution

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[557] Florida Answering Parties Answer at 21 (citing, for example, Florida Power & Light Co., FPL OATT, Attachment K, § 11.1).

[558] *Id.* at 21 (citing, for example, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.1).

[559] *Id.* at 21 (citing, for example, Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.2.7.A.4 & 1.2.2.B).

[560] *Id.* at 21-22.

and the project may be the only solution in which case it would be approved. They explain that, in the event there are equally effective alternative solutions, the least-cost project would be approved. Moreover, Florida Answering Parties state that the FRCC Board would not have unilateral discretion to reject the least-cost project necessary to meet an otherwise unmet public policy requirement and FMPA/Seminole are incorrect in their claims to the contrary.[561]

317. In reference to FMPA/Seminole's question regarding how cost-benefit analysis is applied to projects proposed to address public policy needs, Florida Answering Parties state that if the benefits of a CEERTS public policy project have been verified, then the total cost of the CEERTS public policy project is determined by the methodology set forth in the cost-benefit analysis to calculate the estimated costs for any CEERTS project.[562] Again, Florida Answering Parties note that it is possible that there will be no estimated displacement costs associated with a public policy project if the projects in that category are not displacing other transmission projects.[563]

318. FMPA/Seminole state in response that Florida Parties have, in fact, not clarified the process for planning public policy projects. FMPA/Seminole, noting Florida Parties' statements that certain tariff-required studies would not apply or would not disqualify a public policy project, state that neither the tariff nor Florida Parties' answer: (1) provides a mechanism for waiving such unnecessary studies to the extent they are specifically identified in the tariff; (2) identifies what studies would be relevant and required in evaluating public policy projects; or (3) explains what happens to an identified public policy need if no one steps forward to sponsor a potential solution to that need.[564] Additionally, FMPA/Seminole state that the "least-cost" criterion appears nowhere in the tariff with reference to public policy projects. FMPA/Seminole state that if a project must be approved when a need has been "confirmed" and the project is "least-cost," the tariff should say so, and Florida Parties should be required to explain and justify why those criteria meet the requirements of the Compliance Order and Order No. 1000. FMPA/Seminole also request Florida Parties clarify how the "least-cost" criterion will be applied. For instance, FMPA/Seminole questions how a proposed public policy project with commitments for less than the full capacity would be considered and whether preference would be given to the smallest project that can meet the transmission service

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[561] *Id.* at 23.

[562] Florida Power & Light OATT, Attachment K, § 1.2.9.C.3.

[563] Florida Answering Parties Answer at 52.

[564] FMPA/Seminole Answer at 18-19.

commitments or to a different public policy project with less capacity.[565] FMPA/Seminole further states that, contrary to Florida Answering Parties' answer, putting the FRCC in charge of these types of decisions without clear criteria does not satisfy the directives in the First Compliance Order to establish a transparent and not unduly discriminatory regional public policy planning process.[566]

(4) Commission Determination

319. We find that Florida Parties have partially complied with the requirement to have an evaluation process that applies to CEERTS projects proposed to address identified transmission needs driven by public policy requirements. The Attachment Ks provide that the total cost of a proposed public policy CEERTS project will be calculated using the method outlined in the provisions describing the cost-benefit analysis. In addition, we find reasonable Florida Answering Parties' explanation that it will only perform the studies and apply the evaluation criteria that are relevant to the particular transmission project being considered. Florida Answering Parties also explain in their answer that the least-cost project necessary to meet an otherwise unmet transmission need driven by public policy requirements will be selected in the regional transmission plan for purposes of cost allocation.[567] However, we agree with FMPA/Seminole that this least-cost criteria is not in the Attachment Ks. We therefore direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to include this least-cost criterion for public policy CEERTS projects. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

320. In addition, we agree with FMPA/Seminole that the Attachment Ks are unclear as to how the benefits of a public policy-driven CEERTS project will be "verified," which is proposed as a necessary step for such a project to move forward in the evaluation process.[568] While Florida Answering Parties state that the verification is completed by confirming there are sufficient transmission service commitments, the Attachment Ks do not state that this is the basis for verification. Even if the Attachment Ks were clear on this point, as we discuss below in the Cost Allocation Method for Public Policy Projects section of this order, we find the requirement that the need for access to the selected

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[565] *Id.* at 19.

[566] *Id.* at 20.

[567] Florida Answering Parties Answer at 21.

[568] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9(C)(2).

public policy transmission project must be confirmed through transmission service requests under the standard OATT processes does not comply with Order No. 1000 because it is a form of participant funding. Therefore, Florida Parties may not require that the benefits of a public policy CEERTS project be verified by sufficient transmission service commitments before being able to move forward in the evaluation process. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to describe how the benefits of a public policy CEERTS project will be verified other than by relying on confirmation of sufficient transmission service commitments. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

e. Reevaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

321. To ensure the incumbent transmission provider can meet its reliability needs or service obligations, Order No. 1000 required each public utility transmission provider to amend its OATT to describe the circumstances and procedures for reevaluating the regional transmission plan to determine if alternative transmission solutions must be evaluated as a result of delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation.[569] If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.[570]

i. First Compliance Order

322. In the First Compliance Order, the Commission found that the provisions in Florida Parties' filings addressing the reevaluation of proposed transmission projects partially complied with the requirements of Order No. 1000. The Commission noted that Florida Parties' proposal identified when the FRCC will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation

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[569] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 263, 329; Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

[570] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

of alternative transmission solutions. However, the Commission stated that it was not clear that, for CEERTS reliability-based projects which are delayed, an incumbent transmission provider has an opportunity to propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility would be evaluated for possible selection in the regional transmission plan for purposes of cost allocation. Furthermore, Florida Parties did not explain whether they will retain or remove a project from the plan based on a delay and what they will consider in making that decision.[571]

323. Florida Parties proposed that if the revised cost estimate for a CEERTS project is substantially more than the cost estimate upon which the project was approved, the FRCC Planning Committee or FRCC Board may reexamine the cost-effectiveness of the project. The Commission accepted Florida Parties' proposal, but noted that the proposal must be implemented such that it applies equally to all CEERTS projects, whether proposed by an incumbent transmission provider or nonincumbent transmission developer.

324. In addition, Florida Parties proposed that "[i]f a reliability-based CEERTS project is abandoned by the developer, the Transmission Provider(s) has a right of first refusal to complete the project or propose alternatives to ensure that the reliability need is met."[572] If a non-reliability based CEERTS project is abandoned, then other potential developers may offer to complete the project, and Florida Parties will use the developer evaluation and selection used for a CEERTS project when first proposed. The Commission found that this proposal was consistent with Order No. 1000 for Florida Parties to permit the incumbent transmission provider the opportunity to complete an abandoned reliability-based CEERTS project. The Commission noted that this opportunity applied only to abandoned reliability-based CEERTS projects. However, the Commission stated that if the incumbent transmission provider decides not to complete the abandoned reliability-based CEERTS project and decides instead to build an alternative reliability-based CEERTS project, then Florida Parties must allow any other potential developer to propose an alternative CEERTS project. Therefore, the Commission required Florida Parties to revise their Attachment Ks to clarify that the right of first refusal only allows the incumbent transmission provider to complete an abandoned reliability-based CEERTS project, and that if the incumbent transmission provider decides not to complete

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[571] First Compliance Order, 143 FERC ¶ 61,254 at P 207.

[572] *Id.* P 209 (citing Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.17).

the abandoned reliability-based CEERTS project, then Florida Parties will allow any other potential developer to propose an alternative reliability-based CEERTS project.[573]

325. In the First Compliance Order, the Commission found that Florida Parties' proposed evaluation of CEERTS projects lacked a clear timeline and failed to state when a CEERTS project is ultimately selected in the regional transmission plan. Moreover, it was unclear whether the transmission developer was required to have all contractual obligations settled before the CEERTS project is selected in the regional transmission plan for purposes of cost allocation. The Commission noted that it will determine the appropriateness of the provisions included in section 1.2.13 after Tampa Electric, Florida Power, and Florida Power & Light make their subsequent compliance filings.

ii. Summary of Compliance Filings

326. Regarding a CEERTS reliability-based project that is abandoned, Florida Parties propose that, if the transmission provider decides not to complete the abandoned reliability based CEERTS project and decides instead to propose an alternative CEERTS project, then other potential developers will be given an opportunity to propose an alternative CEERTS project to ensure that the reliability need is met. The developer evaluation and selection shall follow the steps above for a CEERTS project when first proposed.[574]

327. Additionally, Florida Parties proposed OATT revisions to state that, if the FRCC Planning Committee determines that the delay in the CEERTS project would adversely affect reliability (e.g., would cause a violation of one or more NERC reliability standards), the FRCC Planning Committee will initiate a process to evaluate solutions to address the reliability concerns. The transmission providers whose system(s) are affected by these reliability concerns will be given an opportunity to propose solutions that they would implement within their service territories or footprints to address these reliability concerns, and their proposals can be evaluated as possible CEERTS projects if such transmission providers agree. The FRCC Planning Committee will fully evaluate the original CEERTS project delay along with any proposals for alternate solutions and will make a determination on how to proceed in a timely manner to ensure that the FRCC regional transmission plan supports adequate planning for a reliable transmission system for the FRCC region. Where possible, the review of a CEERTS project delay will be included within the biennial regional transmission planning cycle. However, if the FRCC Planning Committee determines that a CEERTS project delay needs to be evaluated

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[573] *Id.* P 210.

[574] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.17.

outside of the biennial regional projects planning cycle, the FRCC Planning Committee will notify the members and establish a schedule for the evaluation process. Like it does for the initial evaluation process, the FRCC Planning Committee will develop a report of the results of its evaluation and provide its findings to the FRCC Board for ultimate resolution.[575]

328. In clarifying the selection process, Florida Parties also expanded the existing provision that states that the FRCC Planning Committee, under the oversight of the FRCC Board, will verify that all required reliability, operational, tariff, cost recovery, liability and contract provisions are in place, or reasonably planned for, after a CEERTS project has been selected in the regional transmission plan for purposes of cost allocation. Florida Parties propose that the FRCC Planning Committee, under the oversight of the FRCC Board, will verify that all required reliability, operational, tariff, cost recovery, liability and contract elements are in place, or reasonably planned for, after a CEERTS project is included in the regional transmission plan. Florida Parties propose that the FRCC Board will monitor these elements and progress toward these elements in determining whether a CEERTS project has been delayed or abandoned. Florida Parties explain these factors as: (a) all certification and other requirements under the NERC Standards and Rules of Procedure; (b) implementation of communications and operational control features; (c) Commission requirements for providing transmission service over CEERTS facilities; (d) cost recovery treatment (including provision for payment and cost recovery by all entities allocated CEERTS project costs); (e) responsibility for operation and maintenance (including any plans to turn over operation and maintenance responsibilities to another entity); (f) liability issues associated with CEERTS facilities; (g) provision for necessary enabling agreements among all affected entities (including for example provisions for assignment of agreements to new owners if a non-incumbent in the future sells its assets to another company); and (h) acquisition of the property rights necessary to construct the CEERTS facilities, or a reasonable expectation of the ability to acquire such rights.[576]

329. Florida Parties confirm that where a transmission project is re-evaluated because of revised cost estimates this reevaluation applies to all CEERTS projects regardless of whether the developer is an incumbent transmission provider or a nonincumbent transmission owner.[577]

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[575] *Id.* § 1.2.18.

[576] *Id.* § 1.2.13.

[577] *E.g.*, Florida Power & Light Co., Transmittal at 26.

iii. Protests/Comments

330. LS Power and FMPA/Seminole state that the proposed provision requiring that the FRCC Board monitor the progress on whether required reliability, operational, tariff, cost recovery, liability and contract provisions are in place, or reasonably planned for, in determining whether a CEERTS project has been delayed or abandoned is inappropriately vague and does not identify the agreements that are required, and with what counter-party, to show that a project is progressing.[578] Further, LS Power asserts that to the extent that such agreements are required, the Commission in other regions required that they are performed through *pro forma* agreements and filed with the Commission.[579] LS Power argues that the planning process should not provide incentive for incumbent transmission owners, to the extent that they are a party to any such agreement, to delay or refuse signing the required agreement. They argue that any delay in project development that occurs as a result of an incumbent transmission owner's failure to advance an enabling agreement, challenge at the Florida Commission or court to project sponsorship or other siting, should not provide the basis for project reassignment. Likewise, LS Power asserts that if a project is abandoned due to incumbent transmission owners efforts to thwart the project developer, it would be inappropriate to provide, as Florida Parties propose, that they would have a right of first refusal for that project if it were a reliability project. They argue that the incumbent transmission owners should not have incentives to engage in efforts to defeat projects that have been determined to be more efficient or cost effective. LS Power states that as entities that represent the vast majority of retail consumers, the incumbent transmission owners should have an affirmative obligation to support development of any projects that have been determined to be more efficient or cost effective for those consumers.[580]

331. Additionally, FMPA/Seminole state that it is not clear what "liability issues with associated CEERTS facilities" means or what "necessary enabling agreements with affected entities" is supposed to entail. FMPA/Seminole does not disagree such information may be appropriate, but FMPA/Seminole is concerned about the scope of the "affected parties" with whom the project sponsor will need to enter enabling agreements.[581] FMPA/Seminole state that the cryptic description is inadequate to protect against unduly discriminatory use of ambiguous terms to burden or delay CEERTS

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[578] LS Power Protest at 26-27; FMPA/Seminole Protest at 79-81.

[579] *Id.* at 26 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 224).

[580] *Id.* at 26-27.

[581] FMPA/Seminole Protest at 80.

projects. FMPA/Seminole assert that the commission should require Florida Parties to define the requirements more fully so that project sponsors know what is expected of them and are not met with inappropriate and unduly onerous requirements at the tail-end of the process, resulting in undue discrimination or delay.[582]

iv. <u>Answer</u>

332. In response to LS Power's and FMPA/Seminole's concern regarding the ambiguity of the term "affected parties," Florida Answering Parties state that "affected parties" are: (i) those entities with which agreements are necessary for the project or which are reliant on the project; (ii) interconnected transmission owners/operators; (iii) transmission providers responsible to pay transmission charges for the project; (iv) entities that will rely on the project to meet service obligations; and (v) any public policy resource developers dependent on the project to interconnect the resources under development. Florida Answering Parties do not believe the potential categories of affected parties should be prescribed in the tariff because such entities will vary by project and whether there is a need for any type of agreement may vary depending on circumstances. Florida Answering Parties state that if the Commission does require further delineation in the tariff, then Florida Answering Parties believe the categories should be identified as illustrative and not necessarily the same for every project.[583]

333. Additionally, Florida Answering Parties note that this position appears not to have been previously raised by LS Power. With regard to LS Power's protest about the filing *pro forma* agreements, Florida Answering Parties state that interconnection agreements involving transmission providers tend to vary depending upon the circumstances and are not appropriate for a single *pro forma* agreement. In addition, they state that other potential agreements, such as with load-serving entities and resource developers, would not necessarily be with Florida Answering Parties and Florida Answering Parties have no authority to develop and propose such agreements for others. Further, in regard to LS Power's claim that the Commission has required in another region that *pro forma* agreements be filed with the Commission, Florida Answering Parties state that the PJM order addresses agreements specified in the tariff that are required to be entered into, such as a Designated Entity Agreement. Florida Answering Parties explain that their proposal, in contrast, does not require a specific type of contract to allow a CEERTS project to move forward. They state that their Attachment Ks allow the region to reconsider a CEERTS project if the developer is not making sufficient progress in necessary arrangements relating to developing its project that are related to matters outside Order

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[582] *Id.* at 80-81.

[583] Florida Answering Parties Answer at 57-58.

No. 1000, such as the actual development of a project (e.g., siting, necessary interconnection arrangements).[584]

334. Moreover, Florida Answering Parties state that LS Power speculates that existing transmission providers may delay or otherwise frustrate enabling agreements such as interconnection agreements. According to Florida Answering Parties, LS Power provides no support for this speculation and argue that Florida Parties have the obligation to provide nondiscriminatory access to their transmission facilities and routinely enter into interconnection agreements with other transmission providers. Florida Answering Parties assert that they, like all stakeholders in the FRCC, will be dependent on approved transmission projects progressing and going into service on schedule. If LS Power believes that a transmission provider is frustrating an approved transmission project then Florida Answering Parties argue that LS Power has ultimate recourse with the Commission under the FPA.[585]

335. In its reply, FMPA/Seminole state that it does not oppose Florida Parties' proposed requirement for CEERTS projects to enter into an agreement with interconnected transmission owners/operators and the transmission providers allocated the costs of the CEERTS project. However, FMPA/Seminole argue that Florida Parties have failed to justify their proposal to require enabling agreements with the third and fourth "affected entities" categories—i.e., entities that will rely on the project to meet service obligations, and public policy resource developers "dependent on the project to interconnect."[586] FMPA/Seminole note that, under Florida Parties' proposal, the region's transmission providers are allocated the costs of a CEERTS project and assigned a cost-proportionate share of transfer capability from the project. Those allocated costs are recovered through the transmission provider's OATT revenue requirement, and all use of that transfer capability—including firm transmission service by the transmission provider or a wholesale customer—must be reserved under the transmission provider's OATT in accordance with the Commission's long-standing open access policies. FMPA/Seminole state that since the transfer capability of the CEERTS project will have been assigned to the region's transmission providers, the CEERTS project owner itself will not be able to contract directly with customers to provide transmission service over the CEERTS project.[587]

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[584] *Id.* at 58.

[585] *Id.*

[586] FMPA/Seminole Answer at 38.

[587] *Id.* at 38.

336. Thus, FMPA/Seminole assert that requiring transmission and interconnection customers to enter into separate contracts with CEERTS project owners that do not have transmission capacity to offer, and presumably no separate OATT, creates an artificial barrier to entry. FMPA/Seminole argue that transmission service customers should not be required to enter into enabling agreements directly with the CEERTS project owner, unless that project owner has a separate OATT; instead, the terms and conditions of the customer's transmission service should be addressed through that customer's service agreements under its transmission provider's *pro forma* OATT. According to FMPA/Seminole, any liability sharing between the CEERTS project owner and the customer's transmission provider should be handled between those two entities through their separate enabling agreement. Further, FMPA/Seminole state, nor should a separate bilateral agreement between an interconnection customer and the CEERTS project owner be required in the absence of a separate CEERTS project owner's OATT; instead, the enabling agreement between the CEERTS project owner and the transmission providers that are allocated the costs and capacity of the CEERTS project should address how requests for interconnection service will be handled. Instead, FMPA/Seminole argue that the enabling agreement between the CEERTS project owner and the transmission providers that are allocated the costs and capacity of the CEERTS project should address how requests for interconnection service will be handled. Florida Parties, for example, may need to request tariff changes to accommodate three-party interconnection agreements between the interconnection customer, the interconnection customer's transmission provider, and the CEERTS project owner. FMPA/Seminole assert that the enabling agreements between the transmission providers and CEERTS project owner might also provide for implementation of a single or coordinated queue for interconnections to the CEERTS project, because the transfer capability of the project will be split between multiple transmission providers. Therefore, FMPA/Seminole request that this provision be clarified.[588]

v. Commission Determination

337. We find that Florida Parties' compliance filings partially comply with the directives of the First Compliance Order relating to the reevaluation process. Florida Parties clarified that, with respect to CEERTS reliability-based projects that are delayed, an incumbent transmission provider has an opportunity to propose solutions that it would implement within its retail distribution service territory or footprint. In addition, if the incumbent transmission provider decides not to complete the abandoned reliability-based CEERTS project and decides instead to propose an alternative CEERTS project, then other potential developers will be given an opportunity to propose an alternative

[588] *Id.* at 39-40.

CEERTS project to ensure that the reliability need is met. Florida Parties also provided additional details as to how the FRCC will determine whether they will retain or remove a project from the plan based on a delay and what they will consider in making that decision.

338. We find that some of the elements that Florida Parties propose to use in determining whether a CEERTS project has been delayed or abandoned, are appropriate. Specifically, we find that the following proposed elements (lettered as shown in the Attachment Ks) are acceptable: (a) all certification and other requirements under the NERC Standards and Rules of Procedure; (b) implementation of communications and operational control features; (e) responsibility for operation and maintenance (including any plans to turn over operation and maintenance responsibilities to another entity); and (h) acquisition of the property rights necessary to construct the CEERTS facilities, or a reasonable expectation of the ability to acquire such rights.[589] We find that these elements are appropriate because they are actions that a transmission developer either should have taken, or reasonably planned for, at the time a transmission project is selected in the regional transmission plan for purposes of cost allocation and should continue to make progress on as it develops the transmission project.

339. However, we find that Florida Parties have not adequately explained why the following elements (lettered as shown in the Attachment Ks) should be considered in determining whether a CEERTS project has been delayed or abandoned: (d) cost recovery treatment (including provision for payment and cost recovery by all entities allocated CEERTS project costs); (f) liability issues associated with CEERTS facilities; and (g) provision for necessary enabling agreements among all affected entities. While these elements may need to be met prior to a CEERTS project going into service, it is not clear how Florida Parties would use these elements to find that a CEERTS project is delayed or abandoned. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to remove these noted elements from consideration in determining whether a CEERTS project has been delayed or abandoned. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

340. We clarify that, to the extent the terms and conditions in the contract "in any manner affect or relate to"[590] jurisdictional "charges … made, demanded or received by a public utility for or in connection with the transmission or sale of electric energy", it is

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[589] *E.g.*, Florida Power & Light Co., Attachment K, § 1.2.13.

[590] 16 U.S.C. § 824d(c).

subject to filing with the Commission.[591] This includes agreements covering financial contributions in aid of construction, transmission and interconnection issues.[592] Accordingly, should Florida Parties wish to require a contract between beneficiaries and a transmission developer as a condition of the developer's transmission project remaining selected in the regional transmission plan for purposes of cost allocation, Florida Parties must submit a *pro forma* agreement for Commission review.[593]

341. In addition, Florida Parties have clarified that once a designated transmission provider beneficiary has been assigned its cost-proportionate share of transfer capability from a regionally cost-allocated transmission project whose costs are recovered through the transmission provider's OATT revenue requirement, all use of that transfer capability (including firm transmission service by the transmission provider or a wholesale customer) must be reserved under the transmission provider's OATT in accordance with the Commission's long-standing open access policies.[594] Given this provision of Florida Parties' Attachment Ks, it is not clear how the FRCC Planning Committee would measure progress towards element (c): Commission requirements for providing

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[591] 16 U.S.C. § 824d(a).

[592] *See, e.g., American Municipal Power-Ohio, Inc. et al. v. Ohio Edison Co.* 57 FERC ¶ 61,358 (1991) (clarifying that contributions in aid of construction are Commission jurisdictional and must be filed); 90 FERC ¶ 61,238 (2000) (clarifying that interconnection is a component of transmission service and interconnection must be offered under the terms of the *pro-forma* tariff); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (clarifying what activities are within the scope of the Commission's jurisdiction under section 205 of the Federal Power Act and must be filed, including contributions in aid of construction, exchange arrangements, pole attachment agreements, joint ownership agreements and operating and maintenance agreements, and "borderline agreements."). However, if an otherwise non-public utility allows its facilities to be used by a jurisdictional utility, such as an independent system operator or regional transmission organization, that would not make the non-public utility now jurisdictional. *Bonneville Power Admin.*, 112 FERC ¶ 61,012, at P 28 (2005).

[593] *See, e.g., Duke Energy Carolinas, LLC*, 147 FERC ¶ 61,241 at P 427 (affirming the decision that *pro forma* contracts between beneficiaries and a transmission developer must be submitted for Commission review); *see also, So. Carolina Elec. & Gas Co.*, 143 FERC ¶ 61,058, at P 208 (requiring the *pro forma* contractual agreement be submitted for Commission review).

[594] *E.g.*, Florida Power & Light Co., FPL OATT Attachment K, § 9.4.6.

transmission service over CEERTS facilities.[595] CEERTS project owners that may not have transmission capacity to offer or have a separate OATT on file during the construction phase of a CEERTS project, may not be the appropriate entities to fulfill this element, given section 1.2.13 in Florida Parties' Attachment Ks. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to remove or justify this noted element for consideration in determining whether a CEERTS project has been delayed or abandoned. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

f. Cost Allocation for Projects Selected in the Regional Transmission Plan for Purposes of Cost Allocation

342. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that provides nonincumbent transmission developers and incumbent transmission developers the same eligibility to use a regional cost allocation method or methods for any transmission facility selected in the regional transmission plan for purposes of cost allocation.[596] Order No. 1000 also required that the regional transmission planning process have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.[597]

i. First Compliance Order

343. In the First Compliance Order the Commission found Florida Parties' proposed revisions addressing cost allocation for nonincumbent transmission projects complied with the requirements of Order No. 1000.[598] The Commission also accepted Florida Parties' proposed project sponsorship model, which would permit a qualified transmission developer, whether incumbent or nonincumbent, to submit a transmission project for possible selection in a regional transmission plan for purposes of cost allocation. In addition, the Commission approved June 1 as the date for which proposed

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[595] *Id.* §1.2.13.

[596] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

[597] *Id.* P 336.

[598] First Compliance Order, 143 FERC ¶ 61,254 at P 216.

CEERTS projects must be submitted for review each transmission planning year.[599] Finally, the Commission accepted Florida Parties' proposed revisions addressing joint ventures, partnerships, or other multi-party transmission developer arrangements, which provide that a designated lead entity and its partners may contractually share responsibilities to meet the project qualification criteria.[600]

344. However, the Commission noted that, consistent with the Commission's directives regarding Florida Parties' affirmative obligation to plan, Florida Parties' regional transmission planning process should include a mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation. The Commission anticipated that Florida Parties would allow potential developers to express an interest in developing any unsponsored transmission projects.[601]

ii. Summary of Compliance Filings

345. Florida Parties propose to amend their respective Attachment Ks to provide a mechanism to grant an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method to the extent that the regional transmission planning process develops an unsponsored transmission facility that is selected in the regional transmission plan for purposes of cost allocation.[602]

346. Florida Parties state that the FRCC Planning Committee shall post a notice on the FRCC website of any unsponsored CEERTS projects that have been identified for evaluation for potential solutions in the regional transmission planning process.[603] Florida Parties state that such notice would be posted "on or about" May 1 of the first year of the biennial regional transmission planning cycle to provide time for the incumbent transmission provider or nonincumbent transmission developers to satisfy the

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[599] *See* Affirmative Obligation to Plan, First Compliance Order summary *supra* section IV.B.1.

[600] First Compliance Order, 143 FERC ¶ 61,254 at P 115.

[601] *Id.* P 217.

[602] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K §1.2.2.C.

[603] *Id.* § 1.2.2.C(ii).

region's qualification criteria, which is due by June 1 of the first year of the biennial regional transmission planning cycle.[604]

347. Florida Parties state that if no entity expresses an interest in becoming the developer of an unsponsored CEERTS project by the FRCC Planning Committee meeting at which the FRCC Planning Committee reviews the information requirements that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process, "then the [unsponsored CEERTS] project will not move forward and the projects in the regional plan that would have been avoided by the [unsponsored] CEERTS project will remain in the regional plan."[605]

348. Florida Parties propose that each transmission project that has been identified for evaluation for potential solutions in the regional transmission planning process will require at least one sponsor in order to be submitted to the FRCC for consideration in the regional transmission planning process for the purposes of cost allocation. Florida Parties provide a process that defines the information that must be submitted in the event that multiple transmission providers wish to, solely or jointly, propose a single transmission project for selection in the regional transmission plan for purposes of cost allocation. Florida Parties state that multiple sponsors of the same project will be considered joint sponsors and shall equally share the required $100,000 project evaluation deposit, unless the joint sponsors otherwise mutually agree to a different sharing of the deposit.[606]

349. Florida Parties propose that an entity that is not a sponsor or joint sponsor of a potential unsponsored CEERTS project shall not be eligible to be a developer of that project unless the sponsors discontinue development of that project.[607] Florida Parties state that the sponsor or joint sponsors shall submit the potential CEERTS project for consideration in the first year of the biennial regional transmission planning cycle.[608]

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[604] *Id.* § 1.2.2.C(ii), 1.2.11.D (section setting out the timeline for project developer qualification).

[605] *Id.* § 1.2.9.A.

[606] *Id.* § 1.2.2.C(iii).

[607] *Id.* § 1.2.2.C(iii).

[608] *Id.* § 1.2.2.C(iv).

iii. Protests/Comments

350. FMPA/Seminole claim that Florida Parties' pre-qualification review process is discriminatory and ask the Commission to reject this requirement. FMPA/Seminole argue that it is overly aggressive to require potential transmission developers to submit sponsorship information and data requirements by June 1 in order to demonstrate that it satisfies the qualification criteria to propose to sponsor an unsponsored project .[609]

351. FMPA/Seminole contend that because Florida Parties propose June 1 as the date for which proposed CEERTS projects must be submitted for review each planning year, a proposed transmission developer may be precluded from later seeking to qualify to develop an unsponsored transmission project, should the transmission developer have an interest in the transmission project. FMPA/Seminole also contend that under Florida Parties' proposal, potential transmission developers will be precluded from expressing an interest in developing any unsponsored regional transmission projects because any potential transmission developer must seek to be qualified and demonstrate its financial strength by January 1, through qualification criteria such as demonstrating the total dollar amount of the unsponsored CEERTS project does not exceed the transmission developer's total capitalization by 30 percent. FMPA/Seminole state that since unsponsored transmission projects are not announced until May 1 of the first year of the biennial regional transmission planning cycle, transmission developers cannot provide the requisite transmission developer qualification criteria by January 1 for data that will not be known until five months later.

352. LS Power states that while an incumbent transmission owner may already satisfy the qualification criteria to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, nonincumbent transmission developers must satisfy such criteria in as little as 30 days or less.[610] LS Power also states that the phrase "on or about" May 1 could result in even less than 30 days to prepare the required sponsorship information. LS Power requests that this phrase be deleted.[611]

353. Finally, LS Power argues that Florida Parties' proposal to force joint sponsorship where there is more than one sponsor does not explain how development, construction, and ownership will be handled among sponsors, or what will happen when one sponsor agrees to a cost cap but the other sponsor does not. LS Power argues that Florida Parties'

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[609] FMPA/Seminole Protest at 77.

[610] LS Power Protest at 18-19.

[611] *Id.* at 18-19.

joint sponsorship requirement leaves too many unanswered questions on how the joint sponsorship agreement would work.[612]

iv. Answer

354. In response to LS Power's objections on the solicitation process for an unsponsored transmission facility selected in the regional transmission plan for purposes of cost allocation, Florida Answering Parties agree to delete the phrase "on or about," so that notice of potential CEERTS projects is posted on the FRCC website "by May 1." However, Florida Answering Parties disagree with LS Power's and FMPA/Seminole's assertions that the revised Attachment Ks provide transmission developers, whether incumbent or nonincumbent, with the opportunity to participate fully in the transmission planning process and remedy any deficiencies.[613] They state that the proposed regional transmission planning process also includes procedures for timely notifying potential transmission developers of unsponsored transmission projects. Specifically, Florida Answering Parties state that potential transmission developers of unsponsored transmission projects have 30-45 days after the June 1st submittal due date to refine elements of their submittals that require additional time.[614]

355. Florida Answering Parties also clarify how non-incumbents could be assigned project sponsorship for joint ventures. Florida Answering Parties explain that a non-incumbent can elect to be a project sponsor and would be part of the group of "joint sponsors" of a given project. Florida Answering Parties state that the evaluation of a new CEERTS project will only need to be technically evaluated once. They also state that any differences among transmission developers' proposals for the same transmission project would be resolved at the transmission developer selection stage.[615]

v. Commission Determination

356. We find that the provisions in Florida Parties' filing addressing eligibility for cost allocation for unsponsored transmission projects comply with the directives in the First Compliance Order. The FRCC will post on its website any potential unsponsored

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[612] *Id.* at 19-20.

[613] Florida Answering Parties Answer at 59-60.

[614] *Id.* at 59-60.

[615] *Id.* at 60-61 (citing Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.10.C).

CEERTS projects and potential sponsors can propose to sponsor any of the unsponsored projects. If there are competing sponsors for an unsponsored CEERTS project, they will have to agree to become joint sponsors. If no entity sponsors an unsponsored CEERTS project or if competing sponsors cannot agree to become joint sponsors, the unsponsored CEERTS project will not move forward.

357. We disagree with FMPA/Seminole and LS Power that Florida Parties' proposed deadlines on the solicitation process for an unsponsored transmission facility selected in the regional transmission plan for purposes of cost allocation, do not allow sufficient time for prospective transmission developers to demonstrate that they have the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities. We find Florida Parties' proposed timeline reasonable and not unduly discriminatory; it identifies January 1 of the first year of a biennial planning cycle as the date by which a potential developer must submit its qualifications and biennial attestations to the FRCC and June 1 of the first year of a biennial planning cycle as the date by a prospective transmission developer is notified on whether they satisfy the region's qualification criteria.[616] In addition, we note that Order No. 1000 permitted each public utility transmission provider the flexibility to determine the date by which information in support of a transmission project must be submitted and may use rolling or flexible dates to reflect the iterative nature of their regional transmission planning process.[617] We also disagree with LS Power that there must be more detail about how competing sponsors of an unsponsored project can become joint sponsors. It is appropriate that such details be worked out among any competing sponsors.

358. However, we accept Florida Parties' offer, in response to LS Power, to replace the term "on or about" with "by" from the proposed OATT revisions addressing cost allocation for nonincumbent transmission projects so that the OATT provision provides that notice of potential CEERTS projects is posted on the FRCC website "by May 1." We therefore direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings reflecting this revision. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

4. <u>Cost Allocation</u>

359. Order No. 1000 required each public utility transmission provider to have in its OATT a method, or set of methods, for allocating the costs of any new transmission

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[616] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.11.D.

[617] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 325, 327.

facility selected in the regional transmission plan for purposes of cost allocation.[618] Each public utility transmission provider must demonstrate that its cost allocation method satisfies six regional cost allocation principles.[619] In addition, while Order No. 1000 permitted participant funding, participant funding cannot be the regional cost allocation method.[620]

360. Regional Cost Allocation Principle 1 requires that the cost of transmission facilities be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. The cost allocation methods must clearly and definitively specify identifiable benefits and the class of beneficiaries, and the transmission facility costs allocated must be roughly commensurate with that benefit.[621]

361. Regional Cost Allocation Principle 2 requires that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, not be involuntarily allocated any of the costs of those transmission facilities.[622]

362. Regional Cost Allocation Principle 3 specifies that, if a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, the threshold must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. Such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.[623]

363. Regional Cost Allocation Principle 4 specifies that the regional cost allocation method must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. In addition, each regional transmission planning process

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[618] *Id.* PP 558, 690.

[619] *Id.* P 603.

[620] *Id.* P 723.

[621] *Id.* PP 625, 678.

[622] *Id.* P 637.

[623] *Id.* P 646.

must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.[624]

364. Regional Cost Allocation Principle 5 specifies that the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.[625]

365. Regional Cost Allocation Principle 6 specifies that a transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, but there can be only one cost allocation method for each type of transmission facility.[626] If a transmission planning region chooses to use a different cost allocation method for different types of transmission facilities, each cost allocation method must be determined in advance for each type of facility.[627] A regional cost allocation method may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.[628]

a. Cost Allocation Method for Reliability, Economic, and Public Policy Transmission Projects

i. First Compliance Order

366. In the First Compliance Order, the Commission found that Florida Parties' proposal to use a single avoided transmission cost allocation method to account for benefits associated with addressing reliability, economic, and public policy-related transmission needs did not comply with the regional cost allocation requirements of Order No. 1000. In particular, the Commission found that relying on an avoided transmission cost method alone to allocate the costs of a transmission facility selected in

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[624] *Id.* P 657.

[625] *Id.* P 668.

[626] *Id.* PP 685-686.

[627] *Id.* P 560.

[628] *Id.* P 689.

a regional transmission plan for purposes of cost allocation does not allocate costs in a manner that is at least roughly commensurate with estimated benefits because it does not adequately assess the potential benefits provided by that transmission facility. Therefore, the Commission found that Florida Parties' cost allocation proposal as a whole did not comply with Regional Cost Allocation Principle 1 and directed Tampa Electric, Florida Power, and Florida Power & Light to submit a further compliance filing with a proposed cost allocation method or methods for transmission facilities selected in the regional transmission plan for purposes of cost allocation that adequately assesses the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs in a manner that satisfies the six Regional Cost Allocation Principles described in Order No. 1000.[629]

367. The Commission explained in the First Compliance Order that the proposed avoided transmission cost method considered as benefits only cost savings that result when a local transmission project is avoided due to the selection of a transmission facility in the regional transmission plan for purposes of cost allocation. The Commission found that the proposed method fails to account for benefits that were not identified in the local transmission planning processes but that could be recognized at the regional level and fails to account for benefits associated with addressing economic and public policy-related transmission needs that the regional transmission facility provides. In addition, the Commission found that the proposed avoided transmission cost method limits the consideration by stakeholders on a more aggregated basis of whether a particular transmission facility may represent the more efficient or cost-effective means of fulfilling a given transmission need. The Commission also stated that, under the proposed avoided transmission cost method, a regional transmission facility that is a more efficient or cost-effective transmission solution than what is in the roll-up of local transmission plans would not be eligible for regional cost allocation if there is not a transmission facility in the local transmission plans that the regional transmission facility would displace. Thus, the proposal to use a single avoided transmission cost method to account for benefits associated with addressing reliability, economic, and public policy-related transmission needs does not allow for the possibility of resolving transmission needs or realizing benefits at the regional level where, in an individual local transmission planning process, the value of resolving the identified transmission need or the value of the additional benefits does not outweigh the costs, even though the value could outweigh the costs when considered on a regional basis.[630]

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[629] First Compliance Order, 143 FERC ¶ 61,254 at P 247.

[630] *Id.* PP 248-250 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 678).

368. However, the Commission also noted that a single regional cost allocation method used for reliability, economic, and public policy-related transmission projects that includes, but does not rely solely upon, avoided costs could be a reasonable approach for allocating costs in a manner that is at least roughly commensurate with benefits.[631] Given that the Commission found that Florida Parties' proposed avoided cost method did not comply with Regional Cost Allocation Principle 1, the Commission did not make a finding on whether Florida Parties' proposed regional cost allocation method complied with Regional Cost Allocation Principles 2 through 6.[632]

ii. Requests for Rehearing or Clarification

(a) Summary of Requests for Rehearing or Clarification

369. Duke Energy argues that Order No. 1000 explicitly provides for the comparison of proposed regional transmission projects to projects identified in a transmission provider's local transmission planning process, and requires the industry to make curative filings that resolve the region's needs more efficiently or cost-effectively "than solutions identified in the local transmission plans of individual public utility transmission providers."[633] At the same time, Duke Energy argues, the Commission found in the First Compliance Order that limiting the search in the regional transmission planning process for alternative transmission projects to those already in the transmission plan ignores important benefits and needs.[634] According to Duke Energy, the avoided transmission cost method retains the benefits and beneficiaries, and addresses the needs, inherent in the predicate local transmission plans because a transmission project selected in the regional transmission plan for purposes of cost allocation under this method must include the same array of constituent benefits and meet the same needs as the local transmission projects that it displaces. Duke Energy states that transmission planning necessarily incorporates reliability, economic, and public policy needs and benefits because these

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[631] *Id.* P 248. We note that a single avoided cost method may be used to identify the beneficiaries of reliability transmission projects when separate cost allocation methods are used for reliability, economic, and public policy-related transmission projects. *See, e.g.*, *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 312.

[632] First Compliance Order, 143 FERC ¶ 61,254 at P 256.

[633] Duke Energy Rehearing at 18 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 78).

[634] *Id.* at 18.

needs and benefits are integrated into the integrated resource planning process, the results of which are combined with long-term firm requests for transmission service under the OATT as data inputs to transmission planning. Thus, Duke Energy states that the avoided transmission cost methodology accounts for benefits associated with addressing economic and public policy-related transmission needs.[635] Duke Energy argues that the Commission's reasoning is flawed because the Commission failed to make a finding, based on the premise that all customers' needs, whether driven by reliability, economics, or public policy, are met through the local transmission solutions and that "transmission planning is limited to transmission planning."[636] Duke Energy states that the Commission's finding ignores crucial regional differences, such as the fact that these needs and benefits are integrated into the integrated resource planning process.[637] Duke Energy further states that trying to monetize the benefits of transmission projects would be wasteful when the avoided transmission cost method embeds within it all relevant considerations.

370. Duke Energy challenges the examples that the Commission provided in the First Compliance Order, arguing that they assume that transmission planners engage in resource planning or joint dispatch within their respective transmission service territories. Duke argues that whether the entities referred to in the Commission's hypothetical examples are network customers or transmission providers, the examples incorrectly assume that economic benefits of transmission projects are spread congruently with load ratio share to all customers. Duke Energy argues that the Commission's hypothetical examples are implausible because they fail to acknowledge the reality of Florida's physical rights transmission model, where transmission is planned and constructed to deliver energy from firm (network) resources to firm load and to meet firm point-to-point transmission service requests. Duke Energy states that the examples are only logical if the Commission were to allow participant funding, which Duke Energy defines as the allocation of costs to those that receive economic benefits, as the regional cost allocation method.[638]

371. In addition, Duke Energy contends that there is no evidence in the record that supports a finding that resource planning in non-ISO/RTO regions can be engaged in

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[635] *Id.* at 18-19.

[636] *Id.* at 17.

[637] *Id.*

[638] *Id.* at 19-24.

collectively.[639] Duke Energy argues that unless the Commission intended to impose regional resource planning obligations on transmission providers, which Duke Energy argues is outside of the Commission's jurisdiction, there is no record that the avoided transmission cost method fails to account for benefits associated with addressing economic and public policy-related transmission needs and transmission needs not identified or identified in isolation.

372. Finally, Duke Energy argues the Commission's determination appears to be inconsistent with regions where there is not a regional transmission organization. Specifically, Duke Energy argues that in regions where load-serving entities individually engage in integrated resource planning and where there is no regional transmission organization, all transmission projects are reliability projects. In addition, Duke Energy cites to Commission precedent accepting an avoided transmission cost method for reliability projects.[640] Duke Energy states that local transmission projects proposed to meet the transmission needs of transmission customers, which are driven by resource needs, are accurately characterized as reliability projects because the customer's need could not be reliably met without the project. Duke Energy asserts that because transmission planners cannot dictate resource alternatives, they cannot identify regional transmission projects based on alternative resource assumptions, but rather can only identify regional transmission projects that reliably meet a collection of individual transmission needs. Thus, Duke Energy contends, without a regional determination of resources, there can be no regional economic or public policy transmission projects.[641]

(b) <u>Commission Determination</u>

373. With respect to Florida Parties' initially proposed regional cost allocation method, Duke Energy argues that: (1) the proposed avoided cost method addresses all economic and public policy-related transmission needs because these needs are reflected in the state integrated resource planning process and long-term firm requests for transmission service; (2) the Commission's examples in the First Compliance Order failed to recognize Florida's physical transmission rights model; and (3) the Commission's determination in

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[639] According to Duke Energy, transmission needs are first identified in isolation because they are identified through resource planning, which is not a joint activity. Duke Energy states that the generation resource decisions, which are informed by transmission expansion costs, drive transmission planning and that transmission planning does not drive generation resource decisions. *Id.* at 24-25.

[640] *Id.* at 26 (citing *Pub. Serv. Co. of Colorado*, 142 FERC ¶ 61,206 at P 311).

[641] *Id.* at 26-27.

the First Compliance Order requires regional resource planning and is inconsistent with the state integrated resource planning process in regions without regional transmission organizations.

374. As a threshold matter, Duke Energy has not persuaded us that Florida Parties' originally proposed regional cost allocation method would allocate the costs of a transmission facility selected in a regional transmission plan for purposes of cost allocation in a manner that is at least roughly commensurate with estimated benefits. Specifically, Duke Energy has not demonstrated that the concerns that the Commission expressed in the First Compliance Order[642] are unwarranted. In the First Compliance Order, the Commission provided examples describing situations in which using one regional cost allocation method that relies solely on avoided costs to capture the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs would not adequately assess these benefits and therefore would not allocate the costs of a transmission facility that is selected in the regional transmission plan for purposes of cost allocation in a manner that is at least roughly commensurate with estimated benefits.[643] While an avoided cost metric may be used to identify the beneficiaries of reliability transmission projects when separate cost allocation methods are used for reliability, economic, and public policy-related transmission projects,[644] Duke Energy has not persuaded us that the proposed regional cost allocation method, which relies on a single avoided cost metric to allocate costs for all types of transmission projects, would adequately capture regional reliability, economic, and public policy-

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[642] The Commission stated that the single avoided cost regional cost allocation method that Florida Parties proposed in their first compliance filing fails to account for benefits that were not identified in the local transmission planning processes but that could be recognized at the regional level, fails to account for benefits associated with addressing economic and public policy-related transmission needs that a regional transmission facility provides, limits the consideration by stakeholders on a more aggregated basis of whether a particular transmission facility may represent the more efficient or cost-effective means of fulfilling a given transmission need, and does not allow for the possibility of resolving transmission needs or realizing benefits at the regional level where, in an individual local transmission planning process, the value of resolving the identified transmission need or the value of the additional benefits does not outweigh the costs, even though the value could outweigh the costs when considered on a regional basis. First Compliance Order, 144 FERC ¶ 61,054 at PP 249-254.

[643] *Id*. PP 250-252.

[644] *See, e.g.*, *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 312.

related benefits.[645] Accordingly, we reiterate the finding in the First Compliance Order that Florida Parties' proposed regional cost allocation method does not adequately assess the potential regional benefits provided by a transmission facility[646] and thus deny rehearing.

375. Moreover, we disagree with Duke Energy's argument that because Order No. 1000 provides for a comparison of local transmission projects and proposed regional transmission solutions, the Commission's rejection of the Florida Parties' proposal to use a single avoided cost metric to allocate costs for all types of transmission projects is flawed. Indeed, the First Compliance Order recognized that a regional transmission planning process could recognize additional benefits of transmission while also accounting for the value of displacing the costs of certain transmission projects from the roll-up of local transmission plans.[647] However, the Commission found that Florida Parties' proposal to rely *solely* on a comparison to transmission facilities in their local transmission plans would not adequately assess the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs on a regional basis and may not account for transmission needs not identified or identified in isolation, and thus not resolved, in the local transmission planning processes.[648] The Commission has also accepted other types of comparisons in other transmission planning regions, such as a comparison between: (1) an entity's production costs with and without a proposed regional transmission project;[649] (2) the reserve sharing requirement an entity would have to maintain with and without a proposed regional transmission project;[650]

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[645] In *Pub. Serv. Co. of Colorado*, the Commission explained that the avoided cost approach to identifying beneficiaries of reliability transmission projects reasonably captures the benefits of such transmission projects. *Pub. Serv. Co. of Colorado*, 142 FERC ¶ 61,206 at P 312. Because the transmission owners would otherwise have to propose new transmission facilities to meet the reliability need fulfilled by the transmission facilities selected in the regional transmission plan for purposes of cost allocation, the avoided cost approach appropriately reflects the beneficiaries of a reliability transmission project at the regional level (i.e., those who would have otherwise had to pay for a local transmission facility to meet their reliability needs). *Id.*

[646] First Compliance Order, 144 FERC ¶ 61,054 at PP 248, 253.

[647] *Id.* P 254.

[648] *Id.* P 254.

[649] *Pub. Serv. Co. of Colorado*, 142 FERC ¶ 61,206 at P 314.

[650] *PacifiCorp*, 143 FERC ¶ 61,151 at P 240.

(3) the level of energy losses with and without a proposed regional transmission project;[651] and (4) the number of megawatts of public policy resources an entity would be able to access with and without a proposed regional transmission project.[652] Thus, the Commission's decision in the First Compliance Order to reject Florida Parties' proposal to rely solely on avoided costs metric to allocate costs for all types of transmission projects does not conflict with Order No. 1000.

376. We also disagree with Duke Energy's argument that the First Compliance Order is inconsistent with state integrated resource planning or otherwise requires the determination of resources on a regional basis. Like Order No. 1000, the First Compliance Order does not mandate planning of resources, and is only concerned with "the processes used to identify and evaluate transmission needs and potential solutions to those needs." Moreover, as we explain above in the Affirmative Obligation to Plan section of this order, Order No. 1000 does not require that public utility transmission providers modify the resources selected through the state integrated resource planning process.[653] The Commission has found that to be just and reasonable under the FPA, a regional transmission planning process must consider transmission facilities that are driven by transmission needs associated with maintaining reliability, addressing economic considerations, and associated with public policy requirements and provide a means for allocating the costs of each type of transmission facility to beneficiaries.[654] The transmission needs and benefits of multiple transmission providers are considered in the regional transmission planning process and, therefore, Florida Parties may be able to identify transmission needs and benefits not otherwise considered in their integrated resource planning processes or associated with long-term firm transmission requests under the OATT or identify transmission solutions to regional transmission needs and benefits that are more efficient and cost-effective than those identified in an individual local transmission planning process. The Commission's treatment of Florida Parties' proposed avoided cost method in the First Compliance Order and the requirement that Tampa Electric, Florida Power, and Florida Power & Light develop a regional cost allocation method that complies with Order No. 1000 will not result in Florida Parties having to modify any state integrated resource planning decisions or determine resources on a regional basis.

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[651] *Id.* P 240.

[652] *Pub. Serv. Co. of Colorado,* 142 FERC ¶ 61,206 at P 317.

[653] *Id*. PP 168-179.

[654] *Id*. P 689.

377. Similarly, we disagree with Duke Energy's contention that a transmission project cannot be driven by any transmission need besides those identified through the determination of resources as part of the state integrated resource planning process or a transmission service request.[655] Duke Energy reiterates its arguments from the First Compliance Order, stating that "transmission is planned and constructed to deliver energy from firm (network) resources to firm load and to meet firm point-to-point transmission service requests, and thus transmission is generally not constructed to support non-firm economy energy transactions."[656] This argument is based on the flawed assumption that regional transmission planning need only reflect requests for transmission service. In Order No. 890, the Commission discussed arguments regarding the adequacy of addressing individual requests for service under the OATT. There, the Commission noted that the process addressing individual requests for service under the OATT is adequate for customers who request specific transmission rights to purchase power from a particular resource in a particular location during a defined time period.[657] The Commission found, however, that such a process does not provide an opportunity for customers to consider whether potential upgrades or other investments could reduce congestion costs or otherwise integrate new resources on an aggregated or regional basis outside of a specific request for interconnection or transmission service.[658] In Order No. 1000, the Commission found that the existing requirements of Order No. 890 are inadequate because, among other things, public utility transmission providers are currently under no affirmative obligation to develop a regional transmission plan that reflects the evaluation of whether alternative regional solutions may be more efficient or cost-effective than solutions identified in local transmission planning processes.[659] Limiting regional transmission planning to the consideration of only those transmission

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[655] *See, e.g.*, *So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 at P 71 (stating that a commitment for long-term firm transmission service should not be a prerequisite for consideration of a transmission need); *Duke Energy Carolinas, LLC*, 147 FERC ¶ 61,241 at P 101 (rejecting proposals to limit regional transmission planning to addressing transmission needs associated with individual requests for transmission service).

[656] First Compliance Order, 143 FERC ¶ 61,254 at P 240. *See also* Duke Energy Rehearing at 26.

[657] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 543.

[658] *Id*.

[659] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 3.

needs associated with individual requests for transmission service under the OATT is thus inconsistent with Order No. 890 and Order No. 1000. Contrary to Duke Energy's claim, there may be transmission projects identified in the regional transmission planning process that are more efficient or cost-effective transmission solutions that did not originate from an individual transmission service request. We therefore disagree with the premise underlying Duke Energy's challenge to the Commission's examples in the First Compliance Order and deny Duke Energy's rehearing request.

378. Finally, in response to Duke Energy's argument that the First Compliance Order assumed joint dispatch, we note that regional cost allocation methods besides Florida Parties' proposed avoided cost method can be reasonably applied in transmission planning regions that have not adopted joint dispatch. In fact, the Commission has largely accepted the regional cost allocation methods proposed in several other transmission planning regions with market structures similar to that of the FRCC region (i.e., that rely on physical transmission rights to govern the use of each public utility transmission provider's transmission system). For example, the Commission has accepted, in part, regional cost allocation methods for the ColumbiaGrid, Northern Tier Transmission Group, and WestConnect transmission planning regions that consider benefits besides those measured using the avoided cost metric.[660] The Commission's analysis in the First Compliance Order was not conditioned on the use of joint dispatch,

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[660] *See, e.g.*, *Avista Corp*. 143 FERC ¶ 61,255 at P 300 (finding that the two categories of benefits considered pursuant to the proposed regional cost allocation method (i.e., the displacement or deferral of transmission facilities by a transmission project selected in the regional transmission plan for purposes of cost allocation and the value of increased capacity on a beneficiary's transmission system) together represent a reasonable approximation of some of the identifiable benefits that a transmission facility selected in the regional transmission plan for purposes of cost allocation may provide); *PacifiCorp*, 143 FERC ¶ 61,151 at P 240 (finding that the proposal to use the change in energy losses and the change in reserves as benefit metrics will allocate the costs of a transmission facility selected in the regional transmission plan for purposes of cost allocation in a manner that is at least roughly commensurate with the benefits it provides); *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at PP 312, 314, 317 (finding that the avoided cost approach to identifying the beneficiaries of reliability transmission projects reasonably captures the benefits of such transmission projects, that the assessment of production cost savings and reductions in reserve sharing requirements reasonably identifies beneficiaries and accounts for economic benefits, and that identifying beneficiaries, defining benefits, and allocating costs based on the number of megawatts of public policy resources enabled allocates costs in a manner that is at least roughly commensurate with estimated benefits).

but rather considered benefits, such as savings from the ability to access less expensive resources through a regional transmission project, that could be measured using a number of different metrics, as evidenced by the regional cost allocation methods that the Commission has accepted for other transmission planning regions.

iii. Compliance

(a) Summary of Compliance Filings

379. On compliance, Florida Parties propose two separate cost allocation methods – one for reliability and economic categories of projects and one for public policy projects. Each proposed method is described below.

(1) Cost Allocation Method for Reliability and Economic Projects

(i) Summary of Compliance Filings

380. Florida Parties propose a cost allocation formula that will be applied specifically to reliability and economic categories of projects, which they assert will allocate CEERTS project costs in proportion to each transmission provider's benefits.[661]

381. For CEERTS reliability and economic projects, Florida Parties introduce transmission line losses as a metric in addition to avoided costs, arguing that the addition of line losses is appropriate. Florida Parties also explain that because transmission line losses are operating costs, costs will no longer be compared based solely on capital costs. Rather, Florida Parties explain that cost comparisons will be based on a net present value analysis over the planning horizon, and estimates revenue requirements (which includes return on equity, any transmission incentives, weighted average cost of capital, and ongoing capital and operating expenses).[662] The proposed cost allocation method for CEERTS reliability and economic projects is based on the following formula: ((Transmission Provider Estimated Avoided Project Cost Benefit + Transmission Provider Estimated Transmission Line Loss Value Benefit) / (Total Estimated Avoided Project Cost Benefit + Total Estimated Line Loss Value Benefit)) * Estimated CEERTS Project Cost.

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[661] *E.g.*, Florida Power & Light Co., Transmittal at 34. Florida Power & Light Co., FPL OATT, Attachment K, § 9.4.3.

[662] *Id.* at 31.

382. Florida Parties explain that the Estimated Avoided Project Cost Benefit measures the costs on a per transmission provider basis, of displaced projects that would not be built due to the CEERTS project proposal. This cost is a net present value calculation of the transmission revenue requirement, which includes a return on equity, commitments regarding incentive rates, weighted average cost of capital, and ongoing capital and operating expenses. Similarly, Florida Parties explain that "Estimated Transmission Line Loss Benefit" is calculated and determined by an independent consultant for each year during which the CEERTS project is expected to be in-service during the planning horizon.[663]

383. Florida Parties explain that "Estimated CEERTS Project Cost" will include the estimated developer costs of the CEERTS project plus the Estimated Displacement Cost (the cost for each transmission provider that has a project that is being displaced by a CEERTS project), plus the cost of any local projects necessary to implement the CEERTS project. Florida Parties explain that the above costs will be calculated based on a net present value analysis using the estimated transmission revenue requirements.[664] Florida Parties state that they will use the time period between when the CEERTS project is expected to go into service and the end of the planning horizon, so if the plan approved for 2015 includes a CEERTS project that is expected to go into service in 2020, the estimated costs and benefits would be determined for the five-year period between the estimated in-service date of 2020 and the end of the planning horizon (2025).[665] Specifically:

> Any enrolled transmission provider that has incurred, or expects to incur, costs associated with a project that is being displaced by a CEERTS project will provide an accounting to the independent consultant as to the level of its actual and expected expenditure on any displaced projects and any planned mitigation of such expenditures. The independent consultant will review the displacement cost estimate and determine the level of displacement costs that the CEERTS developer must pay each transmission provider that has expended funds on a displaced project. The net present value of such amount shall be calculated using the Enrolled

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[663] *Id.* at 31.

[664] *Id.* at 31-32.

[665] *Id.*

> [Transmission Provider] Discount Rate. Such estimated value will be the Estimated Displacement Cost.[666]

384. Further, Florida Parties propose to require CEERTS project developers to reimburse the incumbent transmission owners for these costs.[667] Florida Parties state that this approach of including the Estimated Displacement Costs in the costs of the CEERTS project that will be allocated through the regional cost allocation method or methods addresses the First Compliance Order's discussion of this proposed recovery.

385. Florida Parties propose that "a [CEERTS] project that would otherwise cause unmitigated costs, including any abandonment costs that would otherwise have been recoverable, may go forward if project beneficiaries agree to mitigate the otherwise unmitigated costs of the adversely affected Transmission Provider, and the mitigation costs will be included in the CEERTS project cost."[] Florida Parties state that under the revised approach, "all *estimated* costs related to displacement are simply included in the cost of the CEERTS [p]roject." Florida Parties state that in determining whether a CEERTS project is more cost effective than the displaced project, public utility transmission providers must take into account the amount which has already been spent, or expected to be spent, on the displaced project taking into account the relevant stage of the displaced project (i.e., conceptual stage, design stage, or construction stage). Florida Parties state that rather than treat these costs as abandoned plant recovery, this reimbursement method calculates a new cost category – displacement costs – that should be recoverable from ratepayers that benefit from the displacement. Florida Parties further state that if these costs were considered abandoned plant costs, then there would be little incentive for incumbent transmission owners to abandon their local project because they would not get full cost recovery.[668]

386. In response to the Commission's first directive that Florida Parties revise their Attachment Ks to propose a cost allocation method or methods for transmission facilities selected in the regional transmission plan for purposes of cost allocation that adequately assesses the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs, Florida Parties state that they considered various possible benefit metrics to transmission providers, focusing on examples given by

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[666] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.C.1, 1.2.9.C.3.

[667] *Id.* § 9.4.5.4 ("[d]evelopers will be responsible for reimbursing transmission provider(s) for their displacement costs, if applicable, as identified in section 1.2.9.C.3.").

[668] *E.g.*, Florida Power & Light Co., Transmittal at 32-33 (emphasis added).

the Commission.[669] According to Florida Parties, the Commission's "six cost allocation principles, its requirement that the cost allocation methodology be ex ante in nature, and its prohibition on participant funding render almost all metrics impossible to implement in Florida while still abiding by all or even most of these requirements" for reliability and economic transmission projects.[670] Therefore on compliance, Florida Parties propose a net present value analysis that looks out over the planning horizon and estimates the annual revenue requirements of potential avoided projects and a potential CEERTS project, and then additionally considers the net change in transmission line losses from a potential CEERTS project.[671]

387. In response to the Commission's determination that Florida Parties' avoided cost method did not comply with Regional Cost Allocation Principle 1 because it was applied to all transmission projects selected in the regional transmission plan for purposes of cost allocation, Florida Parties state that they continue to believe that an avoided cost method accounts for benefits to enrolled transmission providers, both in project qualification and in cost allocation, in a manner that is roughly commensurate with estimated benefits.[672] Florida Parties state that their proposal focuses on firm transmission service reservations and on measureable benefits that accrue to enrolled transmission providers, rather than hypothetical benefits based on speculation about future conduct.[673] Florida Parties note that the Commission has accepted an avoided cost metric for reliability transmission projects in other Order No. 1000 compliance orders.[674] Therefore, Florida Parties request that the Commission reject demands to add additional metrics since additional metrics are only appropriate in a market with centralized dispatch.[675]

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[669] *Id.* at 29.

[670] Florida Parties also state that transmission line losses and reduced reserved requirements were also considered as additional metrics, but that simple capital cost comparisons were no longer workable because transmission line losses are an operating cost. *Id.* at 29 and 30.

[671] *Id.* at 28.

[672] *Id.*

[673] *Id.*

[674] *Id.* at 34 (citing *Pub. Serv. Co. of Colorado*, 142 FERC ¶ 61,206 and *PacifiCorp*, 143 FERC ¶ 61,151 at P 242).

[675] *Id.* at 34.

388. Florida Parties state that their Attachment Ks comply with the second cost allocation principle by ensuring only transmission providers whose costs are being reduced to be allocated CEERTS project costs for the cost allocation method for economic and reliability projects.[676] Florida Parties explain that the cost allocation method for public policy projects also satisfies Cost Allocation Principle 2 because it ensures that costs are allocated to transmission providers whose local service entities are in need of the facilities and ensures that costs are not allocated to those that do not benefit.[677]

389. Florida Parties assert that each of their proposed regional cost allocation methods satisfy the third cost allocation principle because they have eliminated the requirement for an independent consultant to conduct a comprehensive long-term net present value revenue requirements analysis on those regional transmission facilities which had a benefit-cost ratio between 1.00 and 1.25.[678] On compliance, Florida Parties propose a single-step process to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for purposes of cost allocation.[679]

390. Under Florida Parties' proposal, once the FRCC Board approves the continuation of a proposed transmission project, an independent consultant will perform a cost-benefit analysis on reliability and economic projects to determine if the sum of the "Total Estimated Avoided Project Cost Benefit" and "Total Estimated Transmission Line Loss Value Benefit" divided by the estimated CEERTS project cost, is greater than 1.00.[680]

391. Florida Parties state that the benefit-cost threshold used to determine which regional or economic transmission facilities have sufficient net benefits to be selected in a regional transmission plan for purposes of cost allocation, does not exceed 1.25.[681] As to

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[676] *Id.* at 35.

[677] *Id.* at 37.

[678] *Id.* at 33.

[679] *Id.*

[680] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.C.

[681] *E.g.*, Florida Power & Light Co., Transmittal at 35.

cost allocation method for public policy projects, Florida Parties state that there is no benefit-cost ratio and thus the 1.25 threshold is not violated.[682]

392. Florida Parties state that consistent with Regional Cost Allocation Principle 4, its set of cost allocation methods for transmission facilities selected in a regional transmission plan for purposes of cost allocation, allocate costs solely to load within the FRCC transmission planning region.[683]

393. Finally, Florida Parties state that their economic and reliability transmission project cost allocation methods satisfy the fifth regional cost allocation principle by relying on transparent metrics. Florida Parties state that an independent consultant is used to provide a consistent approach to estimating costs and benefits.[684] Florida Parties explain that the metrics applied by the independent consultant will be publicly accessible. In addition, Florida Parties explain that the cost allocation method and data requirements for public policy projects meets Regional Cost Allocation Principle 5 because the local service entities "accessing resources will ultimately be reflecting such access in transmission service requests (and thus be identifiable) and the location of the [local service entities] (i.e., in which transmission provider's footprint they are located) is readily obvious."[685] In addition, Florida Parties state that they will document the results of the cost allocation for public policy projects.[686]

394. In accordance with Cost Allocation Principle 6, Florida Parties propose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan – one cost allocation method for all potential reliability and economic transmission projects and one cost allocation method for all potential public policy transmission projects.

(ii) <u>Protests/Comments</u>

395. FMPA/Seminole assert that Florida Parties' proposed net present value calculation is inadequate to the task of supporting the selection of more efficient and cost-effective economic and public policy projects because it excludes consideration of congestion

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[682] *Id.* at 37.

[683] *Id.* at 34 & 37.

[684] *Id.* at 35.

[685] *Id.* at 37.

[686] *Id.*

relief benefits, and the inclusion of transmission loss impacts is unlikely to be sufficient to justify a project.[687]

396. FMPA/Seminole request that the Commission make clear to Florida Parties that they must either use production cost modeling or propose a reasonable alternative method of estimating the benefits of reduced congestion and increased access to generation, for selecting transmission projects as more efficient or cost-effective for purposes of regional cost allocation.[688] FMPA/Seminole argue that Florida Parties' proposal defeats a key purpose of Order No. 1000, fails to satisfy the requirement in the First Compliance Order's to appropriately consider economic benefits in selecting regional projects, and violates Order No. 1000's requirement that costs of regional transmission be allocated roughly commensurate with benefits.[689] FMPA/Seminole assert that Florida Parties' "token addition" of line losses to the benefits analysis ignores and fails to comply with the First Compliance Order's directive that their regional cost allocation method adequately assesses the potential benefits provided by that transmission facility.[690] FMPA/Seminole assert that Florida Parties have not demonstrated that production cost modeling is unsuitable in Florida and requests that the Commission reject Florida Parties' position that congestion and redispatch benefits of regional transmission projects should be ignored in allocating their costs. FMPA/Seminole further argue that Florida Parties' decision to not use production cost modeling and take account of reduced congestion and dispatch benefits in their regional cost allocation is a collateral attack on the First Compliance Order and Order No. 1000.[691]

397. FMPA/Seminole assert that Florida Parties' failure to consider savings due to congestion relief violates Order No. 1000 because the omission effectively forecloses selection for regional cost allocation of a transmission project designed to relieve congestion, such as the frequently binding constraints impeding access to Central Florida generation.[692] FMPA/Seminole assert that Florida Parties' regional transmission planning process only plans for reliability projects, continuing the status quo that has

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[687] FMPA/Seminole Protest at 67-68.

[688] *Id.* at 18.

[689] *Id.* at 5-6.

[690] *Id.* at 18.

[691] *Id.* at 19-20.

[692] *Id.* at 6.

caused the region to be underbuilt. They add that this results in a regional planning process in which economic projects cannot be selected for regional cost allocation in Florida, contrary to Order No. 1000 and the First Compliance Order..[693] FMPA/Seminole assert that Florida Parties' proposal continues to sidestep the Commission's requirement to allow for the possibility of resolving transmission needs or realizing opportunities at a regional level where, in the local transmission planning process, the benefits of resolving the identified transmission need or realizing the identified opportunity did not outweigh the costs of doing so.[694] FMPA/Seminole assert that in order for Florida Parties to comply with the First Compliance Order, they must use a selection methodology that adequately measures the economic benefits of congestion relief, access to more economical resources, and avoided redispatch.[695]

398. FMPA/Seminole assert that the use of reduced line losses is an inappropriate metric in cost allocation because line loss impacts are neither a proxy nor a substitute for including a measure of congestion/redispatch benefits in evaluating whether a proposed project is more efficient or cost-effective, and that loss reductions are not mentioned in Order No. 890's discussion of economic planning, nor does the term "losses" appear in Order No. 1000's discussion of economic planning or the identification and evaluation of transmission needs related to economic consideration.[696] While reduced losses are among the possible impacts listed in the First Compliance Order and FMPA/Seminole do not oppose adding line losses to the cost-benefit analysis, FMPA/Seminole argue that effects on line losses are generally considered only to be a secondary economic benefit of new transmission, and are no substitute for recognition of the energy costs savings transmission can provide.[697] FMPA/Seminole assert that while it does not oppose adding losses to the cost-benefit analysis used in regional project selection, excluding other measures of energy cost savings that transmission can provide will underestimate the economic benefits of proposed regional projects.[698] FMPA/Seminole assert that, as a result, Florida Parties' cost-benefit analysis will systematically reject projects that would produce substantial net economic benefits. FMPA/Seminole also assert that losses are

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[693] *Id.* at 7.

[694] *Id.* at 11 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 251).

[695] *Id.* at 11.

[696] *Id.* at 12.

[697] *Id.*

[698] *Id.* at 13.

likely to be negatively correlated to congestion relief, and unless the economic benefits of access to less expensive generation are also properly taken into account, Florida Parties' proposal to add losses to their benefit-cost analysis may actually show negative benefits from highly beneficial proposed economic projects, making it even less likely that projects that relieve congestion and reduce energy costs will be built.[699]

399. Furthermore, citing to previous Commission Orders in MISO and PJM regions, FMPA/Seminole state that Commission precedent does not support reliance on line loss impacts as the sole measure of economic impacts (aside from avoided transmission costs).[700] FMPA/Seminole argue that the Commission has allowed regional variation in the metrics used to estimate the economic benefits of regional transmission projects, noting that it will approve regional cost allocations based on different combinations and weightings of production cost and load price benefits, so long as they are reasonable.[701] FMPA/Seminole state notwithstanding their differences, however, each of the Commission-approved methodologies has focused on quantifying the effects of such projects on congestion and redispatch and access to more economic generation. The issue in those cases was how best to measure those effects—not whether those effects should be taken into account at all in an economic benefits analysis.[702] Further, FMPA/Seminole assert Florida Parties' reliance on the Northern Tier Transmission Group (NTTG) to justify their proposal to ignore congestion and redispatch effects is misplaced. FMPA/Seminole state, in that case, the Commission approved NTTG's proposed regional cost allocation method, which was based on estimates of the effects of regional transmission projects on capital costs, losses, and reserves. As noted elsewhere in the NTTG First Compliance Order, however, NTTG's compliance filing proposed broader criteria for evaluating projects for selection in the regional transmission plan for purposes of cost allocation.[703] Additionally, FMPA/Seminole note that although NTTG's subsequent compliance filing proposes to limit project selection criteria to capital costs, energy losses, and reserves, NTTG's inclusion of effects on change in annual reserves in

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[699] *Id.* at 13-14.

[700] *Id.* at 14 (citing, for example, *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 at PP 5, 30; *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,051, at PP 8-12, 63-65 (2008)).

[701] *Id.* at 14 (citing, for example, *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 at PP 5, 30; *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,051 at PP 8-12, 63-65).

[702] *Id.* at 14-15.

[703] *Id.* at 15 (citing *PacifiCorp*, 143 FERC ¶ 61,151 at P 177 (2013).

its selection criteria that measures the energy impact of altering projects from the initial regional plan is presented as a measure of a project's resource-related benefits for load serving entities.[704]

400. FMPA/Seminole suggest that Florida Parties should be required to either use production cost modeling or propose a reasonable alternative method of estimating the benefits of reduced congestion and increased access to generation. Additionally, FMPA/Seminole state that those economic benefits must also be integrated into the identification and evaluation of potential CEERTS projects.[705]

401. LS Power asserts that Florida Parties continue to use avoided transmission cost as its sole methodology.[706] LS Power notes that Florida Parties elected not to use production cost savings but does not address the proposed provision including estimated benefits of reduced line losses. LS Power states that the first problem with the avoided transmission cost methodology is that it requires a local project to be on the books before a regional project can be considered. According to LS Power, this fails to account for regional benefits that may arise where there was no local need at all. LS Power argues that Florida Parties' rejection of production cost savings as "hypothetical and speculative given Florida's market structure and transmission access structure" is a good example of this concept. LS Power asserts that what Florida Parties are really saying is that Florida does not have a "market," only captive customers, so there is difficulty measuring production cost savings.

402. FMPA/Seminole assert that Attachment K, section 1.9.2.C, which specifies the criteria for selection of CEERTS projects including use of an independent consultant to conduct the cost-benefit analysis, paired with section 9.4.3, which provides the "formula-type" methodology for reliability/economic projects does not comply with Order 1000's Cost Allocation Principle 1. FMPA/Seminole state the combined proposed provisions cannot be counted on to produce results consistent with Cost Allocation Principle 1, which specifies that the cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits, even for reliability projects.[707]

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[704] *Id.* at 16 (citing NTTG September 16, 2013 Second Compliance Filing).

[705] *Id.* at 18.

[706] LS Power Protest at 22.

[707] FMPA/Seminole Protest at 72.

FMPA/Seminole state that Florida Parties have failed to propose cost allocation for economic or public policy projects that complies with the Commission's directives.[708]

403. FMPA/Seminole state that Florida Parties' proposal fails to assess the multiple benefits of transmission projects serving multiple purposes in their evaluation or cost allocation processes, such as "facilities needed to meet reliability requirements, address economic considerations, and/or meet transmission needs driven by public policy requirements." FMPA/Seminole assert that Florida Parties' proposal is not compliant with Order No. 1000, which states, "[i]f a regional transmission plan determines that a transmission facility serves several functions […] the regional cost allocation method must take the benefits of these functions of the transmission facility into account in allocating costs roughly commensurate with benefits."[709] FMPA/Seminole state, for example, that Florida Parties' approach to measuring the benefits of public policy projects ignores benefits of reduced transmission line losses or avoided project costs. Although the Commission allows use of different methods for different types of projects, FMPA/Seminole state that Florida Parties' failure to provide for assessment of the multiple types of benefits that a proposed project may provide, and allocating their costs roughly proportional to benefits.[710]

404. FMPA/Seminole argue that Florida Parties' proposal to add incumbent transmission owner costs, then termed "abandonment costs" and now renamed "displacement costs" hangs an albatross around a CEERTS project sponsor's neck: whatever costs incumbent transmission owners incurred before the CEERTS Project was proposed or during the vaguely milestoned CEERTS review process are added to the CEERTS project cost to determine the cost-benefit analysis and require that the CEERTS project developer reimburse incumbent transmission owners for these abandonment costs. FMPA/Seminole argue that Florida Parties' proposal unfairly prejudices third-party sponsors and provides opportunities for gaming the cost-benefit calculations once incumbent transmission owners learn that nonincumbent developers are proposing a competing project. FMPA/Seminole argue that Florida Parties ignores the Commission's directives on these costs by simply renaming them and retaining them in the formula without addressing the Commission's concerns.

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[708] *Id.* n.81.

[709] *Id.* at 73 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 148, 690).

[710] FMPA/Seminole Protest at 74.

(iii) Answer

405. Florida Answering Parties state that production cost savings and/or congestion relief benefits are not a necessary metric. Florida Answering Parties assert that avoided transmission cost methodology itself fully takes into account the benefits of relieving congestion and increased access to generation because it ensures that regional projects provide the same economic benefits as the local projects being replaced. Otherwise, the regional project would not be selected. Florida Answering Parties argue what FMPA/Seminole seek is an approach where an attempt is made to guess whether there will be other economic benefits to entities that have not indicated any need for a regional project. Florida Answering Parties state that their decision not to allocate costs based on hypothetical benefits based on speculation about future conduct that might be gleaned through production cost modeling is reasonable. Florida Answering Parties assert that the Commission agreed that production cost modeling did not have to be used and explicitly stated so in the First Compliance Order.[711] Further, Florida Answering Parties note that the Commission also held in its order on NTTG that production cost modeling does not have to be used as a metric.[712] Florida Answering Parties state that in a physical transmission rights regime, production cost savings cannot be assumed based on the existence of additional facilities. More fundamentally, according to Florida Answering Parties, a particular load serving entity may have very different costs such that it would benefit to a far lesser or greater degree than the other transmission customers of any particular provider.[713]

406. Florida Answering Parties state that because the Commission required that additional benefit metrics be used while also maintaining that costs had to be roughly commensurate with benefits, line loss impacts is the only additional metric identified that could be measured with any meaningful accuracy. Florida Answering Parties reiterate that they are not substituting losses for congestion and/or redispatch benefits, since congestion and/or redispatch benefits are too speculative to meet the roughly commensurate with benefits test in the FRCC non-RTO setting where there is no centralized dispatch. Rather, given their market structure, Florida Answering Parties have included losses as an additional metric, which is appropriate in that all customers of each transmission provider beneficiary must pay a share of a CEERTS project.[714] Florida

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[711] Florida Answering Parties Answer at 48 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 255).

[712] *Id.* at 48-49 (citing *PacifiCorp*, 143 FERC ¶ 61,151 at P 242).

[713] *Id.* at 49.

[714] *Id.* at 50.

Answering Parties state that the Commission made clear in the First Compliance Order that reductions in transmission losses are economic savings and the Brattle Report on cost allocation also indicates that losses are an appropriate metric.[715] Further, Florida Answering Parties state that they have recognized that losses may increase in the cost allocation and that this approach accounts for both increases and decreases in transmission line losses. Florida Parties claim that, if a CEERTS project is cost effective, there is no reason such regional transmission projects will not be planned even if it increases losses.[716]

407. Florida Answering Parties dismiss the assertion that NTTG's proposal varies from their proposal that also includes the losses as a cost allocation criteria. Florida Answering Parties state that NTTG's use of reserves as an additional metric was not a metric of congestion and/or redispatch benefits – it was an economic metric of reserve savings. In any case, Florida Answering Parties note that the Commission did not mandate that the FRCC region adopt metrics that, if applied, would be so speculative that it could not meet the roughly commensurate with benefits principle.[717]

408. Florida Answering Parties state that no additional cost allocation methods are necessary for projects with multiple types of benefits. Florida Answering Parties state that the Commission has not required that regions include an "all of above" category for cost allocation. Florida Answering Parties claim that FMPA/Seminole are trying to impose a requirement that has not been imposed on other regions and, in any event, it is not clear in any case that there will be overlap. Florida Answering Parties explain that if a project is needed to meet a transmission service request or reliability standard it is *de facto* not driven by a public policy. That is, according to Florida Answering Parties, if there is, for example, a renewable mandate and a transmission service request is submitted that triggers a transmission project that is then replaced by a CEERTS project, the CEERTS project remains a reliability and/or economic project.[718]

409. Florida Answering Parties assert that FMPA/Seminole's argument against the avoided cost methodology fails to recognize that the methodology itself fully accounts for benefits of relieving congestion and increased access to generation because it ensures that regional projects provide the same economic benefits as the local projects being replaced,

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[715] *Id.* at 50-51 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 254).

[716] *Id.* at 51.

[717] *Id.* at 51-52.

[718] *Id.* at 72-73.

and that otherwise regional projects would not be selected.[719] Florida Answering Parties clarify that their decision not to allocate costs based on hypothetical benefits based on speculation about future conduct that may be gathered through production cost modeling is reasonable and disagree with FMPA/Seminole and state that the Commission specifically states that production cost modeling did not have to be used.[720] Florida Answering Parties claim that FMPA/Seminole's production cost proposal does not address the root issue that in a physical transmission rights regime, cost savings cannot be assumed based on the existence of additional facilities. Florida Answering Parties also state that a particular load serving entity may have different costs such that it would benefit to a far lesser or greater degree than the other transmission customers of any particular provider.[721]

410. Florida Answering Parties claim that LS Power wants a cost allocation approach where entities with production cost savings are allocated the cost.[722] Florida Answering Parties argue that LS Power ignores that adopting as a default cost allocation an approach that allocates costs to the entities that seek to use the new facility to lower their production costs by voluntarily reserving transmission is prohibited by the ban on using participant funding as the default approach. Indeed, Florida Answering Parties state that they fully support an approach to cost allocation where entities that seek to use a new project to lower their production costs are allocated its costs. According to Florida Answering Parties, such participant funding can be used where parties agree voluntarily upon the cost and benefits of a particular transmission project.[723]

411. Florida Answering Parties state that the FMPA/Seminole suggestion of an after-the-fact abandonment proceeding at the Commission is not workable in that the outcome of the case must be known in order to determine whether a CEERTS project is economic. Additionally, this approach imposes unacceptable risks on transmission providers that have a legal obligation to plan to meet customer needs and reliability standards. Florida

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[719] *Id.* at 48.

[720] *Id.* at 48 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 255). These arguments are also addressed in the Evaluation section of this order.

[721] *Id.* at 49.

[722] *Id.*

[723] These arguments are also addressed in the Evaluation section of this order.

Answering Parties assert that to not allow recovery of costs that must be expended to meet those obligations is tantamount to an improper taking.[724]

412. In response to Florida Answering Parties, FMPA/Seminole state that if a single project were proposed that could address additional needs, (e.g., displacement of local projects or public policy needs for which a transmission service request was submitted before the transmission planning cycle began), the full costs of that regional project would be allocated based on only one cost allocation methodology, either the public policy cost allocation process[725] or the reliability/displacement project cost allocation process.[726] FMPA/Seminole contend that Florida Parties' mutually exclusive project categories eliminate ambiguity as to how a given project will be treated for purposes of planning and cost allocation, but only by arbitrarily ignoring, rather than recognizing, the full range of potential benefits provided by regional projects.[727]

413. In its reply to Florida Answering Parties answer, FMPA/Seminole disagree with the argument that it is impossible for Florida Parties to measure economic benefits more than they are already proposing to do. FMPA/Seminole assert that Florida Parties' proposed cost-benefit analysis assumes that congestion relief/economic dispatch are equal to zero, and Florida Answering Parties' assertion that congestion relief/redispatch benefits must be ignored in non-RTO areas amounts to an attack on the economic planning requirements of the First Compliance Order and Order No. 1000.[728] FMPA/Seminole state that, moreover, while they agree that production cost modeling is not required, Florida Parties must provide some measure of congestion relief/redispatch benefits.[729]

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[724] Florida Answering Parties Answer at 70.

[725] FMPA/Seminole Answer at 17 (citing Florida Power & Light Co., FPL OATT, Attachment K § 9.4.4).

[726] *Id.* at 17 (citing Florida Power & Light Co., FPL OATT, Attachment K § 9.4.3).

[727] *Id.* at 16 (citing Florida Answering Parties Answer at 72-73). FMPA/Seminole state that these problems also need to be addressed for economic projects.

[728] *Id.* at 11-12.

[729] *Id.* at 12.

(iv) Commission Determination

a. Cost Allocation Principles

414. We find that Florida Parties' proposed cost allocation method for reliability and economic transmission projects partially complies with the Commission's directives in the First Compliance Order addressing the regional cost allocation principles of Order No. 1000. Specifically, we find that Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects: (1) does not involuntarily allocate costs to those who receive no benefits; (2) includes a benefit to cost threshold that does not exceed 1.25; (3) allocates costs solely within the affected transmission planning region; (4) provides for methods for determining benefits and identifying beneficiaries that are transparent; and (5) represents a single cost allocation method for economic and reliability transmission facilities that is set out clearly and explained in detail.

415. However, we find that Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects partially complies with Cost Allocation Principle 1. In addition, we find that Florida Parties' proposal: (1) does not provide for identification of the consequences for other transmission planning regions, such as upgrades that may be required, associated with a transmission facility selected in the regional transmission plan for purposes of cost allocation; and (2) does not provide for adequate documentation to allow a stakeholder to determine how the methods for determining benefits and beneficiaries were applied to a proposed transmission facility. Accordingly, Florida Parties must make a further compliance filing to revise their Attachment Ks, as discussed below.

416. With respect to Regional Cost Allocation Principle 1, we find that Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects partially complies with the requirements of Order No. 1000. We find that the proposal allocates the costs of transmission facilities selected in the regional transmission plan for purposes of cost allocation to those within the transmission planning region that benefit from those transmission facilities in a manner that is at least roughly commensurate with estimated benefits. Under Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects, the costs of a regional transmission project selected in the regional transmission plan for purposes of cost allocation will be allocated to each company based on the avoided costs and line loss data.

417. We find the proposal to supplement the use of a single avoided costs method to allocate the costs of reliability and economic transmission projects by also measuring line losses partially complies with Cost Allocation Principle 1. Line losses are an appropriate additional metric to identify beneficiaries of a transmission project. But Florida Parties

have not demonstrated that adding benefits associated with line losses to its evaluation of transmission projects is sufficient to overcome the shortcomings the Commission identified with relying on the avoided cost method to identify both reliability and economic benefits of a transmission project. In particular, the Commission found that the single avoided cost regional cost allocation method that Florida Parties proposed in their initial compliance filings: (a) failed to account for benefits that were not identified in the local transmission planning processes but that could be recognized at the regional level; (b) failed to account for benefits associated with addressing economic and public policy-related transmission needs that the regional transmission facility provides; (c) limited the consideration by stakeholders on a more aggregated basis of whether a particular transmission facility may represent the more efficient or cost-effective means of fulfilling a given transmission need, and (d) did not allow for the possibility of resolving transmission needs or realizing benefits at the regional level where, in an individual local transmission planning process, the value of resolving the identified transmission need or the value of the additional benefits does not outweigh the costs, even though the value could outweigh the costs when considered on a regional basis.[730] We find that transmission line losses do not *by themselves* remedy these deficiencies.[731]

418. Florida Parties do not explain how the line loss benefit metric by itself addresses the Commission's concern. Instead, Florida Parties argue that, in the FRCC region, monetizing and measuring most types of benefits is a speculative exercise such that a metric based on such benefit cannot possibly meet the requirement that costs be at least roughly commensurate with benefits.[732] While Florida Parties acknowledge that a wide range of possible benefit metrics exist, they argue, without further explanation, that the Commission's six cost allocation principles, the requirement that the cost allocation method be ex ante in nature, and the prohibition on participant funding render almost all metrics impossible to implement in Florida while still abiding by all or even most of these requirements.[733] Line loss impacts, according to Florida Parties, is the only

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[730] First Compliance Order, 143 FERC ¶ 61,254 at PP 248-253.

[731] By comparison, the Commission has accepted proposals that include avoided cost and line losses when included with an additional benefit metric that considers all alternative local and regional transmission projects that would be required in lieu of the proposed regional transmission project. *E.g., So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 at PP 272-273).

[732] *E.g.*, Florida Power & Light Co. Transmittal at 29.

[733] *Id.* at 29.

additional benefit metric they identified that could be measured with any meaningful accuracy.[734]

419. Notwithstanding Florida Parties' claim that line losses is the only benefit metric they can use to measure benefits not related to avoided costs, we find that their proposal is insufficient to meet Cost Allocation Principle 1. While changes in line losses related to a potential regional transmission project can identify benefits beyond those that were identified in the local transmission planning process, Florida Parties have not demonstrated that the scope of those benefits is sufficient to ensure costs are allocated on a basis that is at least roughly commensurate with benefits. We do not find persuasive Florida Parties' arguments that they cannot adopt any other benefit metric, such as one of those that the Commission provided to Florida Parties as examples or that the Commission has accepted in other regions, and arguing that there are no other benefit metrics that they could adopt does not make Florida Parties' proposal to adopt a single line loss benefit metric in addition to avoided costs compliant with Cost Allocation Principle 1. Indeed, the Commission has not accepted avoided costs plus line losses as sufficient to comply in any other region.

420. We also disagree with Florida Parties' claim that production cost modeling is particularly speculative such that it cannot possibly meet the requirement to be roughly commensurate with benefits.[735] While the Commission acknowledged in the First Compliance Order that Florida Parties had concerns with applying production cost modeling in the FRCC region, the Commission also noted that other non-RTO regions have developed forms of production cost modeling for purposes of identifying beneficiaries, which the Commission has accepted as compliant with Order No. 1000.[736] We also note that Florida Parties' OATT already provides that the "FRCC Regional Transmission Planning Process includes both economic and congestion studies" and allows members of the FRCC Planning Committee to "request a study of the cost of congestion" from transmission providers.[737] Thus, we reject Florida Parties' argument that line losses are the only available source of data to measure the benefits of economic transmission projects that may provide benefits beyond those associated with displacing a local transmission project.

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[734] Florida Answering Parties Answer at 50.

[735] *E.g.*, Florida Power & Light Co. Transmittal at 29-30.

[736] First Compliance Order, 143 FERC ¶ 61,254 at P 254.

[737] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, §8.2.

421. Although production cost modeling is not a required metric, we agree with FMPA/Seminole that an alternate method beyond line losses and avoided costs is needed to fully comply with Cost Allocation Principle 1. We note that the Commission has accepted as compliant with Cost Allocation Principle 1 a proposal to measure benefits by using the avoided costs related to the displacement or deferral of transmission facilities together with the value of increased capacity on a beneficiary's transmission system, measured as the lesser of the costs the beneficiary would have otherwise incurred to achieve such increased capacity or the beneficiary's projected changes in revenue that would result from such increased capacity.[738] However, Florida Parties dismiss this type of analysis as an attempt to guess whether there will be other economic benefits to entities that have not indicated any need for a regional transmission project by requesting firm transmission service.[739]

422. The Commission has also found that a proposal to identify benefits by measuring avoided costs, changes in line losses, and changes in reserves, when used together, complies with Cost Allocation Principle 1.[740] Florida Parties state, however, the FRCC region has already captured economic benefits related to the reduction of reserve sharing requirements with the implementation of the Florida Reserve Sharing Agreement and there are no additional savings that could be attained through incremental transmission facilities.[741] Therefore, Florida Parties also reject reductions in reserve sharing requirements as a benefit metric.

423. A benefit metric Florida Parties do not address is one where, if a regional transmission project addresses a transmission need for which no transmission project is included in the local transmission plans, the cost of all alternative local and regional transmission projects that would be required in lieu of the proposed regional transmission project would be calculated to identify beneficiaries. Specifically, the Commission found that South Carolina Electric & Gas Company's (SCE&G) proposal to identify beneficiaries and measure benefits based on the following: (1) all canceled or postponed transmission projects in the Transmission Providers' local and regional transmission plans; (2) any reduction in costs of existing transmission projects in those plans; (3) if the proposed regional transmission project addresses a transmission need for which no

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[738] *Avista Corp.*, 143 FERC ¶ 61,255 at PP 299-300. The Commission required additional transparency requirements related to these proposed benefit metrics. *Id.* P 301.

[739] Florida Answering Parties Answer at 48.

[740] *PacifiCorp*, 143 FERC ¶ 61,151 at P 240.

[741] *E.g.*, Florida Power & Light Co. Transmittal at 34.

transmission project is included in those plans, all alternative local and regional transmission projects that would be required in lieu of the proposed regional transmission project; and (4) the estimated value of the reduction of real power losses on the Transmission Providers' transmission systems, complies with Cost Allocation Principle 1.[742]

424. The Commission has also found compliant with Cost Allocation Principle 1 the SERTP transmission providers' similar proposal to identify beneficiaries based on the cost savings associated with the following: (1) the displacement of one or more transmission projects previously included in the beneficiaries' 10 year expansion plans; (2) the displacement of one or more regional transmission projects previously included in the regional transmission plan; (3) if the proposed regional transmission project addresses a transmission need for which no transmission project is included in those plans, any alternative transmission projects that would be required in lieu of the proposed regional transmission project; and (4) the reduction of real power transmission losses on the beneficiaries' transmission systems.[743] Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, a further compliance filing revising their regional cost allocation method for reliability and economic transmission projects to adopt the method used by either the SCE&G or SERTP regions.[744] Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

425. We reject FMPA/Seminole's argument that the proposal does not comply with Order No. 1000 because, if a single transmission project is proposed that could address multiple types of needs, the full costs of that single transmission project would be allocated based on only one cost allocation method, either the public policy cost allocation method or the reliability cost allocation method. As provided in Order No. 1000, each public utility transmission provider is afford the flexibility to have in its OATT a method, or set of methods, for allocating the costs of any new transmission facility selected in the regional transmission plan for purposes of cost allocation so long as the cost allocation method or methods satisfy the six regional cost allocation principles.[745] In response to FMPA/Seminole's protest that we require Florida Parties to

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[742] *See So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 at PP 272-273.

[743] *See Louisville Gas & Elec. Co.*, 147 FERC ¶ 61,241 at P 463.

[744] *See So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 at PP 272-273; *Louisville Gas & Elec. Co.*, 147 FERC ¶ 61,241 at P 463.

[745] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 558, 603, & 690.

use production cost modeling to calculate transmission project benefits, we decline to impose this requirement at this time.

426. We find that Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects complies with Regional Cost Allocation Principle 2. Cost Allocation Principle 2 requires that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, not be involuntarily allocated any of the costs of those transmission facilities. Under Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects, the beneficiaries of a CEERTS project will be those transmission providers enrolled in the FRCC region (on behalf of their retail and wholesale customers) that benefit from the project,[746] and entities that receive no benefit from a CEERTS project will not be allocated any costs.[747] Florida Parties therefore propose that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, are not involuntarily allocated any of the costs of such transmission facilities. We note that, as discussed above in connection with our conclusion that the proposed cost allocation method partially complies with Cost Allocation Principle 1, subject to the compliance directives for Cost Allocation Principle 1, Florida Parties' proposal allocates costs in a manner that is at least roughly commensurate with estimated benefits. Thus, Florida Parties' proposed regional cost allocation method does not involuntarily allocate the costs of transmission facilities to those that receive no benefit from those transmission facilities.

427. Cost Allocation Principle 3 requires that if a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, the threshold must not exceed 1.25. Florida Parties state that they use a benefit to cost threshold of 1.0 or greater for reliability and economic transmission projects. Thus, we find that Florida Parties' regional cost allocation method for reliability and economic transmission projects complies with Regional Cost Allocation Principle 3.

428. As discussed above, Florida Parties propose that the beneficiaries of a CEERTS project will be those transmission providers enrolled in the FRCC region (on behalf of their retail and wholesale customers) that benefit from the project.[748] Thus, we find that Florida Parties' proposed regional cost allocation method for reliability and economic

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[746] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 9.4.2.

[747] *Id.* § 9.4.1.

[748] *Id.* § 9.4.2.

transmission projects complies with the Regional Cost Allocation Principle 4 requirement that the regional cost allocation method must allocate the costs of a transmission facility selected in the regional transmission plan for purposes of cost allocation solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects does not comply with the Regional Cost Allocation Principle 4 requirement that the regional transmission planning process identify the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region. Florida Parties also do not address whether the FRCC region has agreed to bear the costs associated with any required upgrades in another transmission planning region or, if so, how such costs will be allocated within the FRCC region. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to address these requirements. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

429. We find that Florida Parties' proposed regional cost allocation method partially complies with Regional Cost Allocation Principle 5. Florida Parties state that an outside independent consultant will be hired to review all proposed transmission facilities selected in the regional transmission plan for purposes of cost allocation in order to provide adequate documentation to allow a stakeholder to determine how benefits and beneficiaries will be identified and applied to a proposed transmission facility. However, the Attachment Ks do not state how and at what point the independent consultant will release the relevant documentation. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to provide stakeholders an opportunity to review and comment on the independent consultant's documentation that will allow a stakeholder to determine how benefits and beneficiaries will be identified and applied to a proposed transmission facility. Likewise, Orlando also should submit further clarifications to its Attachment K consistent with this directive.

430. We find that Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects complies with Regional Cost Allocation Principle 6. Consistent with Regional Cost Allocation Principle 6, Florida Parties proposes to use a different cost allocation method for different types of transmission facilities selected in the regional transmission plan for purposes of cost allocation.[749] In

[749] *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 685.

addition, Florida Parties have not proposed to designate a type of transmission facility that has no regional cost allocation method applied to it.[750]

b. Provisions Related to Cost Recovery and Displaced Projects

431. We reject Florida Parties' proposal to allow transmission providers to automatically recover all displaced transmission project costs from a transmission developer without having to make a further filing at the Commission.[751] As proposed, if a CEERTS project is selected in the regional transmission plan for purposes of cost allocation such that a displaced transmission project therefore does not go into service, then the incumbent transmission owner's expenditures on the displaced transmission project become abandoned plant costs.[752] Under the proposal, as Florida Answering Parties explain in their answer,[753] a transmission provider will recover from each developer of a CEERTS project, a lump sum payment for the entire amount of any costs the incumbent transmission provider incurred on a displaced transmission project, which will include abandoned plant costs, without having to make any further filing at the Commission.

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[750] *Id.* P 690.

[751] *See* First Compliance Order, 143 FERC ¶ 61,254 at 199 (citing Order No. 1000, FERC Stats. & Regs ¶ 31,323 at P 267); s*ee also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 489. *ISO New England, Inc.* 143 FERC ¶ 61,150, at P 399, n.720 (2013) (noting that Commission policy requires that the utility demonstrate that the costs were prudently-incurred and are not permitted to be passed through without initial Commission review of the particular costs through a section 205 filing).

[752] Investment costs associated with cancelled plant that does not go into service are abandonment costs. *See, e.g., New England Power Co.*, Opinion No. 49, 8 FERC ¶ 61,054 (1979), *aff'd sub nom.*; *NEPCO Municipal Rate Committee v. FERC*, 668 F.2d 1327 (D.C. Cir. 1981), *cert. denied*, 457 U.S. 1117 (1982); *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

[753] Florida Answering Parties Answer at 69-70.

432. We reject this proposal because it is inconsistent with the Commission's policy on recovery of abandoned plant costs.[754] The Commission has outlined several conditions of abandoned plant recovery.[755] For example, when a utility requests abandoned plant recovery, the utility must offset any abandoned plant recovery with proceeds from the sale of related assets.[756] The Commission must be able to review these asset sales, particularly if they are between affiliates, to ensure that the abandoned plant balance is properly reduced.[757] Companies must propose a review process to ensure there is no double recovery between abandoned plant and survey/study costs.[758] We find unconvincing Florida Parties' claim that an after-the-fact abandonment proceeding is not workable because the outcome of the abandonment case must be known to determine whether a CEERTS project is economic.[759] As we find in the Benefit-Cost Analysis section, it is reasonable to include abandonment costs for displaced transmission facilities as part of the accounting provided to an independent consultant when performing the cost-benefit analysis; the part of the proposal we reject here would allow transmission

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[754] This includes, but is not limited to, the inclusion of displaced project costs in the cost allocation and recovery data inputs. *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 9.4.3 (using the term "Estimated CEERTS Project Cost," which includes Total Estimated Displacement Costs) and § 9.4.5.4.

[755] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 116 (citing *Construction Work In Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, 48 Fed. Reg. 24,323 (June 1, 1983), FERC Stats. & Regs. ¶ 30,455 (1983), *order on reh'g*, Order No. 298-B, 48 Fed. Reg. 55,281 (Dec. 12, 1983), FERC Stats. & Regs. ¶ 30,524 (1983)); *see also*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 488 (stating Order No. 1000 did not provide for a blanket recovery of abandoned plant costs, but requires a case-by-case review of abandoned plant recovery consistent with Order No. 679).

[756] *Minnesota Power & Light Co.*, Opinion No. 87, 11 FERC ¶ 61,313 (1980) (disallowing abandonment costs associated with self-dealing).

[757] *Id.*

[758] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 164-167 (2006) (requiring abandoned plant recovery be reviewed on a case-by-case section 205 filing to adequately discipline investment decisions, ensure the decision to cancel the plant was truly beyond the utility's control, and ensure there was no double-recovery between abandoned plant and survey/study expenses).

[759] Florida Answering Parties Answer at 70.

providers to *recover* a lump sum payment for the abandoned plant costs that were included in the benefit-cost analysis without making a filing at the Commission.[760] Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings revising their OATTs to make clear that the transmission providers must make a separate filing at the Commission with respect to recovery of any abandoned plant costs associated with a transmission project that has been displaced by a different transmission project that has been selected in the regional transmission plan for purposes of cost allocation. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

433. Further, Florida Parties propose to allocate the costs of CEERTS projects based on a formula that uses the term "Estimated CEERTS Project Cost." The term "Estimated CEERTS Project Cost" includes three components – the Estimated Developer Cost, Total Estimated Related Local Project Costs, and Total Estimated Displacement Costs. As discussed in the previous paragraph, we reject Florida Parties' proposal to allow transmission providers to automatically recover all displaced transmission project costs from a transmission developer without having to make a further filing at the Commission. With respect to the other components, the Estimated Developer Cost is described in the OATT as "a comprehensive annual transmission revenue requirement associated with the original or revised cost estimate for the developer's project,[…] for the years during which the CEERTS project is expected to be in service during the planning horizon. […] The net present value of these estimated annual revenue requirements shall be the Estimated Developer Cost."[761] Order No. 1000 requires that "every cost allocation

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[760] Florida Answering Parties also argue that requiring a transmission provider to make a filing at the Commission after-the-fact to recover abandoned plant costs that a transmission provider expended to meet its legal obligation to plan to meet customer needs and reliability standards is tantamount to an improper taking. Florida Answering Parties Answer at 70. We reject this argument as a collateral attack on the Commission's policy on abandoned plant cost recovery, which Order No. 1000 did not change. Further, Florida Answering Parties' claim does not reach the required threshold for unconstitutional taking because we are not prohibiting transmission providers from requesting cost recovery pursuant to the Commission's regulations, including an appropriate valuation of property at that time. *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 123 (1978).

[761] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, §1.2.9.C.3. Further, the Total Estimated Related Local Project Costs are calculated using the annual transmission revenue requirements for the years during which a local transmission project

(continued…)

method or methods provide for allocation of the entire prudently incurred cost."[762] The proposal to allocate the "Estimated CEERTS Project Cost" does not make clear that, in accordance with Order No. 1000, the entire prudently incurred cost of the CEERTS project will be fully allocated because the Estimated Developer Cost includes only the annual transmission revenue requirements during the planning horizon. We therefore direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings revising this section of their OATTs to provide that all prudently incurred CEERTS project costs will be fully allocated. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive. In these further compliance filings, Florida Parties and Orlando must also include revisions providing that all prudently incurred costs for a local transmission project that an enrolled transmission provider will need to construct to implement a CEERTS project will be fully allocated as well.

434. Regarding Florida Parties' proposal to allocate costs in accordance with each enrolled transmission provider's Estimated Avoided Project Cost Benefit,[763] we note that an enrolled transmission provider will be identified as benefiting from a CEERTS project if that project displaces one or more of the enrolled transmission provider's transmission projects. While we find that Florida Parties' proposal is reasonable with respect to the displacement of local transmission projects, this proposal, as it applies to the displacement of regional transmission projects, appears to be inconsistent with Florida Parties' avoided cost benefit metric. Under Florida Parties' proposal, in the event that a regional transmission project that was previously selected in the regional transmission plan for purposes of cost allocation is also (or subsequently) displaced as part of the regional transmission planning process, the beneficiaries of the newly proposed more efficient or cost-effective regional transmission project would include, or potentially be limited to, the enrolled transmission provider whose regional transmission project is being displaced. We therefore direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to clarify and revise their OATTs to address the inconsistency with Florida Parties' avoided cost benefit metric, as it applies to the displacement of regional transmission projects. We direct Florida Parties to specify that, if a regional transmission project displaces a different regional transmission project that was previously selected in

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that an enrolled transmission provider will need to construct to implement a CEERTS project is expected to be in service during the planning horizon.

[762] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 640.

[763] Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.2.9.C.1 & 9.4.3.

the regional transmission plan for purposes of cost allocation, the portion of the costs of the newly proposed more efficient or cost-effective regional transmission project associated with the benefits calculated using the costs of the displaced regional project will be allocated to the enrolled transmission providers that were allocated costs for the displaced regional transmission project in accordance with the regional cost allocation method. Likewise, Orlando also should submit revisions to its Attachment K consistent with this directive.

(2) Cost Allocation Method for Public Policy Projects

(i) Summary of Compliance Filings

435. Under the proposed cost allocation method for public policy driven projects, costs will be allocated to the transmission providers whose transmission systems would need to be modified to provide access to the public policy resources.[764] Florida Parties explain that CEERTS public policy projects, by definition, are not displacing or avoiding projects in the regional transmission plan, and thus the avoided cost metric would be inapplicable.[765]

436. Florida Parties explain that they will first calculate the number of megawatts of public policy resources enabled by the public policy project. Florida Parties propose to then determine the "Individual transmission provider MWs" confirmed through transmission service requests under standard tariff processes in the form of executed service agreements, filings of unexecuted service agreements, and "Network Resource" designations. Florida Parties explain that the cost of the CEERTS public policy project will be allocated based on their pro-rata share of the number of megawatts of public policy resources enabled for the customers within their service territory based on these confirmed public policy resource needs.[766]

437. Florida Parties explain that the Commission found the cost allocation principles in the WestConnect First Compliance Order satisfy Regional Cost Allocation Principle 1 because "identifying beneficiaries, defining benefits, and allocating costs based on 'the number of megawatts of public policy resources enabled,' allocates costs in a manner that is at least roughly commensurate with estimated benefits because it reflects which entities

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[764] *E.g.*, Florida Power & Light Co., Transmittal at 36.

[765] *Id.* at 36.

[766] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 9.4.4.

are expected to rely on particular public policy resources to meet applicable public policy requirements."[767]

438. Florida Parties state the cost allocation method for public policy projects also satisfies Cost Allocation Principle 2 because it ensures that costs are allocated to transmission providers whose local service entities are in need of the facilities and ensures that costs are not allocated to those that do not benefit.[768]

439. Florida Parties assert that the cost allocation method for public policy projects also satisfies the Regional Cost Allocation Principle 3 because there is no benefit-cost ratio and thus the 1.25 threshold is not violated.[769]

440. Florida Parties state that consistent with Regional Cost Allocation Principle 4, its set of cost allocation methods for transmission facilities selected in a regional transmission plan for purposes of cost allocation, allocate costs solely to load within the FRCC transmission planning region.[770]

441. In addition, Florida Parties explain that the cost allocation method and data requirements for public policy projects meets Regional Cost Allocation Principle 5 because the local service entities "accessing resources will ultimately be reflecting such access in transmission service requests (and thus be identifiable) and the location of the [local service entities] (i.e., in which transmission provider's footprint they are located) is readily obvious."[771] Florida Parties state that they will document the results of the cost allocation for public policy projects.[772]

442. In accordance with Cost Allocation Principle 6, Florida Parties propose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan –one cost allocation method for all potential reliability and

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[767] *E.g.*, Florida Power & Light Co., Transmittal at 36 (citing *Public Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 286).

[768] *Id.* at 37.

[769] *Id.*

[770] *Id.* at 34, 37.

[771] *Id.* at 37.

[772] *Id.*

economic transmission projects and one cost allocation method for all potential public policy transmission projects.[773]

(ii) Protests/Comments

443. FMPA/Seminole argue that Florida Parties are silent as to when in the regional transmission planning process transmission needs driven by public policy requirements must be "confirmed by load serving entities through transmission service requests."[774] FMPA/Seminole state that Florida Parties propose that they will cut off consideration of a public policy need-driven transmission project absent firm transmission service agreements for part or potentially all of the planned capacity of the upgrade and that a proposal that effectively blocks all regional transmission planning for public policy projects defeats a key purpose of Order No. 1000.[775]

444. FMPA/Seminole state that as evidenced by FMPA's experience with seeking transmission for a particular power resource located north of the Georgia border, the individual transmission service request-driven, "straw-that-breaks-the-camel's back" approach to grid expansion results in a game of "chicken," with no one customer willing or able to alone shoulder the costs of upgrades on which others can then "free ride" (i.e., the very issue the Commission is seeking to overcome through Order No. 1000).[776] FMPA/Seminole argue that even with "or" pricing, if a transmission request triggers the need for significant upgrades, which FMPA/Seminole contend will often be the case for requests associated with accessing significant new generation, given Central Florida's deficient grid, the cost of such upgrades may be too high to be justified by a single transmission customer.[777] FMPA/Seminole further contends that if the customer does decide to proceed, the transmission solutions identified and evaluated in the transmission service request process would likely not be comprehensive solutions that efficiently address the public policy needs of all LSEs in the region.[778]

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[773] *Id.*

[774] FMPA/Seminole Protest at 29.

[775] *Id.* at 30.

[776] *Id.* at 30 (citing, for example, Order No.1000, FERC Stats. & Regs. ¶ 31,323 at PP 10, 486-87, 534-35, 717, 723; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 562, 578, 726).

[777] *Id.* at 30.

[778] *Id.* at 30-31.

445. FMPA/Seminole argue that conditioning the obligation to plan for public policy needs on the existence of transmission service agreements and confirmed Network Resource designations will pull Order No. 1000's regional planning into the same stand-off that has blocked the construction of needed transmission under the region's existing planning regime, and that under strict application of the OATT, it would be virtually impossible to achieve a confirmed Network Resource designation that would require the construction of significant transmission facilities, unless the transmission customer begins the process of committing to the generating resource before the regional transmission planning cycle has even started.[779] FMPA/Seminole assert that because of the game of "chicken" described above, this is unlikely to be the case in the individual transmission service request context.

446. FMPA/Seminole contend that the transmission studies necessary to achieve a transmission service agreement or confirmed Network Resource designation in time (i.e., before the unspecified cut-off date) would be either duplicative of the analysis being undertaken in the regional planning process, or wasteful and inaccurate because they fail to take into account upgrades being actively considered for construction in the regional plan.[780] FMPA/Seminole argue that if in evaluating such individual transmission service requests, a transmission provider assumes that no proposed public policy projects will be built, it will be forced to plan, develop charges to the individual transmission customers for, and potentially start construction of, upgrades that would be unnecessary and duplicative if the regionally planned upgrade is completed as proposed.[781] FMPA/Seminole state that on the other hand, if the transmission provider incorporates a proposed CEERTS public policy project in the base case used for the transmission service request studies, then the region can find itself transmission-short if that project is ultimately not selected for inclusion in the regional plan, and that either way, the regional planning process will not have achieved the Commission's purpose of meeting the needs

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[779] *Id.* at 31. FMPA/Seminole states that Section 30.2 of the *pro forma* OATT provides that a request for network resource designation "must include a statement that the new network resource satisfies the following conditions: (I) the Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff."

[780] *Id.* at 31.

[781] *Id.* at 31-32.

of the region more efficiently and cost-effectively than relying on the planning efforts of individual public utilities.[782]

447. FMPA/Seminole contend that the Commission's directive to transmission providers to identify and evaluate more efficient or cost-effective transmission projects to meet reliability, economic, and public policy needs and to propose a regional cost allocation method that accommodates such projects is expressly intended to go beyond needs already reflected in firm transmission service reservations.[783] FMPA/Seminole stress that the identification and evaluation of transmission solutions for transmission needs driven by public policy requirements should not be cut-off at any stage, much less an unspecified stage, by limiting such planning only to needs reflected in firm transmission service agreements or confirmed Network Resource designations. FMPA/Seminole argue that requiring customers to commit to firm transmission service agreements and confirmed Network Resource designations before it is known whether an efficient or cost-effective regional transmission project will be included in the regional transmission plan prevents public policy transmission projects from being selected for regional cost allocation.[784]

448. FMPA/Seminole assert that the Commission should direct Florida Parties to eliminate any requirement that public policy transmission projects be supported by firm transmission service agreements or confirmed Network Resource designations prior to inclusion of such a project in the regional transmission plan for regional cost allocation. They add that, should the Commission decide to allow Florida Parties to require any indication of interest from transmission customers prior to selecting a public policy transmission project in the regional transmission plan, the proposal must avoid the pitfalls of planning based on *in seriatim* firm transmission service agreements and confirmed Network Resource designations.[785]

(iii) <u>Answer</u>

449. Florida Answering Parties disagree with FMPA/Seminole's statement that that new generation that is planned in response to an environmental regulation would not create a public policy transmission need and that FMPA/Seminole misconstrue the

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[782] *Id.* at 32 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 81).

[783] *Id.* at 32 (citing Order No. 1000 NOPR, 75 Fed. Reg. 37,884, at P 68; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 43, 45-46, 52, 147-48).

[784] *Id.* at 32-33.

[785] *Id.* at 33.

project categorization criteria. Florida Answering Parties explain that "if a transmission need associated with new generation to meet an environmental mandate is reflected in a Network Resource designation and/or [an] associated point-to-point service request, [then] the transmission project that solves that need [is categorized as a] reliability/economic transmission project."[786] Florida Answering Parties clarify that an entity that *must* meet an environmental regulation would seek firm transmission service for its new resource to ensure compliance and that this does not suggest "a hollowed-out public policy planning requirement." Florida Answering Parties state that instead, it simply reflects that the *new* category of public policy transmission projects are projects driven, in the first instance, where requests for transmission service have *not* been submitted, but a need is nonetheless demonstrated.[787] Florida Answering Parties clarify further that they do not have discretion and that if a transmission service request already has been submitted, a solution to the need already is under development. Florida Answering Parties state that any transmission projects developed as solutions can be replaced with a CEERTS reliability/economic project.[788]

450. Florida Answering Parties explain that their OATTs state the requirement that the need for a public policy transmission project eventually be confirmed by actual transmission service commitments, and that if there is inadequate demand for a given transmission project then it would be imprudent to construct such a project. Florida Answering Parties explain further that by definition there would be stranded costs for which no one would be responsible and that these stranded costs would be the subject of expensive and disruptive litigation. Florida Answering Parties assert that FMPA/Seminole are wrong that the need to avoid stranded costs "effectively blocks all regional planning for public policy projects"[789] and that public policy planning will go forward as described by Florida Answering Parties' Answer. Florida Answering Parties explain that one or more entities have to be willing to pay for the transmission service that the transmission project would be constructed to provide and if transmission service commitments are not made then it means that the previously identified transmission need driven by public policy requirements was not accurately identified or some other essential premise is invalid. Florida Answering Parties clarify that the scope of the transmission project would need to be reevaluated based on the actual transmission service

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[786] Florida Answering Parties Answer at 19-20.

[787] *Id.* at 20.

[788] *Id.*

[789] *Id.* at 24 (citing FMPA/Seminole Protest at 30).

commitments and the project modified to meet the actual transmission need driven by public policy requirements.[790]

451. Florida Answering Parties disagree with FMPA/Seminole's assertion that the individual transmission service request-driven approach to grid expansion results in a game of "chicken." In response to FMPA/Seminole's reference to an instance when FMPA/Seminole pursued transmission for a particular power resource located north of the Georgia border, Florida Answering Parties ask why and how should others be compelled to pay for an FMPA project.[791] Florida Answering Parties contend that to the extent there is a "free rider" issue that may arise from the Commission's longstanding interconnection policies, the issue is beyond the scope of this proceeding. Florida Answering Parties argue that nothing prevents FMPA from overcoming such an issue by joining with others for joint project development – *if there is sufficient collective interest to support such a project.* Florida Answering Parties explain that the transmission planning process provides an opportunity for entities to jointly examine options and rather than submitting transmission service requests on a one-off basis, collectively demonstrate a need for a public policy transmission project that is economic as a result of a shared cost allocation.[792]

452. Florida Answering Parties argue further that they have proposed a public policy planning construct that *will* identify and evaluate public policy transmission projects, and that such planning is *not* being somehow blocked, but the need for such projects eventually must be confirmed by actual transmission service commitments.[793] Florida Answering Parties explain that such commitments cannot be deferred until after a given transmission project receives final approval for selection in the regional transmission plan as FMPA/Seminole suggest.[794] Florida Answering Parties explain further that a transmission project in the regional transmission plan is part of the baseline on which transmission planning must rely going forward. Florida Answering Parties state that transmission planning cannot rely on transmission projects in which there is not enough interest to justify building them, and it would appear to violate reliability standards to do so. Florida Answering Parties also state that it is unlikely that the Florida Commission

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[790] *Id.* at 24.

[791] *Id.* at 24.

[792] *Id.* at 24-25.

[793] *Id.* at 25.

[794] *Id.* at 25 (citing FMPA/Seminole Protest at 33).

would accept such planning as part of the overall integrated resource planning process or would certificate a public policy transmission project when there is insufficient need for or interest in that project.[795]

453. In their answer, FMPA/Seminole state that the Commission directed Florida Parties to remove the restriction that a "public policy requirement must drive a transmission need that is not readily met through existing, approved requests for new transmission service and/or already planned transmission facilities"[796] and that the Commission was "concerned that Florida Parties' compliance proposal categorically precludes Florida Parties from considering whether a regional transmission solution may meet transmission needs driven by public policy requirements more efficiently or cost-effectively than one or more local transmission projects."[797] FMPA/Seminole point out that, although this language was removed in Florida Answering Parties' answer, in their answer, Florida Answering Parties clarify that the restriction is still an implicit and binding element of Florida Parties proposal, and that the regional public policy planning process is intended to include only transmission projects for which a request for transmission service has *not* been submitted at the time the public policy need has been identified by the regional transmission planning process.[798] FMPA/Seminole argue that Florida Answering Parties, in their answer, read back into the OATT, the exact problem that the Commission directed Florida Parties to address (therefore, collaterally attacking the Commission's directive), and that Florida Parties compliance, as modified by Florida Answering Parties' answer is non-compliant.[799]

454. FMPA/Seminole assert that Florida Answering Parties' arbitrary bifurcation of transmission needs driven by public policy requirements (and therefore, solutions to those needs), based on transmission service request submission date, highlights how Florida Answering Parties' OATT provisions are designed to prevent any public policy transmission projects from ever being selected for inclusion in the regional transmission plan for purposes of cost allocation. FMPA/Seminole further assert that transmission needs driven by public policy requirements are prevented from being identified, since prior submission of a transmission service request disqualifies such a need from being

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[795] *Id.* at 25.

[796] FMPA/Seminole Answer at 13.

[797] *Id.* at 13 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 86).

[798] *Id.* at 13 (citing Florida Answering Parties Answer at 20-22, 52).

[799] *Id.* at 14.

considered in the regional public policy planning process.[800] FMPA/Seminole argue that Florida Answering Parties refused to provide details on how or when a solution to a transmission need driven by public policy requirements will be selected if sufficient firm transmission service agreements or confirmed network resource designations are in place in the regional transmission planning process before project selection.[801] FMPA/Seminole state that given the amount of time necessary to process firm transmission service agreements and network resource designations under Florida Answering Parties' existing OATTs, the underlying service requests would likely have to be submitted almost immediately after the transmission need driven by public policy requirements has been identified (but not a moment sooner, since that would preclude identification of the regional transmission need driven by public policy requirements in the first place).[802]

455. FMPA/Seminole state that Florida Parties intend to study and process any timely-submitted transmission service requests related to the transmission need driven by public policy requirements using a base transmission model that excludes any proposed regional transmission solution to that need.[803] FMPA/Seminole contend that each Florida Party would therefore perform, and individual transmission customers would pay for, the wrong studies for purposes of determining whether the regional public policy transmission project is an efficient or cost-effective solution to transmission need driven by public policy requirements.[804] FMPA/Seminole assert that Florida Parties have an inefficient process for evaluating public policy projects. FMPA/Seminole contend that

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[800] *Id.* at 14 (citing Florida Answering Parties Answer at 20).

[801] *Id.* at 14 (citing Florida Answering Parties Answer at 23-25).

[802] *Id.* at 14.

[803] *Id.* at 15 (citing Florida Answering Parties Answer at 25). FMPA/Seminole state that according to Florida Answering Parties, "it would appear to violate reliability standards" to use a base plan for transmission planning that includes "projects in which there is not enough interest to justify building them." FMPA/Seminole argue that it will almost be impossible to know if there is "enough interest to justify building" a particular proposed regional public policy transmission project immediately after identification of the associated transmission need driven by public policy requirement. FMPA/Seminole contend that the base case model used to study the individual transmission service request requests submitted at that time will not include any of the proposed regional solutions to the identified need.

[804] *Id.* at 15.

Florida Parties' process for determining the adequacy of public policy transmission service commitments is an unreasonable standard to use as a litmus test for evaluating the sufficiency of transmission needs driven by public policy requirements or verifying the benefits of a public policy transmission project.[805] FMPA/Seminole further contend that these features may be integral to the routine processing of OATT transmission service requests,[806] but the transmission service request studies that Florida Parties would require are irrelevant to evaluating a regional public policy project. FMPA/Seminole insist that Florida Parties' firm transmission service agreements requirement has no place in the regional planning and cost allocation processes required by Order No. 1000 and the First Compliance Order, which seek to facilitate the construction of more efficient or cost-effective regional transmission solutions in the real world, not create obstacles to them. FMPA/Seminole argue that Florida Parties' assurance that "[p]ublic policy planning will go forward as described in the December Compliance Filing and in this answer" is designed to produce no results in the public policy planning process.[807]

456. FMPA/Seminole argue that Florida Answering Parties' proposed bifurcation of transmission needs driven by public policy requirements will foreclose planning for regional transmission projects designed to comprehensively address *all* transmission needs driven by public policy requirements efficiently and cost-effectively, and that instead, the transmission planning process appears to be limited to transmission projects designed to address only the specific firm transmission service agreements used to support the benefit verification determination.[808] FMPA/Seminole repeat that a

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[805] *Id.* at 15-16.

[806] *Id.* at 16 (citing Florida Answering Parties Answer at 24-25). FMPA/Seminole explain that contrary to Florida Parties' suggestion, FMPA/Seminole are not attacking the OATT's transmission service request and generator interconnection processes. FMPA/Seminole further explain their protest is that Florida Parties' regional public policy planning proposal boils down to being nothing more than those pre-existing OATT processes, which the Commission has specifically found must be supplemented by new regional transmission planning processes and cost allocation method to "ensure that Commission-jurisdictional transmission services are provided at rates, terms, and conditions that are just and reasonable and not unduly discriminatory or preferential." *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 42).

[807] *Id.* at 16 (citing Florida Answering Parties Answer at 24).

[808] *Id.* at 17 (citing Florida Power & Light Co., FPL OATT, Attachment K § 1.2.9.B.2).

reasonable process[809] could be designed to require a concrete showing of interest from transmission customers at the end of Step 5 of the evaluation process,[810] just before project selection decisions.[811] FMPA/Seminole contend further that requiring an executed or unexecuted firm transmission service agreements, or confirmed network resource designation, however, is unworkable, wasteful, and simply defeats the selection of any public policy transmission projects for inclusion in the regional transmission plan.[812]

457. FMPA/Seminole also assert that Florida Answering Parties have not clarified the criteria for "confirm[ing]" a transmission need driven by public policy requirements. For example, FMPA/Seminole are unclear regarding whether or not firm transmission service agreements and confirmed Network Resource designations have to be in place, at what point in time, and for what percentage of the incremental transmission capacity. FMPA/Seminole reiterate that the Commission should reject any requirement that firm transmission service agreements and confirmed network resource designations be in place prior to project selection. FMPA/Seminole state that Florida Answering Parties may identify a different form of commitment for this purpose; however, FMPA/Seminole are unclear that if this is the case, what are the level of commitments necessary to "confirm" a transmission need driven by public policy requirement for purposes of project selection. FMPA/Seminole are also unclear on how the public policy planning process would treat transmission solutions that provide transfer capacity in excess of pre-selection

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[809] *Id.* at 17 (citing FMPA/Seminole Protest at 33).

[810] *Id.* at 17 (citing Florida Power & Light Co., FPL OATT, Attachment K § 1.2.9.B.2).

[811] *Id.* at 18 (citing Florida Answering Parties Answer at 25). FMPA/Seminole state that Florida Parties misleadingly suggest that FMPA/Seminole oppose any requirement that there be a demonstration of transmission customer interest before a public policy transmission project is selected for inclusion in the regional transmission plan for purposes of cost allocation and constructed. FMPA/Seminole state that they are aware that requiring firm transmission service agreements commits transmission customers to take service, but comment that a demonstration of interest in service involving the public policy transmission project itself could be appropriate at the end of Step 5 of the evaluation process, just before project selection decisions.

[812] *Id.* at 18.

commitments, why those treatments are just, reasonable, not unduly discriminatory, and how they comply with the First Compliance Order and Order No. 1000.[813]

(iv) <u>Commission Determination</u>

458. We find that Florida Parties' proposed cost allocation method for public policy transmission projects partially complies with the Regional Cost Allocation Principles of Order No. 1000. Generally, Florida Parties meet the Order No. 1000 requirement that each public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation.[814] However, to comply with the cost allocation requirements of Order No. 1000, Florida Parties must remove the provision that states that, for a public policy project to proceed, there must be sufficient confirmed transmission service requests, because that requirement renders the cost allocation method a participant funding cost allocation method, which may not be the regional cost allocation method under Order No. 1000. In addition, certain aspects of the proposed cost allocation method must be explained in the OATT in greater detail to provide adequate transparency. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to file, within 60 days of the date of issuance of this order, further compliance filings, as discussed herein. Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

459. As a threshold matter, we reject the proposed provisions that require that, before the public utility transmission providers will apply the cost allocation method for a public policy transmission project that has been selected in the regional transmission plan for purposes of cost allocation, the need for access to the selected public policy transmission project must be confirmed through transmission service requests under the standard OATT processes. We find that this is a form of participant funding because the costs of a transmission facility are allocated only to those entities that volunteer to bear those costs.[815] Florida Parties confirm in their answer that these provisions are meant to transform their public policy cost allocation method into a form of participant funding when they state that this provision is needed because, "for any given public policy [transmission] project, one or more entities have to be willing to pay for the transmission

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[813] FMPA/Seminole Motion for Leave to Reply and Reply of FMPA/Seminole at 19.

[814] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558.

[815] *Id.* P 486 n.375.

service that the project would be constructed to provide."[816] In Order No. 1000, the Commission found that participant funding is permitted, but not as a regional cost allocation method and that if proposed as a regional cost allocation method, would not comply with the regional cost allocation principles adopted in Order No. 1000.[817] The Commission explained that reliance on participant funding as a regional cost allocation method increases the incentive of any individual beneficiary to defer investment in the hopes that other beneficiaries will value a transmission project enough to fund its development.[818] The Commission determined that, because of this, it is likely that some transmission facilities identified as needed in the regional transmission planning process would not be constructed in a timely manner, adversely affecting ratepayers.[819] Because the provision requiring that the need for a public policy transmission project be confirmed through transmission service requests is a form of participant funding and participant funding cannot be the regional cost allocation method, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings deleting this provision and references to confirmed transmission needs from their OATTs. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

460. Subject to the removal of the reference to confirmed public policy resource needs, we find that Florida Parties' proposed regional cost allocation method for public policy projects complies with Regional Cost Allocation Principle 1. Florida Parties propose to allocate the costs of public policy projects to those enrolled transmission providers whose transmission systems provide access to the public policy resources based on the proportion of the total megawatts of public policy resources enabled by the public policy project for the customers within the enrolled transmission providers' respective

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[816] Florida Answering Parties Answer at 24.

[817] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 723.

[818] *Id*.

[819] *Id*. The Commission recognized that, if the costs of a transmission facility were to be allocated to non-beneficiaries of that transmission facility, then those non-beneficiaries are likely to oppose selection of the transmission facility in a regional transmission plan for purposes of cost allocation or to otherwise impose obstacles that delay or prevent the transmission facility's construction. For this reason, the Commission adopted the cost allocation principles that seek, among other things, to ensure that any regional cost allocation method or methods allocates costs roughly commensurate with benefits. *Id.*

transmission service territories with confirmed public policy resource needs.[820] We find that identifying beneficiaries, defining benefits, and allocating costs on this basis without reference to whether the public policy resource needs are confirmed through transmission service requests allocates costs in a manner that is at least roughly commensurate with estimated benefits because it reflects which entities are expected to rely on particular public policy resources to meet applicable public policy requirements.

461. Similarly, subject to the compliance directive above, we find that Florida Parties' proposed regional cost allocation method for public policy projects complies with Regional Cost Allocation Principle 2. Regional Cost Allocation Principle 2 requires that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, not be involuntarily allocated any of the costs of those transmission facilities. Under Florida Parties' proposed regional cost allocation method for public policy projects, the beneficiaries of a CEERTS project will be those transmission providers enrolled in the FRCC region (on behalf of their retail and wholesale customers) that benefit from the project,[821] and entities that receive no benefit from a CEERTS project will not be allocated any costs.[822] Florida Parties therefore propose that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, are not involuntarily allocated any of the costs of such transmission facilities. We note that, as discussed above in connection with our conclusion that the proposed cost allocation method for public policy projects complies with Regional Cost Allocation Principle 1, Florida Parties' proposal allocates costs in a manner that is at least roughly commensurate with estimated benefits. Thus, Florida Parties' proposed regional cost allocation method for public policy projects, as modified herein, does not involuntarily allocate the costs of transmission facilities to those that receive no benefit from those transmission facilities.

462. Further, we find that Florida Parties' proposed regional cost allocation method for public policy transmission projects, as modified herein, complies with Regional Cost Allocation Principle 3, which requires that if adopted, a benefit to cost threshold may not include a ratio of benefits to costs that exceeds 1.25, because Florida Parties do not propose to apply a benefit to cost ratio to public policy transmission projects.

463. As discussed above, Florida Parties propose that the beneficiaries of a CEERTS project will be those transmission providers enrolled in the FRCC region (on behalf of

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[820] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 9.4.4.

[821] *Id.* § 9.4.2.

[822] *Id.* § 9.4.1.

their retail and wholesale customers) that benefit from the transmission project.[823] Thus, we find that Florida Parties' proposed regional cost allocation method for public policy transmission projects, as modified herein, complies with the Regional Cost Allocation Principle 4 requirement that the regional cost allocation method must allocate the costs of a transmission facility selected in the regional transmission plan for purposes of cost allocation solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, Florida Parties' proposed regional cost allocation method for public policy transmission projects does not comply with the Regional Cost Allocation Principle 4 requirement that the regional transmission planning process identify the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region. Florida Parties also do not address whether the FRCC region has agreed to bear the costs associated with any required upgrades in another transmission planning region or, if so, how such costs will be allocated within the FRCC region. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to revise Florida Parties' Attachment Ks to provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation. In addition, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit a further compliance filing that clarifies whether the Florida Parties have agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated under the Florida Parties regional cost allocation method for public policy projects. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

464. We find that Florida Parties' proposed regional cost allocation method, as modified herein, partially complies with Regional Cost Allocation Principle 5 (i.e., the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility). For public policy transmission projects, Florida Parties propose to identify as beneficiaries the entities that will access the resources enabled by a public policy transmission project to meet their public policy requirements, and as benefits the number of megawatts of public policy resources enabled by the public policy transmission project for each beneficiary.[824] Subject to the removal of the requirement for transmission

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[823] *Id.* § 9.4.2.

[824] *Id.* § VII.B.3.

service commitments, we find that the description will result in a transparent identification of beneficiaries and determination of benefits for reliability and public policy transmission projects.

465. However, Florida Parties' proposed regional cost allocation method for public policy transmission projects, as modified herein, only partially complies with Regional Cost Allocation Principle 5 because the proposed revisions do not provide for adequate documentation to allow a stakeholder to determine how the regional cost allocation method for public policy transmission projects are applied to a proposed transmission facility. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to provide for adequate documentation to allow a stakeholder to determine how these methods were applied to a proposed transmission facility. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

b. Cost Recovery

i. First Compliance Order

466. The Commission found that the cost recovery provisions provided by Florida Parties provide a means for both incumbent and nonincumbent transmission developers to recover the costs of funding regional transmission facilities selected in the regional transmission plan for purposes of cost allocation, and that these cost recovery provisions are generally just and reasonable and not unduly discriminatory. However, the Commission determined that certain aspects of Florida Parties' proposed cost recovery provisions require greater clarity. To demonstrate how incumbent and nonincumbent transmission providers can recover costs in accordance with the proposed provisions, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to include examples of how these cost recovery provisions would work, similar to the examples provided for the proposed avoided cost method.[825] Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives.[826]

467. While the Commission found that the flexibility of Florida Parties' proposed two options for an incumbent transmission provider to recover costs associated with a regional transmission facility is just and reasonable, for both of the options, the Commission found that proposed section 9.4.4.1 of their Attachment Ks does not

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[825] *E.g.*, Florida Power & Light Co., Appendix 4 to Attachment K.

[826] First Compliance Order, 143 FERC ¶ 61,254 at P 284.

sufficiently describe what constitutes valid "transmission costs" to be included within a transmission provider's rate base. The Commission noted that, in their answer, Florida Parties indicate that "transmission costs" include the initial installed capital costs of regional transmission projects[827] and directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to include this clarification. The Commission also directed Tampa Electric, Florida Power, and Florida Power & Light to submit further compliance filings that provide for the allocation of ongoing capital and non-capital costs associated with a regional transmission facility to beneficiaries in accordance with an Order No. 1000-compliant cost allocation method. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with these directives, as well.[828]

468. The Commission disagreed with FMPA/Seminole's comments that Florida Parties' proposed first option for cost recovery by incumbent transmission providers allows non-constructing transmission providers to provide payment to the constructing entity, and for the entity receiving such payments to treat them as CIAC, grossed up for income taxes, if applicable, results in an unfair tax burden on non-constructing transmission providers. However, the Commission agreed with FMPA/Seminole that whether or not a construction transmission provider is subject to income taxes is an important consideration in deciding whether a transmission project is more efficient or cost-effective. The Commission found that it is just and reasonable to consider the tax burden when evaluating the total project costs of a proposed CEERTS project.[829]

469. The Commission agreed that Florida Parties' Attachment Ks are unclear regarding how the deferred debit representing a CIAC will be applied to regional transmission projects selected in the regional transmission plan for purposes of cost allocation and stated that Florida Parties do not explain how the CIAC will be included in the transmission rate base or to which FERC Accounts the non-constructing transmission provider's CIAC will be booked. The Commission directed Tampa Electric, Florida Power, and Florida Power & Light to clarify how the contributions in aid of construction will be allocated to the transmission rate base and specify the FERC Accounts to record and amortize the contributions in their further compliance filings. Likewise, the

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[827] *Id.* P 284 (citing Florida Companies' Answer at 72).

[828] *Id.* P 285.

[829] *Id.* P 286.

Commission noted that Orlando should submit further clarifications to its Attachment K consistent with this directive.[830]

470. The Commission directed Tampa Electric, Florida Power, and Florida Power & Light to submit further compliance filings to clarify that CIAC agreements will be filed with the Commission, and required that such future charges to ratepayers be justified, including cost support and work papers upon which parties to these agreements base their rates components, the detail necessary to explain how the numbers were derived, and what FERC Accounts will be used. The Commission also directed Tampa Electric, Florida Power, and Florida Power & Light to clarify that the CIAC will be filed with the Commission before the monies are paid for the construction of the regional transmission project.[831] Likewise, the Commission noted that Orlando should submit further clarifications to its Attachment K consistent with these directives.

471. The Commission also agreed with FMPA/Seminole's assertion that it is unclear exactly what is to be included in the Transmission Revenue Requirement costs under sections 9.4.4.1(2) and 9.4.4.2, how costs are allocated among wholesale customers and retail customers, or how such direct-assignment cost recovery is credited to existing transmission plant-in-service where formula rates are used. Therefore, to ensure greater clarity, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to explain what account(s) they will use to track charges under sections 9.4.4.1(2) and 9.4.4.2, and the allocation methods that will be used to allocate between wholesale and retail customers. Likewise, the Commission noted that Orlando should provide further explanation in a compliance filing consistent with this directive.[832]

472. Regarding proposed section 9.4.4.3 of Attachment Ks, the Commission agreed with FMPA/Seminole that Florida Parties must submit a separate FPA section 205 filing to reflect the inclusion of contributions in aid of construction in their formula rates and explain how direct-assignment cost recovery through other rate schedules will be credited to total transmission costs in formula rates, and the allocation methods that will be used. Accordingly, to allow interested parties such as FMPA/Seminole to understand the effects that a regional transmission facility selected in the regional transmission plan for purposes of cost allocation will have on Florida Parties' formula rates, the Commissioned

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[830] *Id.* P 287.

[831] *Id.* P 288 (citing *Am. Elect. Power Serv. Corp.*, 96 FERC ¶ 61,136, at 61,570 (2001)).

[832] *Id.* P 289.

directed Tampa Electric, Florida Power, and Florida Power & Light to submit a further compliance filing to revise their OATTs to state that they will submit a section 205 filing to reflect the inclusion of the contributions in aid of construction in their formula rates. The Commission clarified that such a filing should be made every time this provision is used in relation to a new regional transmission project selected in a regional transmission plan for purposes of cost allocation. Likewise, the Commission noted that Orlando should submit further revisions to its Attachment K consistent with this directive as well.[833]

ii. Requests for Rehearing or Clarification

(a) Summary of Requests for Rehearing or Clarification

473. FMPA/Seminole agree with the Commission's determination that "it is just and reasonable to consider the tax burden when evaluating the total project costs of proposed CEERTS project."[834] However, FMPA/Seminole argue that consideration of the tax burden includes not only the tax exempt status of the proposed transmission developer, but also the burden imposed when an incumbent transmission provider elects to fund its CEERTS project using option one under section 9.4.4.1, which requires non-constructing transmission provider beneficiaries to make a CIAC that includes a tax gross-up. FMPA/Seminole note that section 9.4.4.1 seems to anticipate that incumbent transmission providers elect whether to use payment option one after the selection process. If this is true, then FMPA/Seminole argue that the incumbent transmission provider's payment decision will not be taken into account in determining which transmission project and which transmission developer are most cost-effective and efficient. Therefore, FMPA/Seminole request that the Commission clarify that incumbent transmission providers that intend to elect payment option 1 under section 9.4.4.1 must state that intention at the outset of the CEERTS process under section 1.2 so that the transmission project selection and transmission developer selection processes can take that into account, which it argues is consistent with the First Compliance Order.[835] If the Commission declines to make this clarification, then FMPA/Seminole request that the

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[833] *Id.* P 290.

[834] FMPA/Seminole Rehearing at 12 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 286).

[835] *Id.* at 12-15.

Commission grant rehearing and require Florida Parties to remove payment option one.[836]

(b) Commission Determination

474. We grant FMPA/Seminole's request for clarification, and therefore find that FMPA/Seminole's request for rehearing is moot. Specifically, we find to be reasonable FMPA/Seminole's request for clarification that incumbent transmission providers that intend to elect payment option 1 under section 9.4.4.1 must state that intention at the outset of the CEERTS process under section 1.2 so that the transmission project selection and transmission developer selection processes can take into account whether the incumbent transmission providers intends to elect payment option 1 under section 9.4.4.1. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings that explicitly state that incumbent transmission providers that intend to elect payment option 1 under section 9.4.4.1 must state that intention at the outset of the CEERTS process under section 1.2 so that the transmission project selection and transmission developer selection processes can take into account whether the incumbent transmission providers intends to elect payment option 1 under section 9.4.4.1, in their respective OATTs. Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives. Furthermore, we clarify that any tax gross-ups must be calculated consistent with Commission policy on tax gross-ups, as explained below.

iii. Compliance

(a) Summary of Compliance Filings

475. In compliance with the Commission's directive to revise Florida Parties' Attachment Ks to include cost recovery provision examples similar to the examples provided for the proposed avoided cost method, Florida Parties have provided such examples in Appendix 6.[837] Florida Parties propose that for portions of transmission projects that are built related to their cost responsibility, the companies would include those transmission costs as identified in a CIAC filing submitted to the Commission within their respective rate bases and transmission revenue requirements.[838]

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[836] *Id.* at 15.

[837] *E.g.*, Florida Power & Light Co., Transmittal at 38.

[838] *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 9.4.5.1.

476. Florida Parties clarify that the proportionate share of the costs of each of the companies constructing the transmission project would be reflected in their respective OATT rates in Account 107, Construction Work in Progress, and that when the assets go into service, the balance will be moved to Account 101, Electric Plant in Service, and the Units of Property will be unitized to the FERC Accounts corresponding to the Units of Property. Florida Parties state that the constructing company receiving the money would treat the money as a CIAC and thus have no net associated book investment in its transmission rate base.

477. Florida Parties explain that for the portion of the funding that was being provided for the transmission project to be built by someone other than the incumbent transmission owner, the payments by the incumbent transmission owner (for their cost responsibility) would be recorded by the incumbent transmission owner in Account 303, Miscellaneous Intangible Plant and amortized by debiting Account 404, Amortization of Limited-Term Electric Plant, and crediting Account 111, Accumulated Provision for Amortization of Electric Utility Plant. Florida Parties state that the amortization of the investment (recorded as intangible plant) would be derived using a composite factor based on the most recently approved depreciation rates for the constructing company and that the calculation of the composite factor would be based on the Units of Property installed in the transmission project. Florida Parties further explain that the incumbent transmission owner will begin amortization when the constructing party declares the transmission project in service and the costs and amortization would be reflected in Commission-filed OATT rates until the investment is fully amortized to expense.[839]

478. Also in compliance with the Commission's directives, Florida Parties explain that CIAC agreements will be filed with the Commission prior to any CIAC payments being made to the constructing transmission developer and that transmission providers with formula-based OATT rates must submit a separate FPA section 205 filing with the Commission for authorization to include the intangible asset investment and amortization expense in the formula rate. Florida Parties propose traditional cost-based ratemaking procedures would be used to determine the impact of including the intangible asset investment in rate base and the amortization expense in operating expenses in deriving OATT rates and for CIAC agreements filed with the Commission to include work papers to support the costs included in the determination of revenue requirements.[840]

479. Florida Parties state that transmission revenue requirements will be directly assigned to the beneficiary(ies) responsible for that portion of the cost assignment and

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[839] *Id.* § 9.4.5.1.

[840] *Id.* § 9.4.5.1.

that the Transmission Revenue Requirements when received by the incumbent transmission developer would be treated as a revenue credit recorded in Account 456, Miscellaneous Revenue in its cost of service to offset the inclusion of other beneficiary(ies) assigned cost in rate base and revenue requirement. Florida Parties also propose that transmission providers with formula-based OATT rates must submit a separate FPA section 205 filing with the Commission for authorization to include their allocated transmission revenue requirements costs in the formula rate.[841]

(b) Protests/Comments

480. FMPA/Seminole state that Florida Parties' benefit-cost evaluation fails to account for the cost impact of the CIAC payment option. FMPA/Seminole assert that despite the Commission's finding that tax impacts are "an important consideration in deciding whether a transmission project is more efficient or cost-effective" and that it is "just and reasonable to consider the tax burden when evaluating the total project costs of a proposed CEERTS project,"[842] Florida Parties have failed to do so. FMPA/Seminole note that the tax gross-up associated with the CIAC payment option (i.e., section 9.4.4.1.1) has significant adverse cost consequences that must be considered in the CEERTS evaluation process if it is to result in selection of transmission projects that are more efficient and/or cost-effective. Indeed, the gross-up associated with the CIAC could diminish or eliminate the savings expected to be achieved by a CEERTS project evaluated for cost-effectiveness without considering the impact of the tax burden imposed on non-constructing transmission provider beneficiaries.[843] FMPA/Seminole state that ignoring the tax gross-up impacts in the cost-benefit analysis may result in selection of an incumbent transmission project over a nonincumbent transmission project, even though the incumbent transmission project would impose more costs if the tax gross-up cost impact on the non-constructing transmission provider were factored into the comparison. Thus, FMPA/Seminole state, in this way, Florida Parties' proposal to ignore incumbent CIAC election impacts in cost comparisons unfairly discriminates against nonincumbent transmission projects.[844]

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[841] *Id.* § 9.4.5.1.

[842] FMPA/Seminole Protest at 64 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 286).

[843] *Id.* at 64-65.

[844] *Id.* at 66.

(c) Answers

481. Florida Answering Parties agree to FMPA/Seminole's request to revise the non-inclusion of such amounts in the project evaluation process, which process relied on a comparison that assumed a transmission revenue recovery approach to cost recovery although the Commission approved the inclusion of tax gross-ups for cost recovery purposes.[845] Florida Answering Parties propose to remove on compliance the tax gross-up on the CIAC should this be the funding alternative chosen.[846] Specifically, Florida Answering Parties agree to remove the sentence from Section 9.4.5.1.1 that states "CIAC for these purposes will be grossed up for income taxes if applicable." Also, in Appendix 6, Florida Answering Parties agree to remove the bullet referring to the CIAC tax gross-up and revise the assumptions and T-account line items to remove the CIAC tax gross-up and add a footnote that indicates that the CIAC has not been grossed up for income taxes.[847]

482. FMPA/Seminole state that Florida Answering Parties also do not address the potential tax gross-up implications of their proposal for recovery of displacement costs. While Florida Answering Parties' answer ostensibly removes the provision for tax gross-up where an incumbent transmission provider elects to be funded through a CIAC, they do not address whether the tax gross-up will be included in the compensation for displacement costs, which would unnecessarily heighten the costs imposed on Florida consumers. Further, FMPA/Seminole state that Florida Answering Parties have ignored FMPA/Seminole's offer to work with Florida Answering Parties to develop other mechanisms to properly recognize truly sunk or unavoidable local project costs in the cost-benefit analysis, while incentivizing mitigation and abiding by the Commission's abandoned plant recovery policy. FMPA/Seminole state that it also willing to consider committing to support section 205 filings for 100 percent abandoned cost recovery for local projects displaced by a CEERTS project to the extent the abandoned costs are in fact demonstrated to have been prudently incurred. Thus, FMPA/Seminole state Florida Answering Parties have not complied with Commission directives while failing to meaningfully address the schedule delays and refusing to allow any check on recovery of displacement costs.[848]

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[845] Florida Answering Parties Answer at 73.

[846] *Id.* at 74.

[847] *Id.*

[848] FMPA/Seminole Answer at 35-36.

(d) Commission Determination

483. We find that Florida Parties' proposed cost recovery provisions partially comply with the Commission's directives in the First Compliance Order.

484. At the outset, we note that some of the findings that we are directing above with respect to displacement cost recovery also apply to the cost recovery provisions, and Florida Parties must remove displacement cost recovery from their cost recovery provisions.[849] Within the Transmission Project Funding and Rate Base Cost Recovery section of Florida Parties' Attachment Ks, Florida Parties propose the following to govern cost recovery for incumbent transmission providers:

> For portions of the projects that each of the companies were building that are related to their cost responsibility, the companies would include those transmission costs as identified in a CIAC filing at FERC within their respective rate bases and transmission revenue requirements. The costs would be reflected in FERC filed OATT rates in Account 107, Construction Work in Progress. When the assets go into service, the balance will be moved to Account 101, Electric Plant in Service and the Units of Property will be unitized to the FERC Accounts corresponding to the Units of Property.[850]

485. It is unclear from this provision how Florida Parties propose to reflect these amounts in FERC Account 107, Construction Work in Progress, and in FERC filed OATT rates. Therefore, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings clarifying that this provision is solely for accounting purposes. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

486. We also find that the CIAC (recorded as intangible plant) complies with the Commission's directives in the First Compliance Order. Florida Parties represent that the CIAC would be recorded in Account 303 and not subject to depreciation expense. Florida Parties state that it will amortize the contributions for book purposes in Account 404 using the constructing party's depreciable life of similar assets on its books. We find

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[849] *See supra* Cost Allocation discussion Part IV.B.1.c for further discussion of the displacement cost recovery process.

[850] *E.g.*, Florida Power & Light Co., FPL OATT Attachment K, § 9.4.5.1.1.

this is consistent with Commission policy.[851] Furthermore, the Commission treats a CIAC different from other amounts includable in intangible plant which may not have a terminable life. Commission policy requires that a CIAC be amortized to Account 404 over the period of benefit, which is typically the depreciable life of the asset constructed with the contribution. Consistent with the Commission's policy relating to an interconnection customer's liability for the tax gross up amounts due on certain facilities and upgrades, we also require Tampa Electric, Florida Power, and Florida Power & Light to submit, within 60 days of the date of issuance of this order, further compliance filings to include the Commission-approved tax gross-up calculation in their cost recovery provisions of their OATTs. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

487. Finally, as briefly proposed, Florida Parties must provide all information in a section 205 filing that would include the details of the CIAC, including the proposed accounting, and rate recovery mechanisms.

c. Transmission Rights

i. First Compliance Order

488. The Commission found that Florida Parties' proposal to provide beneficiaries with transmission rights on a transmission project selected in the regional transmission plan for purposes of cost allocation in proportion to their respective share of allocated costs partially complied with Order No. 1000. The Commission disagreed with FMPA/Seminole and found that Florida Parties' compliance proposal is just and reasonable and not unduly discriminatory in that it assigns transmission transfer capability on a transmission facility selected in the regional transmission plan for purposes of cost allocation based on the cost allocation, which Florida Parties explain in their answer includes wholesale customers. To ensure that the proposed OATT revisions accurately reflect the parties that are entitled to transmission rights, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to clarify that wholesale customers are included in those receiving transmission rights. The Commission clarified that the use of such transmission transfer capability is governed by the Commission's long-standing open access policies as adopted in Order

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[851] *See e.g.*, *American Transmission Company*, Docket No. AC04-100-000 (January 24, 2005) (unpublished letter order); *Kern River Gas Transmission Company*, 99 FERC ¶ 61,085 (2002); *Kern River Gas Transmission Company*, 98 FERC ¶ 61,205 (2002); *Georgia Strait Crossing Pipeline LP*, 98 FERC ¶ 61,271 (2002); *Horizon Pipeline Company*, L.L.C., 92 FERC ¶ 61,205 (2000).

Nos. 888 and 890.[852] The Commission also noted that Orlando should submit further revisions to its Attachment K consistent with these directives.

ii. Summary of Requests for Rehearing or Clarification

489. FMPA/Seminole seek rehearing or clarification of the Commission's directives regarding the allocation of transmission rights. Specifically, FMPA/Seminole request clarification that Commission approval of the assignment of the transmission transfer capability created by a CEERTS project to specific transmission providers based on the cost allocation gives the transmission providers the right to include a certain share of the regional facility's new incremental transfer capability under the beneficiary transmission provider's OATT, but it does not grant a preferential "use right."[853] Alternatively, FMPA/Seminole seek rehearing of the Commission's directives regarding transmission access on the grounds that it would improperly grant transmission providers preferential access and would be discriminatory and inconsistent with the intent of Order 1000 and the First Compliance Order.[854]

iii. Summary of Compliance Filings

490. On compliance, Florida Parties submit revisions to their Attachment Ks stating that as part of their regional cost allocation method, any use of the transmission rights allocated to the transmission provider, including use by the transmission provider itself, shall be governed by their respective OATTs.

iv. Protests/Comments

491. In response to Florida Parties' clarification that any use of transmission rights allocated to the transmission provider, including use by the transmission provider itself, is governed by Florida Parties' OATTs, FMPA/Seminole withdrew a portion of their July 22, 2013 Request for Clarification or, in the Alternative, Rehearing on cost allocation of transmission rights.[855] FMPA/Seminole interpret Florida Parties' clarification as making clear that once a designated transmission provider beneficiary has been assigned its cost-

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[852] First Compliance Order, 143 FERC ¶ 61,254 at P 296.

[853] FMPA/Seminole Rehearing at 8.

[854] *Id.* at 9.

[855] FMPA/Seminole Notice of Withdrawal at 2-3.

proportionate share of transfer capability from a regionally cost-allocated transmission project whose costs are recovered through the transmission provider's OATT revenue requirement, all use of that transfer capability (including firm transmission service by the transmission provider or a wholesale customer) must be reserved under the transmission provider's OATT in accordance with the Commission's long-standing open access policies.[856]

v. Commission Determination

492. We find that Florida Parties' filing complies with Order No. 1000 and the directives in the First Compliance Order.[857]

The Commission orders:

(A) The requests for rehearing and clarification are hereby denied in part and granted in part, as discussed in the body of this order.

(B) Florida Parties' respective compliance filings are hereby accepted, effective January 1, 2015 subject to further compliance filings, as discussed in the body of this order.

(C) Tampa Electric, Florida Power, and Florida Power & Light are hereby directed to submit further compliance filings, within 60 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Clark is concurring with a separate statement attached.

Nathaniel J. Davis, Sr.,

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[856] FMPA/Seminole Protest at 9.

[857] Given FMPA/Seminole's withdrawal of the portion of their rehearing request on this issue, we do not address it.

Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tampa Electric Company	Docket Nos.	ER13-80-001
Duke Energy Carolinas, LLC		ER13-80-002
Florida Power & Light Company		ER13-86-001
Orlando Utilities Commission		ER13-86-002
		ER13-104-001
		ER13-104-002
		NJ13-2-002
		NJ14-4-000

(Issued September 5, 2014)

CLARK, Commissioner, *concurring*:

I concur with today's order, but note that as a policy matter I continue to harbor concerns regarding the general direction Order No. 1000 takes us in relation to non-market, non-RTO/ISO regions.[1] In regions of the country like Florida where integrated resource planning and facility siting, as approved by the State, ensures that generation and transmission decisions are viewed and approved holistically, this Commission should continue to find ways to facilitate cost-effective transmission solutions, encourage regional planning to meet customer needs, and ensure fair cost allocation without unnecessarily upending or interfering with state resource planning.

For these reasons, I respectfully concur.

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Tony Clark
Commissioner

[1] *See Tampa Elec. Co.*, 143 FERC ¶ 61,254 (2013) (Clark, Comm'r, concurring).