

151 FERC ¶ 61,013  
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.	ER13-80-003 ER13-80-004 ER13-80-005
Duke Energy Carolinas, LLC		ER13-86-003 ER13-86-005
Florida Power & Light Company		ER13-104-003 ER13-104-004 ER13-104-005 ER13-104-006
Orlando Utilities Commission		NJ13-2-003 NJ14-4-001 NJ15-4-001

ORDER ON REHEARING AND COMPLIANCE

(Issued April 7, 2015)

1. On September 5, 2014, the Commission issued an order accepting in part and rejecting in part the second compliance filings that Tampa Electric Company (Tampa Electric), Florida Power & Light Company (Florida Power & Light), Duke Energy Florida, Inc. (Duke Energy), and Orlando Utilities Commission (Orlando) (collectively, Florida Parties) submitted to comply with the directives of the June 20, 2013 order<sup>1</sup> and the local and regional transmission planning and cost allocation

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<sup>1</sup> *Tampa Elec. Co.*, 143 FERC ¶ 61,254 (2013) (First Compliance Order).

requirements of Order No. 1000.<sup>2</sup> The Commission also granted in part and denied in part requests for rehearing of the First Compliance Order and accepted Florida Parties' second compliance filings, effective January 1, 2015, subject to further compliance filings.<sup>3</sup>

2. On October 3, 2014, Florida Parties and Jacksonville Electric Authority (JEA) filed a request for clarification of the Second Compliance Order. On October 6, 2014, LS Power Transmission LLC and LS Power Holdings, LLC (collectively, LS Power) filed a request for rehearing and Florida Municipal Power Agency (FMPA) and Seminole Electric Cooperative, Inc. (Seminole) (together, FMPA/Seminole) filed a request for clarification or, in the alternative, rehearing of the Second Compliance Order.

3. On November 4, 2014, Tampa Electric, Duke Energy, and Florida Power & Light (Florida Public Utility Parties) submitted, pursuant to section 206 of the Federal Power Act (FPA),<sup>4</sup> in Docket Nos. ER13-80-004, ER13-86-004, and ER13-104-004, respectively, revisions to Attachment K or Attachment N-2 of their Open Access Transmission Tariffs (OATTs)<sup>5</sup> to comply with the Second Compliance Order.<sup>6</sup> On December 2, 2014, in Docket No. NJ15-4-000, Orlando submitted revisions to its Attachment K to update its transmission planning and cost allocation provisions consistent with the Attachment Ks submitted by Florida Public Utility Parties. On February 13, 2015, in Docket Nos. ER13-80-005, ER13-86-005, and ER13-104-006 Florida Public Utility Parties filed an amendment to their compliance filings to include additional transmission providers enrolled in the Florida Reliability Coordinating Council, Inc. (FRCC) regional transmission planning process. On February 19, 2014, in Docket No. NJ15-4-001, Orlando filed its amendment to include the additional transmission providers.

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<sup>2</sup> *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 (2012).

<sup>3</sup> *Tampa Elec. Co.*, 148 FERC ¶ 61,172 (2014) (Second Compliance Order).

<sup>4</sup> 16 U.S.C. § 824e (2014).

<sup>5</sup> 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.

<sup>6</sup> On November 21, 2014, in Docket No. ER13-104-005, Florida Power & Light submitted an errata filing to delete erroneous text in the heading on the first page of its Attachment K.

4. For the reasons discussed below, we grant in part and deny in part the requests for rehearing and clarification. Also as discussed below, we accept Florida Parties' proposed tariff revisions and amendments, subject to further compliance filings.

### **I. Background**

5. 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<sup>7</sup> 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.

6. 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**

7. Florida Parties and JEA filed a request for clarification of the Second Compliance Order. LS Power filed a request for rehearing and FMPPA/Seminole filed a request for clarification or, in the alternative, rehearing of the Second Compliance Order.

### **III. Compliance Filings**

8. In response to the Second Compliance Order, Florida Parties submitted a joint transmittal letter and corresponding revisions to their local and regional transmission planning processes in their respective Attachment Ks to comply with the Commission's

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<sup>7</sup> *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).

directives, including modifications relating to the regional transmission planning requirements, consideration of transmission needs driven by public policy requirements, nonincumbent transmission developer reforms, evaluation and cost allocation provisions.

9. Notices of Tampa Electric's and Duke Energy's compliance filings were published in the *Federal Register*, 79 Fed. Reg. 67,430 (2014), and notice of Florida Power & Light's compliance filing was published in the *Federal Register*, 79 Fed. Reg. 68,229 (2014), with interventions and protests due on or before November 25, 2014.<sup>8</sup>

FMPA/Seminole filed a timely protest. On December 22, 2014, Florida Public Utility Parties filed an answer to FMPA/Seminole's protest. On January 8, 2015, FMPA/Seminole filed an answer to Florida Public Utility Parties' answer.

10. Notice of Orlando's compliance filing was published in the *Federal Register*, 79 Fed. Reg. 75,799 (2014), with interventions and protests due on or before December 29, 2014.

11. On February 13, 2015, Florida Public Utility Parties amended their third compliance filings to add FMPA, Seminole, and the City of Tallahassee, Florida as enrolled transmission providers in FRCC's regional transmission planning process. Florida Public Utility Parties request the Commission accept the amended tariff provisions adding these three non-public utility transmission providers, effective January 1, 2015. On February 19, 2015, in Docket No. NJ15-4-001, Orlando submitted revisions to its Attachment K to update its list of enrolled transmission providers, consistent with the Attachment Ks submitted by Florida Public Utility Parties.

12. Notice of Florida Public Utility Parties' amended compliance filings was published in the *Federal Register*, 80 Fed. Reg. 10,081 (2015), with interventions and protests due on or before March 5, 2015. Notice of Orlando's compliance filing was published in the *Federal Register*, 80 Fed. Reg. 11,192 (2015), with interventions and protests due on or before March 6, 2015.

#### **IV. Discussion**

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 accept FMPA/Seminole's and Florida Public Utility Parties' answers because they have provided information that assisted us in our decision-making process.

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<sup>8</sup> Notice of Florida Power & Light's November 21, 2014 errata filing was published in the *Federal Register*, 79 Fed. Reg. 71,412 (2014), with interventions and protests due on or before December 12, 2014.

14. We grant LS Power's and FMPA/Seminole's requests for clarification, as discussed more fully below.<sup>9</sup> We deny the requests for rehearing as discussed more fully below. We find that the Florida Public Utility Parties' compliance filings partially comply with the directives in the Second Compliance Order. Accordingly, we accept the Florida Public Utility Parties compliance filings to be effective January 1, 2015, subject to further compliance filings due within 30 days of the date of issuance of this order.

15. Orlando's Attachment K is essentially the same as Florida Public Utility Parties' Attachment Ks and, therefore, we find that, with the modifications discussed throughout this order, it partially satisfies the requirements of Order No. 1000 and the Second Compliance Order.

16. We also find Florida Parties' February 13, 2015 and February 19, 2015 amendments adding FMPA, Seminole, and the City of Tallahassee, Florida as enrolled transmission providers in FRCC's regional transmission planning process comply with the requirements of Order No. 1000. Accordingly, we accept these amendments effective January 1, 2015.

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<sup>9</sup> We note that LS Power and FMPA/Seminole have not previously been granted intervenor status in Docket No. NJ14-4-000, and therefore their respective requests for rehearing do not lie in that proceeding, but nevertheless their requests for rehearing are properly before the Commission in the other dockets. We remind parties that in situations where a new root docket is established, the Commission will follow its existing practice with respect to the need to intervene. Currently, parties who have intervened in initial proceedings do not have to re-intervene in subdockets. However, when the Commission establishes new root dockets (such as for compliance with rulemaking proceedings), intervention is required to become a party to the new root docket proceeding and to appear on the service list for that proceeding. The same approach will be taken whenever a new root docket is assigned in a compliance proceeding: those wishing to become parties to a new root docket will have to intervene in that docket. *See* <http://www.ferc.gov/whats-new/comm-meet/2010/012110/M-1.pdf>.

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

**1. Minimum Thresholds Requirements for Cost Effective and/or Efficient Regional Transmission Solution Projects**

**a. 15 miles or Longer**

**i. Second Compliance Order**

17. In the Second Compliance Order, the Commission accepted Florida Parties' proposal that a regional transmission project must be 15 miles or longer to be eligible for consideration as a Cost Effective and/or Efficient Regional Transmission Solution (CEERTS) project and potentially selected in the regional transmission plan for purposes of cost allocation.<sup>10</sup> The Commission stated that this proposed minimum threshold requirement "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."<sup>11</sup> While the Commission agreed with LS Power that it is possible that a transmission project that spans less than 15 miles could provide regional transmission benefits, the Commission stated that this was not the requirement for adopting a minimum threshold. The Commission explained that, as it stated in the First Compliance Order, 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."<sup>12</sup> The Commission further explained 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 transmission benefits. However, the Commission found that by limiting potential transmission projects to those that are likely to provide regional transmission 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.<sup>13</sup>

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<sup>10</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 139.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (referencing First Compliance Order, 143 FERC ¶ 61,254 at P 67).

<sup>13</sup> *Id.*

ii. **Requests for Rehearing or Clarification**

18. LS Power argues that the Commission erred in accepting Florida Parties' proposed 15 mile minimum threshold requirement. LS Power argues that even the Commission agreed that transmission projects that span less than 15 miles can still provide regional benefits.<sup>14</sup> LS Power disagrees with the Commission's reasoning that minimum thresholds balance the need for excluding local transmission projects from consideration and the need to evaluate those transmission projects likely to provide regional benefits. LS Power asserts nonincumbent transmission developers have an incentive to propose local transmission projects with regional transmission benefits, regardless of their mileage.<sup>15</sup> LS Power argues that only regional transmission projects will be eligible for selection in the regional transmission plan for purposes of cost allocation.<sup>16</sup> Furthermore, it argues that since Order No. 1000 retained the right of first refusal for local transmission projects, a nonincumbent transmission developer would never be eligible to build a local transmission project.<sup>17</sup>

19. LS Power states that in the Second Compliance Order, the Commission supported its decision to accept minimum thresholds by arguing that minimum thresholds establish clear and objective standards that would limit potential transmission projects to those that are likely to provide regional benefits and avoid the need for public utility transmission providers to expend resources on projects less likely to provide regional benefits.<sup>18</sup> However, LS Power argues that public utility transmission providers in the FRCC transmission planning region would not be required to expend any resources on transmission projects that do not provide regional benefits because Florida Parties require a \$50,000 qualification deposit and a \$100,000 project study deposit for each CEERTS project proposed.<sup>19</sup>

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<sup>14</sup> LS Power Rehearing at 4 (citing Second Compliance Order, 148 FERC ¶ 61,172 at P 139).

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 5-6 (citing Second Compliance Order, 148 FERC ¶ 61,172 at PP 224, 249).

<sup>19</sup> *Id.* at 6.

20. LS Power also argues that even if the Commission allowed Florida Parties to maintain the 15 mile threshold, this requirement should not apply to transmission projects involving significant Florida water crossings.<sup>20</sup> LS Power argues that transmission projects involving either an overhead or submarine water crossing can be over ten times as costly as land crossings.<sup>21</sup> LS Power argues that an exception to the minimum threshold requirement in Florida is warranted since Florida has the greatest percentage of water area in the 48 conterminous states.<sup>22</sup> LS Power argues that this is an important regional factor for the Commission to consider in that the minimum mileage threshold requirement will likely exclude numerous costly regional transmission projects.<sup>23</sup>

### iii. Commission Determination

21. We affirm the finding in the Second Compliance Order approving Florida Parties' minimum threshold requirement that states that to be eligible for consideration for selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project must be at least 15 miles long.<sup>24</sup> As the Commission previously stated, this requirement "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."<sup>25</sup> 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."<sup>26</sup> We continue to recognize that this balance is not an exact science and that

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<sup>20</sup> *Id.* at 7. LS Power defines a significant water crossing as an overhead or submarine crossing of a river, lake, inter-coastal waterway, inlet, bay, estuary, barrier island, or ocean. LS Power Rehearing at 10.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 9 (referencing the United States, Department of Interior's *Hydrologic Almanac of Florida*).

<sup>23</sup> *Id.* at 9.

<sup>24</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 139.

<sup>25</sup> *Id.*

<sup>26</sup> First Compliance Order, 143 FERC ¶ 61,254 at P 67.

there could be some transmission projects that do not meet the minimum threshold, but could still provide regional transmission benefits. However, we still find that by limiting potential transmission projects to those that are likely to provide regional transmission 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.<sup>27</sup>

22. We do not find persuasive LS Power's argument that the Commission should reject Florida Parties' 15 mile minimum threshold because transmission developers are required to pay for the costs of studying their proposed transmission projects. Even if the transmission planning region is ultimately compensated for the time and resources it uses to review and study proposed transmission projects, Florida Parties' 15 mile minimum threshold nevertheless avoids the need for the transmission planning region to expend additional time and resources reviewing and studying proposed transmission projects that are unlikely to have regional transmission benefits. Requiring Florida Parties to review and study transmission projects that are unlikely to provide regional transmission benefits may unnecessarily lengthen the transmission planning process and delay the development of needed regional transmission facilities. Thus, we continue to find that the 15 mile minimum threshold strikes a reasonable balance between excluding clearly local transmission projects with the need to evaluate transmission facilities that are likely to provide regional transmission benefits.

23. Furthermore, we find unpersuasive LS Power's argument that the 15 mile minimum threshold should not apply to transmission projects that involve significant water crossings. LS Power contends that the 15 mile minimum threshold should not apply to such transmission projects because transmission projects that involve significant water crossings can be more expensive than those transmission projects that do not involve such crossings and second, Florida as a state has a high percentage of water area. While transmission projects that involve significant water crossings may be more expensive than transmission projects that do not involve crossings, LS Power has provided no evidence that there is a correlation between the additional expense of significant water crossings and regional transmission benefits.

**b. Materially Different**

**i. Second Compliance Order**

24. In the Second Compliance Order, the Commission conditionally accepted Florida Parties' proposal to require that, to be eligible for possible selection in the regional

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<sup>27</sup> See Second Compliance Order, 148 FERC ¶ 61,172 at P 139 (citing First Compliance Order, 143 FERC ¶ 61,254 at P 67).

transmission plan for purposes of cost allocation, a transmission project must be materially different than a CEERTS transmission project already selected in the regional transmission plan for purposes of cost allocation.<sup>28</sup> However, the Commission was concerned that the requirement would allow incumbent transmission providers undue discretion to decide whether a proposal is materially different. Accordingly, the Commission directed Florida Public Utility Parties to make transparent any determination that a proposed transmission facility is not materially different than a project already under consideration by posting any such determinations for stakeholders. The Commission stated that 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.<sup>29</sup> Likewise, the Commission noted, Orlando should also submit a further compliance filing to address this issue.<sup>30</sup>

**ii. Third Compliance Filing**

25. In their third compliance filings, Florida Parties propose that the FRCC Planning Committee will post on the FRCC website (subject to any posting restrictions to protect Critical Energy Infrastructure Information (CEII) or other confidential information) any determination that a proposed CEERTS project is not materially different from a CEERTS transmission project or projects already selected in the regional transmission plan, along with an explanation of the basis for the determination. Florida Parties propose that the FRCC Planning Committee will post this information at the next FRCC Board<sup>31</sup> meeting following the FRCC Planning Committee's review of the submitted CEERTS project proposals to determine whether a transmission project meets the transmission planning region's minimum threshold criteria and information requirements.<sup>32</sup>

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<sup>28</sup> *Id.* PP 117 & 142.

<sup>29</sup> *Id.* P 143.

<sup>30</sup> *Id.*

<sup>31</sup> The FRCC Board of Directors consists of industry representatives allocated among several sectors including: (1) suppliers, (2) non-investor owned utilities wholesale, (3) load serving entities, (4) generating load serving entities, (5) investor owned utilities, (6) general, and (7) the CEO of FRCC (an ex-officio non-voting member). FRCC Bylaws, section 3.2a, 3.2e.

<sup>32</sup> *See, e.g.,* Florida Power & Light Co., Attachment K § 1.2.6.

**iii. Protest**

26. FMPA/Seminole assert that the Commission should require Florida Parties to revise their Attachment Ks to provide that the FRCC Planning Committee will post its determination that a proposed CEERTS project is not materially different from a transmission project or projects already in the regional transmission plan, along with an explanation of the basis for the determination, *prior to* the FRCC Board meeting. FMPA/Seminole argues that this revision is necessary to ensure that stakeholders are aware of the FRCC Planning Committee's determination earlier in the transmission planning process to allow stakeholders to submit comments prior to the FRCC Board meeting.<sup>33</sup>

**iv. Answer**

27. Florida Public Utility Parties argue that FMPA/Seminole's request would add an additional review and comment period that the Commission did not require in the Second Compliance Order.<sup>34</sup> Florida Public Utility Parties argue that rather than requiring a review and comment period for the FRCC Planning Committee's determination that a proposed CEERTS project is not materially different, the Commission in the Second Compliance Order required a posting of that determination, explaining that the requirement was to "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." Thus, Florida Public Utility Parties contend that FMPA/Seminole's request is an untimely request for rehearing.<sup>35</sup> Finally, Florida Public Utility Parties assert that the posting should occur at the time of the FRCC Board meeting, as proposed, because the FRCC Planning Committee cannot determine whether a proposed CEERTS project is materially different from a transmission project or projects already in the regional transmission plan until it has the opportunity to collect and review all of the CEERTS project submittals.<sup>36</sup>

**v. Commission Determination**

28. We find that the Florida Parties' proposal that the FRCC Planning Committee will post on the FRCC website, subject to any posting restrictions to protect CEII or other

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<sup>33</sup> FMPA/Seminole Protest at 23.

<sup>34</sup> Florida Public Utility Parties Answer at 12-13.

<sup>35</sup> Florida Public Utility Parties at 13.

<sup>36</sup> *Id.* at 14.

confidential information, any determination that a proposed CEERTS project is not materially different from a CEERTS project or projects already selected in the regional transmission plan for purposes of cost allocation, along with an explanation of the basis for the determination, complies with our directive in the Second Compliance Order. We will not require Florida Parties to revise their Attachment Ks to create a separate stakeholder review and comment period for this posting prior to the FRCC Board Meeting, as FMPA/Seminole request. As the Commission stated in the Second Compliance Order, posting a materially different determination will provide affected stakeholders with an opportunity to challenge the determination through the region's dispute resolution procedures or before the Commission, if they so desire.<sup>37</sup> Under Florida Parties' proposal, the FRCC Planning Committee will make the materially different posting at the time of the FRCC Board meeting that occurs during Step 2 of the 6-Step FRCC regional transmission planning process. During Step 2, the FRCC Planning Committee provides an update to the FRCC Board related to all transmission projects that have been submitted and deemed complete, but the FRCC Board makes no decisions regarding potential transmission projects at this stage of the regional transmission planning process.<sup>38</sup> Therefore, stakeholders can dispute any FRCC Planning Committee determination that a proposed CEERTS project is not materially different than a CEERTS project already selected in the regional transmission plan for purposes of cost allocation even after the FRCC Board meeting and, if they choose, can bring any dispute before the Commission.

**B. Consideration of Transmission Needs Driven by Public Policy Requirements**

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

**a. Second Compliance Order**

29. In the Second Compliance Order, the Commission found that Florida Parties' proposed revisions regarding the consideration of transmission needs driven by public policy requirements in the regional transmission planning process were unclear as to 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. In addition, the Commission found that it was not clear to whom a stakeholder would submit a

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<sup>37</sup> Second Compliance Order, 148 FERC ¶ 61,172 at 143.

<sup>38</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 1.2.6.

description of such transmission needs.<sup>39</sup> The Commission stated that, as it 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.”<sup>40</sup> Accordingly, the Commission required Florida Public Utility Parties to 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, the Commission noted, Orlando should submit further revisions to its Attachment K, consistent with this directive.<sup>41</sup>

**b. Third Compliance Filing**

30. In their third compliance filings, Florida Parties propose to clarify the process for stakeholders to submit a description of transmission needs driven by public policy requirements for consideration of those transmission needs in the regional transmission planning process. First, Florida Parties propose revisions to their Attachment Ks to clarify that a written description of the transmission need driven by public policy requirements that the stakeholder has identified must be submitted to the FRCC Planning Committee prior to January 1 of the first year of the biennial regional transmission planning cycle. Second, Florida Parties propose that the description of a transmission need driven by public policy requirements that a stakeholder submits “must” (rather than “should,” as originally proposed and accepted in the Second Compliance Order) identify: (1) the state, federal, or local law or regulation that contains the public policy requirement; (2) the type of 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) a description of the type and nature of the transmission service, including the number of megawatts<sup>42</sup> needed from the transmission providers by such subset of entities to meet

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<sup>39</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 171.

<sup>40</sup> *Id.* (citing First Compliance Order, 143 FERC ¶ 61,254 at P 76 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 321)).

<sup>41</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 171.

<sup>42</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 11.1. In their third compliance filings, Florida Parties also propose to revise (item 4) as it was accepted in the Second Compliance Order to require that the description include the number of megawatts.

that transmission need. Third, Florida Parties propose to revise their Attachment Ks to state that any stakeholder submitting a potential transmission need driven by public policy requirements may, but is not required to, also propose a transmission project to meet the transmission need along with its description of the need. Finally, Florida Parties propose to revise their Attachment Ks to clarify that stakeholder submissions will be posted on the FRCC website.<sup>43</sup>

**c. Protest**

31. FMPA/Seminole argues that Florida Parties go beyond the requirements of the Second Compliance Order by proposing to revise their Attachment Ks to *require* stakeholders to include all of the four categories of information discussed above when submitting a description of a potential transmission need driven by public policy requirements. Nonetheless, FMPA/Seminole state that it is reasonable to require a stakeholder to identify the state, federal, or local law or regulation that contains the public policy requirement (item 1) and the type of entities in the region to which the public policy requirement applies (item 2). FMPA/Seminole also states that it is reasonable to require a stakeholder to submit any information then available to that stakeholder regarding the subset of entities in the region subject to the public policy requirement that have a transmission need driven by the public policy requirement (item 3) and a description of the type and nature of the transmission service needed from the transmission providers by such subset of entities to meet that transmission need (item 4), particularly with respect to the stakeholder's own needs. However, FMPA/Seminole argue that it is unreasonable to require a stakeholder to submit the sort of detailed and technical information called for in items 3 and 4 at the initiation of the process to identify transmission needs driven by public policy requirements, particularly when it pertains to other entities. FMPA/Seminole argues that it may take some time and some amount of in-depth technical study, as well as information from other entities, to determine 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 the type and nature of the transmission service, including the number of megawatts, needed from the transmission providers by such subset of entities to meet the transmission need. It asserts that this is the sort of detailed technical data that would best be determined by the FRCC Planning Committee through the transmission planning process. As such, FMPA/Seminole requests that the Commission reject Florida Parties' proposed revision to change "should identify" to "must identify" or, in the alternative, find that a transmission project that is identified in the pre-January time frame may not be rejected later if further technical analysis finds that the description initially provided proves inaccurate.<sup>44</sup>

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<sup>43</sup> *See, e.g., id.*

<sup>44</sup> FMPA/Seminole Protest at 20-22.

**d. Answers**

32. Florida Public Utility Parties argue that stakeholders must submit all of the information listed in their Attachment Ks because the FRCC is not required to proactively identify transmission needs driven by public policy requirements, but instead must only consider transmission needs raised by other stakeholders in the transmission planning process. Florida Public Utility Parties assert that the Commission in the Second Compliance Order used the term “must” in describing a stakeholder’s obligations.<sup>45</sup> Florida Public Utility Parties argue that they must rely on something other than a stakeholder’s claim before moving on to evaluating transmission solutions and that the required information is necessary for the transmission planning process to be conducted in a rational, predictable, and defined manner.<sup>46</sup>

33. In their answer to Florida Public Utility Parties’ answer, FMPA/Seminole respond that it is highly unlikely that stakeholders will be able to supply data about other entities regarding the subset of entities in the region subject to the public policy requirements that have a transmission need driven by the public policy requirement and the type and nature of the transmission service, including the number of megawatts needed from the transmission providers by such subset of entities to meet the transmission need absent analysis by the FRCC Planning Committee.<sup>47</sup> FMPA/Seminole also assert that this provision is inconsistent with the FRCC’s overall approach to evaluating transmission needs driven by public policy requirements. They assert that Florida Parties’ tariffs provide for the FRCC Planning Committee to perform a technical analysis after a transmission need driven by public policy requirements is identified and that it is unreasonable to require stakeholders to provide information regarding the needs of other entities that would be available only after that analysis is complete.<sup>48</sup>

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<sup>45</sup> Florida Public Utility Parties Answer at 9-10 (citing Second Compliance Order, 148 FERC ¶ 61,172 at P 171 (“[a]ccordingly, we require Tampa Electric, [Duke Energy], 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 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 transmission planning cycle, as well as the process for submitting that description (e.g., to whom it should be submitted).”) (emphasis added)).

<sup>46</sup> *Id.* at 10.

<sup>47</sup> FMPA/Seminole Answer at 10.

<sup>48</sup> *Id.* at 11.

e. **Commission Determination**

34. We find that Florida Parties' proposal to revise their Attachment Ks to clarify that: (1) the written description of the transmission need driven by public policy requirements that the stakeholder has identified must be submitted to the FRCC Planning Committee prior to January 1 of the first year of the biennial regional transmission planning cycle; (2) any stakeholder submitting a potential transmission need driven by public policy requirements may, but is not required to, also propose a transmission project to meet the transmission need along with its description of the need; and (3) stakeholder submissions are posted on the FRCC website, complies with the directives of the Second Compliance Order. These proposed revisions clarify the process through which a stakeholder must submit a description of a transmission need driven by public policy requirements for that transmission need to be considered during that transmission planning cycle.

35. We accept Florida Parties' proposed revisions establishing a submission deadline of January 1 of the first biennial cycle and providing for the FRCC Planning Committee to propose transmission solutions to identify transmission needs driven by public policy requirements as consistent with our directives in the Second Compliance Order. However, with respect to Florida Parties' proposal to revise their Attachment Ks to state that a stakeholder "must" rather than "should" identify the four categories of information when proposing transmission needs driven by public policy requirements, we agree with FMPA/Seminole that it is unreasonable to require a stakeholder to have all the listed information at the outset of the process. For example, we find that requiring a stakeholder to submit information about other entities' potential transmission needs, which may not be available to a particular stakeholder, creates a barrier to stakeholder submissions that is inconsistent with the requirement in Order No. 1000 that public utility transmission providers adopt procedures to "allow all stakeholders to bring forth any transmission needs that they believe are driven by Public Policy Requirements."<sup>49</sup> Furthermore, we also agree with FMPA/Seminole that some of the information requirements that Florida Parties propose require the submission of technical data that will be developed as part of the FRCC transmission planning process for transmission needs driven by public policy requirements.<sup>50</sup> While it is reasonable to require a stakeholder proposing a transmission need driven by public policy requirements to

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<sup>49</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 209 (2011); *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

<sup>50</sup> See, e.g., Order No. 1000-A, 139 FERC ¶ 61,132 at P 334 (finding that the process for identifying transmission needs driven by Public Policy Requirements can identify what parties are subject to the public policy requirements and whether such parties have a need for a transmission solution to meet those requirements).

submit any information in the four categories that is available to that stakeholder, Florida Parties may not reject a proposed transmission need driven by public policy requirements merely because a stakeholder does not submit all the information.<sup>51</sup> We therefore reject Florida Parties' proposal to revise their Attachment Ks so that a stakeholder "must" rather than "should" identify the four categories of information when proposing a transmission needs driven by public policy requirements. Accordingly, we direct Florida Public Utility Parties to submit, within 30 days of the date of issuance of this order, a further compliance filing to revise their OATTs to state that when a stakeholder proposes a transmission need driven by public policy requirements for consideration, the description of the need "should" include the 4 categories of information.<sup>52</sup> Likewise, Orlando should also submit a further compliance filing to address this issue.

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

i. **Second Compliance Order**

36. In the Second Compliance Order, the Commission found that Florida Parties did not revise their Attachment Ks to incorporate the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements in their local transmission planning process, as directed in the First Compliance Order.<sup>53</sup> First, the

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<sup>51</sup> See, e.g., *South Carolina Elec. & Gas Co.*, 143 FERC ¶ 61,058, at P 174 (2013) (finding that the information requirements for proposing a transmission project for selection in the regional transmission plan for purposes of cost allocation should permit a transmission developer to submit any studies and analysis it performed to support its proposed transmission project, but should not require studies and analyses that only incumbent transmission providers are likely to have sufficient information to complete); *PacifiCorp, et al.*, 143 FERC ¶ 61,151, at P 171 (2013) (finding that the information requirements should permit a transmission developer to submit any studies and analysis the region performed to support its proposed transmission project, but that 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).

<sup>52</sup> As we discuss in the next section of this order, Florida Public Utility Parties must make the same change to the parts of their OATTs that address consideration of transmission needs driven by public policy requirements in their local transmission planning processes.

<sup>53</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 178.

Commission directed Florida Public Utility Parties to revise their OATTs to include a definition of the term “public policy requirements” for use in their local transmission planning processes.<sup>54</sup> Second, the Commission required Florida Public Utility Parties to 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.<sup>55</sup> Third, the Commission directed Florida Public Utility Parties to revise their OATTs to 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.<sup>56</sup> Fourth, the Commission directed Florida Public Utility Parties 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 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.<sup>57</sup> The Commission also directed Florida Public Utility Parties 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.<sup>58</sup> Likewise, the Commission noted, Orlando should submit further revisions to its Attachment K consistent with these directives.<sup>59</sup>

**ii. Third Compliance Filing**

37. In their third compliance filings, Florida Parties propose a process for proposing transmission needs driven by public policy requirements nearly identical to the regional process. Specifically, Florida Parties propose to revise their Attachment Ks to state that, to be considered in the local transmission planning process, a public policy requirement

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<sup>54</sup> *Id.* P 179.

<sup>55</sup> *Id.* P 180.

<sup>56</sup> *Id.* P 181.

<sup>57</sup> *Id.* P 181.

<sup>58</sup> *Id.* P 182.

<sup>59</sup> *Id.* PP 178-182.

must be reflected in a state, federal, or local law or regulation (including an order of a state, federal, or local agency).<sup>60</sup> Florida Parties also propose that on or before January 1 of each calendar year, a stakeholder may submit to the transmission provider a written description of a transmission need that the stakeholder believes is driven by a public policy requirement. In addition, they propose that any stakeholder submitting a potential transmission need driven by public policy requirements may, but is not required to, also propose a transmission project to meet such a need. Under the proposal, the written description that a stakeholder must submit with a proposed transmission need driven by public policy requirements must: 1) identify the state, federal, or local law or regulation that contains the public policy requirement; 2) identify the type of entity(ies) in the transmission provider's area to which the public policy requirement applies; 3) identify the subset of entities in the area 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 provider by such subset of entities to meet that transmission need.<sup>61</sup>

38. Florida Parties also propose that all submissions of a local transmission need that a stakeholder believes is being driven by a public policy requirement will be posted on the transmission provider's website 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.<sup>62</sup> Similar to its regional transmission planning process, Florida Parties also provide that transmission providers in their local transmission planning processes 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 decide whether a public policy requirement is driving a transmission need for which a solution is required.<sup>63</sup> Florida Parties propose to post the determination on the transmission provider's website prior to April 1 of the local transmission planning process cycle, along with an explanation and record of the determination, (including a negative determination).<sup>64</sup> Florida Parties propose that if a public policy transmission need is identified for which a solution is required, local projects shall be proposed to address such a need.<sup>65</sup> Florida Parties also propose to add discussion and analysis of

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<sup>60</sup> *See, e.g.,* Florida Power & Light Co., Attachment K Appendix 1, § A.

<sup>61</sup> *See, e.g., id.*

<sup>62</sup> *See, e.g., id.* § B.

<sup>63</sup> *See, e.g., id.*

<sup>64</sup> *See, e.g., id.*

<sup>65</sup> *See, e.g., id.*

potential solutions to identified transmission needs driven by public policy requirements throughout the local transmission planning process.<sup>66</sup>

### iii. **Commission Determination**

39. We find that Florida Parties' proposed revisions to the transmission planning process concerning the consideration of local transmission needs driven by public policy requirements partially comply with the directives in the Second Compliance Order and Order No. 1000. Florida Parties propose to follow a process to consider transmission needs driven by public policy requirements at the local level that is similar to the one they use at the regional level and, as we discuss in the previous section of this order, we find that the proposal complies with one exception. In particular, Florida Parties propose that a stakeholder must identify four categories of information when proposing a transmission need driven by public policy requirements at the local level but, as we discuss in the previous section of this order, requiring a stakeholder to submit information about other entities' potential transmission needs, which may not be available to a particular stakeholder, creates a barrier to stakeholder submissions that is inconsistent with the requirement in Order No. 1000 that public utility transmission providers adopt procedures to "allow all stakeholders to bring forth any transmission needs that they believe are driven by Public Policy Requirements."<sup>67</sup> Therefore, we direct Florida Public Utility Parties to submit, within 30 days of the date of issuance of this order, a further compliance filing to revise their OATTs to state that when a stakeholder proposes a transmission need driven by public policy requirements for consideration in the local transmission planning process, the description of the need "should" include the four categories of information. Likewise, Orlando should also submit a further compliance filing to address this issue.

## C. **Nonincumbent Transmission Developer Reforms**

### 1. **Qualification Criteria**

#### a. **Financial Criteria**

#### i. **Second Compliance Order**

40. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks to include changes to the financial qualification

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<sup>66</sup> See, e.g., *id.*, §§ D, F, & H.

<sup>67</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; see also Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

criteria that they proposed in an answer to a protest and stated that the Commission would evaluate the revised qualification criteria as part of the next compliance proceeding. Likewise, the Commission noted, Orlando should submit further revisions to its Attachment K consistent with this directive.<sup>68</sup> Specifically, in an answer to protests to the second compliance filing, Florida Parties proposed to revise the financial qualification criteria in their Attachment Ks to provide 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. Their criteria included 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 proposed that a potential transmission developer must include audited financial statements from the most recent three years and its most recent quarterly financial statements, 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 signed a confidentiality agreement.<sup>69</sup>

**ii. Third Compliance Filing**

41. In their third compliance filings, Florida Parties revised their Attachment Ks to include, in addition to existing financial qualification criteria, the financial qualification criteria they proposed in their previous answer regarding a transmission developer's current and expected capability to finance transmission projects.<sup>70</sup> Specifically, Florida Parties propose that the demonstration of the transmission project developer is technically, and financially capable of (i) completing the CEERTS project in a timely and competent manner; and (ii) operating and maintaining the CEERTS facilities consistent with Good Utility Practice and applicable reliability criteria for the life of the project, should be supported by providing the following information:

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<sup>68</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 229.

<sup>69</sup> *Id.* Florida Parties stated that the proposed provisions are similar to what the Commission approved in the New York Independent System Operator region. *Id.* n.405.

<sup>70</sup> Florida Parties' Filing at 10-11. *See* Florida Public Utility Parties Answer at 59, 81.

A transmission developer must demonstrate its current and expected capability to finance, or arrange financing for the transmission facilities, including:

- (1) [e]vidence of its demonstrated experience financing or arranging financing for transmission facilities, including a description of such projects (not to exceed ten) 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) [i]ts audited financial statements from the most recent three years and its most recent quarterly financial statement, or equivalent information; ... and (6) Such other evidence that demonstrates its current and expected capability to finance a CEERTS project.<sup>71</sup>

42. Florida Parties also propose to revise their Attachment Ks to provide that the transmission developer must identify those portions of the financial data that would need to be treated as confidential information and subject to disclosure only to those that have signed a confidentiality agreement.<sup>72</sup>

### **iii. Protest and Answer**

43. FMPA/Seminole argue that Florida Parties' proposal that transmission developers must provide a description of financing for transmission projects "through rates approved by the Commission or state regulatory agency" does not account for cooperative or municipal utilities whose rates are set by their owner-members. FMPA/Seminole request that Florida Parties' tariffs be revised to include "any approved rates."<sup>73</sup> In their answer, Florida Public Utility Parties agree to make the revision.<sup>74</sup>

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<sup>71</sup> See, e.g., Florida Power & Light Co., Attachment K, Appendix 3, §§ 1.A.1-2.

<sup>72</sup> See, e.g., *id.* Appendix 3 § 1.A.6.

<sup>73</sup> FMPA/Seminole Protest at 28.

<sup>74</sup> Florida Public Utility Parties Answer at 17.

iv. **Commission Determination**

44. We find that Florida Parties' revisions to the transmission developer qualification process partially comply with the requirements of Order No. 1000 and the directives in the Second Compliance Order. We find that, with the exception noted below regarding cooperative or municipal utility rates, Florida Parties' proposed financial qualification criteria are fair and not unreasonably stringent, are not unduly discriminatory or preferential, and provide each potential transmission developer the opportunity to demonstrate that it is financially capable of developing, constructing, owning and maintaining transmission facilities.<sup>75</sup> For example, under the new language that Florida Parties propose, a transmission developer can provide evidence of its expected capability to finance a CEERTS project without having to provide evidence that it already has experience financing or arranging financing for transmission facilities. Further, we find that while a transmission developer should submit, if available, the information listed under criterion 1 through 5 to demonstrate its current and expected capability to finance, or arrange financing for the transmission facilities as explained above, the transmission developer may provide additional information under criterion 6 to support its demonstration if it cannot provide all of the information listed under criterion 1 through 5.

45. We also accept Florida Public Utility Parties' agreement in response to FMPA/Seminole, to make changes to account for cooperative or municipal utility rates and therefore direct Florida Public Utility Parties to file, within 30 days of the date of issuance of this order, further compliance filings revising their Attachment Ks to allow transmission developers to provide a description of financing through any approved rates. Likewise, Orlando should also submit a further compliance filing to address this issue.

2. **Evaluation Process for Transmission Projects Selected in the Regional Transmission Plan for Purposes of Cost Allocation**

a. **General Evaluation Process**

i. **Second Compliance Order**

46. In the Second Compliance Order, the Commission noted that Florida Parties had proposed a sponsorship model, under which 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.<sup>76</sup> The

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<sup>75</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324.

<sup>76</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 281 (citing, for example, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336).

Commission stated that Florida Parties' Attachment Ks would allow the FRCC Board in certain cases to select a transmission developer for a transmission project selected in the regional transmission plan for purposes of cost allocation that is different than the developer that sponsored it. The Commission explained that its 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, and thus the 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. Consequently, the Commission directed Florida Public Utility Parties 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 eligible to use the regional cost allocation method for that project, even if more than one CEERTS project was proposed to meet the same need. Likewise, the Commission noted, Orlando should submit further revisions to its Attachment K consistent with this directive.<sup>77</sup>

47. The Commission found 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 transmission developer based on a comparative analysis of the developer's qualifications. However, the Commission also found, Florida Parties did not explain how and on what basis the FRCC Board will use the developer qualification criteria to conduct a comparative analysis of transmission developers that have already had to satisfy those criteria or when the FRCC Board will choose a transmission developer. Therefore, the Commission directed Florida Public Utility Parties to revise their Attachment Ks 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, the Commission noted, Orlando should submit further revisions to its Attachment K consistent with this directive.<sup>78</sup>

48. In addition, the Commission found that some aspects of Florida Parties' procedures did not provide an opportunity for meaningful stakeholder input.<sup>79</sup> The

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<sup>77</sup> *Id.* P 281.

<sup>78</sup> *Id.* P 283.

<sup>79</sup> *Id.* P 279 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 267 and 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)).

Commission stated that stakeholders must be allowed to review the FRCC Planning Committee's reports and recommendations (subject to any CEII or confidential information protections) prior to the relevant FRCC Board meeting at which they will be discussed, and stakeholders must be able to provide input in advance for the FRCC Board to consider. In addition, the Commission found that the FRCC Board must review input from *all* stakeholders when making any decisions in the evaluation process. Accordingly, the Commission directed Florida Public Utility Parties to revise their Attachment Ks 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<sup>80</sup> and the report about the cost-benefit analysis in Step 5;<sup>81</sup> and (2) make clear that the FRCC Board will consider input from all stakeholders when deciding in Step 4<sup>82</sup> whether a

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<sup>80</sup> During Step 3, 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. The FRCC Planning Committee will provide a report to the FRCC Board that includes its findings from the technical analysis, as well as a recommendation as to whether a proposed CEERTS project should proceed to the next step in the evaluation process. *See, e.g.*, Florida Power & Light Co., Attachment K, §§ 1.2.7.A, 1.2.7.C.

<sup>81</sup> During Step 5, the FRCC Planning Committee evaluates the proposed CEERTS projects that the FRCC Board has determined should proceed to the next step of the evaluation process. For reliability and economic CEERTS projects, this aspect of the evaluation process includes a cost-benefit analysis performed by an independent consultant. For a proposed public policy CEERTS project, the FRCC Planning Committee will determine whether the proposed CEERTS project meets the public policy transmission needs identified and will work with the identified beneficiaries to verify the proposed CEERTS project's benefits. Subsequently, the FRCC Planning Committee provides a report to the FRCC Board of its recommendation based upon its evaluation. 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 is a more cost-effective or efficient solution to regional transmission needs. *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.

<sup>82</sup> During Step 4, the FRCC Board will review the FRCC Planning Committee report and any comments on the report 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

(continued...)

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 transmission needs in Step 6.<sup>83</sup> Likewise, the Commission noted, Orlando should submit further revisions to its Attachment K consistent with this directive.<sup>84</sup>

49. Finally, in the Second Compliance Order, the Commission accepted 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 transmission planning cycle.<sup>85</sup> However, the Commission noted that the proposed process then provided up to 21 months to evaluate those proposals.<sup>86</sup> The Commission found it inconsistent with the proposed biennial transmission planning cycle for the evaluation process to go beyond the end of the second year. Accordingly, the Commission directed Florida Public Utility Parties to revise 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 transmission planning cycle and to provide more detail about when the referenced FRCC Board meetings will occur. Likewise, the Commission noted, Orlando should submit further revisions to its Attachment K consistent with this directive.<sup>87</sup>

## ii. Third Compliance Filing

50. In their third compliance filings, Florida Parties revised their Attachment Ks to clarify that if a single CEERTS project sponsor is also the transmission developer identified for a given CEERTS project, then that transmission developer is eligible to use the regional cost allocation for that CEERTS project, subject to review of its

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Procedures in Appendix 6 are available for use. *See, e.g.,* Florida Power & Light Co., Attachment K, § 1.2.8.

<sup>83</sup> During Step 6, 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. *See, e.g.,* Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.10.

<sup>84</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 279.

<sup>85</sup> *Id.* P 284.

<sup>86</sup> *Id.* (referencing, for example, Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.2.5 – 1.2.10).

<sup>87</sup> *Id.*

qualifications. If there are different proposed CEERTS projects to address the same transmission need, Florida Parties propose that a CEERTS project will be selected in the regional transmission plan for purposes of cost allocation based on the highest benefit-to-cost ratio. Once a transmission developer's proposed CEERTS project has been selected in the regional transmission plan for purposes of cost allocation, Florida Parties propose that the transmission developer will also be selected as the developer eligible to use the regional cost allocation method for the selected CEERTS project, subject to review of its qualifications. Florida Parties have revised their Attachment Ks to further state that CEERTS projects proposed by a single qualified transmission developer and selected by the FRCC Board will not be assigned to a different transmission developer.<sup>88</sup>

51. In addition, Florida Parties' revised Attachment Ks state that if multiple qualified transmission developers express an interest in developing a potential CEERTS project proposed by a sponsor that does not plan to be the developer, each transmission developer interested in developing the project must submit certain information, such as a cost estimate and in-service date and a high-level summary of who will own, operate and maintain the project.<sup>89</sup> This information must be submitted within 30 days of the meeting that the FRCC Planning Committee will organize during Step 5 to provide the project sponsor the opportunity to fully describe its proposed CEERTS project. The submitted CEERTS projects will then be evaluated as part of Steps 5 and 6 of the regional transmission planning process.<sup>90</sup> Florida Parties propose that if there are multiple transmission developers for the same CEERTS project, the transmission developer for the CEERTS project will be selected based on the highest benefit-to-cost ratio.<sup>91</sup>

52. In response to the requirement to revise their Attachment Ks 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 transmission planning cycle Florida Parties propose to shorten the time frame for each step by one to two months.<sup>92</sup> Florida Parties state that these revisions clarify how the evaluation process and the final selection of CEERTS projects in the regional transmission plan for purposes of

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<sup>88</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 1.2.10.B.

<sup>89</sup> *See, e.g., id.* §§ 1.2.9.A & 1.2.4.B.2-4.

<sup>90</sup> *See, e.g., id.* § 1.2.9.A.

<sup>91</sup> *See, e.g., id.* § 1.2.10.C.

<sup>92</sup> *See, e.g.*, Florida Power & Light Co., Attachment K §§ 1.2.7, 1.2.9, 1.2.10, 1.2.14.

cost allocation occur within the proposed two year transmission planning cycle.<sup>93</sup> In addition, in response to the requirement to provide more detail about when the referenced FRCC Board meetings will occur, Florida Parties propose to revise their Attachment Ks to discuss generally the FRCC Board's role in the regional transmission planning process, including its meetings. Specifically, Florida Parties propose to revise their Attachment Ks to state that the FRCC Board has the responsibility to ensure that the FRCC regional transmission planning process, which results in a Board-approved regional transmission plan, is fully implemented. The revised Attachment Ks further state that the regional transmission planning process includes several steps in which the FRCC Board is kept informed and must act to keep the process moving forward. In addition, the revised Attachment Ks state that while the FRCC Board typically meets at least four times per year, if a regular FRCC Board meeting is not scheduled within the timeframes specified for the evaluation of a CEERTS project, the Chair of the FRCC Board will call a special meeting to meet the scheduled milestones for CEERTS project evaluation within the biennial transmission planning process timeline.<sup>94</sup>

53. In response to the requirement to provide for meaningful stakeholder input into various steps in the evaluation process, Florida Parties propose to revise their Attachment Ks to provide both CEERTS sponsors and stakeholders an opportunity to review and provide input on the FRCC Planning Committee report that includes the FRCC Planning Committee's findings from technical analysis it conducts during Step 3 of the regional transmission planning process before it submits the report to the FRCC Board. In addition, Florida Parties propose to revise their Attachment Ks to allow CEERTS sponsors and stakeholders an opportunity to provide written comments on the report to the FRCC Board.<sup>95</sup> Florida Parties propose to further revise their Attachment Ks to state that the FRCC Board will review any comments received on the FRCC Planning Committee's report when determining whether a proposed CEERTS project should proceed to the next step of the evaluation process.<sup>96</sup> Florida Parties also propose revisions to allow CEERTS sponsors and stakeholders to review and provide input on the FRCC Planning Committee's cost-benefit analysis report before the FRCC Planning Committee provides it to the FRCC Board. Florida Parties propose to revise their Attachment Ks to state that CEERTS sponsors and stakeholders will be given an opportunity to provide written comments about the report to the FRCC Board, which the

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<sup>93</sup> Florida Parties Filing at 14.

<sup>94</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 1.2.1.

<sup>95</sup> *See, e.g., id.* § 1.2.7.C.

<sup>96</sup> *See, e.g., id.* § 1.2.8.

FRCC Board will review when making its decision about whether the proposed CEERTS project is a more cost-effective or efficient solution to regional transmission needs.<sup>97</sup>

**iii. Protest and Answers**

54. FMPA/Seminole argue that when revising their Attachment Ks to address the compliance directives discussed above, Florida Parties also deleted language that FMPA/Seminole assert supported collaboration among project sponsors/developers. Specifically, FMPA/Seminole are concerned that Florida Parties deleted a provision that provided that, when there are multiple transmission developers for the same CEERTS project or different proposed CEERTS projects to address the same need, the FRCC Board will, upon request, facilitate an opportunity for the project sponsors/transmission developers to collaborate with each other to determine how each of the transmission developers may share responsibility for portions of the CEERTS project. FMPA/Seminole contend that removing this provision improperly raises obstacles to joint ownership and other mutually beneficial voluntary arrangements that could get needed transmission built. FMPA/Seminole argues that that the Commission directed Florida Parties to clarify that the FRCC Board cannot select a CEERTS project proposed by one transmission developer and assign it to another. However, FMPA/Seminole argue that that clarification is not incompatible with the FRCC Board facilitating voluntary collaboration among potential transmission developers.<sup>98</sup>

55. FMPA/Seminole also request that Florida Parties clarify the timeline for stakeholders and CEERTS sponsors to provide comments on the FRCC Planning Committee's technical analysis report that is issued in Step 3 of the regional transmission planning process. FMPA/Seminole note that the FRCC Board will not begin to evaluate the technical analysis report until after it also receives stakeholder comments.<sup>99</sup> Thus, FMPA/Seminole argue, the lack of a deadline for CEERTS sponsors and stakeholders to submit comments could extend the transmission planning process indefinitely. FMPA/Seminole contend that Florida Parties should be required to clarify how their Attachment Ks will both provide a meaningful opportunity for stakeholder comment and result in the selection of CEERTS projects within the two year transmission planning cycle.<sup>100</sup>

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<sup>97</sup> *See, e.g., id.* §§ 1.2.9.D, 1.2.9.E.

<sup>98</sup> FMPA/Seminole Protest at 24-25.

<sup>99</sup> *Id.* at 24 (citing Florida Power & Light Co., Attachment K § 1.2.8).

<sup>100</sup> *Id.* at 24-25.

56. In response to FMPA/Seminole's concern about collaboration among project sponsors/developers, Florida Public Utility Parties respond arguing that it was appropriate to delete these provisions since Florida Parties changed their approach to dealing with competing transmission developers when revising their Attachment Ks to comply with the Commission's directives in the Second Compliance Order. Florida Public Utility Parties argue that it is unnecessary for the FRCC to have to facilitate opportunities for project sponsors or transmission developers to collaborate with each other since it raises questions of what process will be utilized to achieve this and what standard applies to the FRCC's performance of this task.<sup>101</sup>

57. In response to FMPA/Seminole's protest about the lack of a deadline for stakeholders to provide comments to the FRCC Planning Committee's technical analysis, Florida Public Utility Parties respond arguing that the proposed tariff language provides that all of the steps can occur within the two year transmission planning cycle but that the FRCC must have some flexibility in establishing various timelines to ensure "the right degree of flexibility and certainty is achieved."<sup>102</sup> In its answer to Florida Public Utility Parties' answer, FMPA/Seminole reiterate its request that Florida Parties specify a deadline for stakeholder comments that provides a meaningful opportunity to provide input and ensures a timely completion of the regional transmission planning process.<sup>103</sup>

#### **iv. Commission Determination**

58. We find that Florida Parties' proposed revisions partially comply with the Commission's directives in the Second Compliance Order. As directed in the Second Compliance Order, Florida Parties have revised their Attachment Ks to clarify that the transmission developer that proposed a CEERTS project that is selected in the regional transmission plan for purposes of cost allocation will be eligible to use the regional cost allocation method for that project. In addition, we accept Florida Parties' proposal to clarify that if there are different proposed CEERTS projects to address the same transmission need, the CEERTS project with the highest benefit-to-cost ratio will be selected in the regional transmission plan for purposes of cost allocation. We also accept Florida Parties' revised proposal for selecting among transmission developers that are interested in developing a CEERTS project proposed by a sponsor that does not plan to be the developer (non-developer). Florida Parties propose that the transmission developers interested in developing a CEERTS project sponsored by a non-developer must submit certain information, which will then be evaluated through the regional

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<sup>101</sup> Florida Public Utility Parties Answer at 15.

<sup>102</sup> *Id.* at 14.

<sup>103</sup> FMPA/Seminole Answer at 12.

transmission planning process, and the proposal with the highest benefit-to-cost ratio will be selected in the regional transmission plan for purposes of cost allocation.<sup>104</sup> Florida Parties' proposal complies with Order No. 1000's requirement that each public utility transmission provider 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.<sup>105</sup>

59. However, we reject Florida Parties' proposal to delete the provisions in their Attachment Ks that provide for the FRCC Board, upon request, to facilitate an opportunity for project sponsors/transmission developers to collaborate with each other to determine how each of the transmission developers may share responsibility for portions of the CEERTS project. The proposed deletions are outside of the scope of the previous compliance directive. The Commission previously accepted these provisions, and we find that it is not necessary for Florida Parties to remove them to implement their proposal to choose among competing transmission developers for a CEERTS project sponsored by a non-developer. Accordingly, we direct Florida Public Utility Parties to submit, within 30 days of the date of this order, further compliance filings to restore the provision. Likewise, Orlando should also submit a further compliance filing to address this issue.

60. We find that Florida Parties have complied with the requirement to provide an opportunity for meaningful stakeholder input. In particular, Florida Parties propose to revise their Attachment Ks to make it clear that stakeholders can provide comments that will be considered in various steps in the evaluation process.<sup>106</sup> We also find that Florida Parties have partially complied with the requirement to clarify the timeline for the evaluation process and final selection of transmission projects in the regional transmission plan for purposes of cost allocation so that it can occur within the proposed two-year transmission planning cycle and to provide more detail about when the referenced FRCC Board meetings will occur. While the proposed changes to the length of time various steps in the process timeline will take would allow the process to be completed by the end of the two-year cycle, we agree with FMPA/Seminole that, without a deadline for stakeholder comments on the FRCC Planning Committee's technical analysis report, the proposal would allow the evaluation process to be delayed indefinitely. Thus, without a deadline for stakeholder comments, the proposal does not fully comply with the requirement to clarify the Attachment Ks so that that the process

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<sup>104</sup> *See, e.g.*, Florida Power & Light Co., Attachment K §§ 1.2.9.A & 1.2.4.B.2-4.

<sup>105</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

<sup>106</sup> *See, e.g.*, Florida Power & Light Co., Attachment K §§ 1.2.7.C and 1.2.8.

will be completed within the proposed two-year time frame. In particular, Florida Parties propose that the FRCC Board's review of the FRCC Planning Committee's technical analysis report will take two to three months, but they also propose that the FRCC Board's review will not begin until after the FRCC Board receives comments on the technical analysis report from stakeholders.<sup>107</sup> Without a deadline for stakeholder comments, it is not clear how the process will be completed in the proposed two year timeframe while also providing a meaningful opportunity for stakeholder comment on the FRCC Planning Committee's technical analysis report prior to the FRCC Board's review. Accordingly, we direct Florida Public Utility Parties to submit, within 30 days of the date of this order, further compliance filings to revise their Attachment Ks to provide a deadline for stakeholders to submit comments on the FRCC Planning Committee's technical analysis report. This deadline must provide stakeholders with sufficient time to provide meaningful input on the report for the FRCC Board to consider during the FRCC Board's review and also allow the evaluation process and final selection of transmission projects in the regional transmission plan for purposes of cost allocation to occur within the proposed two-year transmission planning cycle. Likewise, Orlando should also submit a further compliance filing to address this issue.

**b. Cost-Benefit Analysis**

**i. Second Compliance Order**

61. In the Second Compliance Order, the Commission noted that, in response to FMPA/Seminole's concern that Florida Parties propose to require payments associated with contribution-in-aid of constructions (CIAC) 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, Florida Parties and JEA proposed to revise their Attachment Ks to remove the requirement that CIAC payments be grossed-up for income taxes. The Commission found that Florida Parties and JEA's proposal addressed FMPA/Seminole's concern because it makes the treatment of CIACs in the cost-benefit analysis consistent with how CIAC payments are required to be made. Thus, the Commission required Florida Public Utility Parties to remove the proposed requirement that payments associated with CIAC be grossed up for income taxes to make the treatment of CIACs in the cost-benefit analysis consistent with how CIAC payments are required to be made. Likewise, the Commission noted, Orlando should also submit further revisions to its Attachment K consistent with this directive.<sup>108</sup>

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<sup>107</sup> See, e.g., *id.* § 1.2.8.

<sup>108</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 309.

62. In a separate section of the Second Compliance Order, the Commission found that the CIAC (recorded as account 303, intangible plant) complied with the Commission's directives. However, 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, the Commission required Florida Public Utility Parties to include the Commission-approved tax gross-up calculation in their cost recovery provisions of their OATTs. Likewise, the Commission noted, Orlando should also submit further revisions to its Attachment K consistent with this directive.<sup>109</sup>

**ii. Request for Clarification**

63. Florida Parties and JEA in their request for rehearing and FMPA/Seminole in its request for rehearing argue that there is an inconsistency in the Second Compliance Order. They state that the Commission directed Florida Public Utility Parties to revise their Attachment Ks, in separate sections of the Second Compliance Order, to both (1) remove the requirement that CIAC payments be grossed up for income taxes and (2) include the Commission-approved tax gross-up calculation in their cost recovery provisions.<sup>110</sup> Florida Parties and JEA request clarification that they are only required to remove the requirement that CIAC payments be grossed up for income taxes, not to include the Commission-approved tax gross-up calculation in their cost recovery provisions. Otherwise, Florida Parties and JEA contend, the gross-up for income taxes will be included in their cost recovery provisions, but not in the cost-benefit evaluation, which is the concern that FMPA/Seminole raised in its protest to the Florida Parties' second compliance filing.<sup>111</sup> Florida Parties and JEA also state that they cannot comply with both directives so they note that they will abide by the directive to remove the proposed requirement that payments associated with CIAC be grossed up for income taxes to make the treatment of CIACs in the cost-benefit analysis consistent with how CIAC payments are required to be made.<sup>112</sup> FMPA/Seminole request further clarification that, if the Commission did intend to direct Florida Public Utility Parties to revise their Attachment Ks to include the Commission-approved tax gross-up calculation in their cost recovery provisions, the Commission was not intending to provide for cost recovery of tax gross-up payments by the entity making CIAC payments. FMPA/Seminole request

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<sup>109</sup> *Id.* P 486.

<sup>110</sup> Florida Parties and JEA Rehearing Request at 1-3 (citing Second Compliance Order, 148 FERC ¶ 61,172 at PP 309, 486); FMPA/Seminole Rehearing Request at 7-8 (citing Second Compliance Order, 148 FERC ¶ 61,172 at PP 309, 486).

<sup>111</sup> Florida Parties and JEA Rehearing Request at 2-3.

<sup>112</sup> *Id.* at 3.

rehearing to the extent that tax gross-ups on CIAC payments will be recovered from consumers, but not fully accounted for in the cost-benefit analysis.<sup>113</sup>

### **iii. Third Compliance Filing**

64. Consistent with their request for clarification, Florida Parties propose to revise their Attachment Ks to delete the provisions stating that CIAC will be grossed up for income taxes to comply with the Commission's directive to remove the proposed requirement that payments associated with CIAC be grossed up for income taxes to make the treatment of CIACs in the cost-benefit analysis consistent with how CIAC payments are required to be made rather than comply with the Commission other directive that Florida Parties include the Commission-approved tax gross-up calculation in their cost recovery provisions of their OATTs.<sup>114</sup>

### **iv. Commission Determination**

65. In response to Florida Parties and JEA, and FMPA/Seminole, we grant clarification and direct Florida Parties to comply with the directives to remove the requirement that CIAC payments be grossed up for income taxes when evaluating the total project costs of a proposed CEERTS project and remove the requirement to include the Commission-approved tax gross-up calculation in their cost recovery provisions of their OATTs. In the Second Compliance Order, the Commission accepted Florida Parties' proposal to remove the provisions related to tax gross for CIAC payments to address FMPA/Seminole's concerns regarding inconsistency between the cost-benefit provisions and the cost recovery provisions. Rather than reintroduce this inconsistency by requiring Florida Public Utility Parties to use the Commission's existing generic formula to calculate tax gross-ups in their cost recovery provisions, we accept Florida Parties' proposal in this third compliance filing to delete the provision stating that a CIAC will be grossed up for income taxes, which complies with the clarification provided here and the directive in the Second Compliance Order.<sup>115</sup>

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<sup>113</sup> FMPA/Seminole Rehearing Request at 8-9.

<sup>114</sup> Florida Parties Filing at 16.

<sup>115</sup> However, consistent with our direction in the First Compliance Order, to the extent that Florida Parties propose to account for or recover tax effects of a CIAC, we require the associated tax effect be considered as part of the total project cost in the cost benefit analysis, and therefore include the calculation in their cost recovery provisions. We also remind Florida Parties that the opportunity for recovery of the tax effects of CIACs is at the time that the utility seeks the required Commission approval for that lump sum payment, and may not be recovered at some later point outside of the

(continued...)

c. **Evaluation of Transmission Needs Driven by Public Policy Requirements**

i. **Second Compliance Order**

66. In the Second Compliance Order, the Commission accepted Florida Public Utility Parties' explanation "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."<sup>116</sup> However, the Commission found that this least-cost criterion was not in the Attachment Ks. Therefore, the Commission directed Florida Public Utility Parties to revise their Attachment Ks to include this least-cost criterion for public policy CEERTS projects.

67. In addition, the Commission found that the Attachment Ks were 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.<sup>117</sup> While Florida Public Utility Parties stated that the verification would be completed by confirming there are sufficient transmission service commitments, the Attachment Ks did not state that this is the basis for verification. In any event, the Commission found that, even if the Attachment Ks were clear on this point, the requirement that the "need for access to the selected 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.<sup>118</sup> Therefore, the Commission found that 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. The Commission therefore directed Florida Public Utility Parties to describe how the benefits of a CEERTS project to address transmission needs driven by public policy requirements

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transaction from entities other than the contributor. *American Mun. Power-Ohio, Inc. v. Ohio Edison Co.*, 57 FERC ¶ 61,358 (1991) *reh'g denied*, 58 FERC ¶ 61,182 (1992), *Trailblazer Pipeline Co.*, 55 FERC ¶ 61,050 (1991) (whether taxes are grossed-up or spread out over time, the contributor making the CIAC would pay the full cost of its contribution, including its tax effect, which would be determined as part of that transaction filed with the Commission for approval).

<sup>116</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 319.

<sup>117</sup> *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9(C)(2).

<sup>118</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 320.

will be verified, such that the project can move forward in the evaluation process, other than by relying on confirmation of sufficient transmission service commitments.<sup>119</sup>

**ii. Third Compliance Filings**

68. In response to the requirement to revise their Attachment Ks to include the least-cost criterion for public policy transmission project that they explained but that was not included in their Attachment Ks, Florida Parties propose to revise their Attachment Ks to state:

For a proposed public policy project identified through the process set forth in section 11 [Public Policy Planning] of Attachment K, the FRCC [Planning Committee] will determine whether the proposed CEERTS project meets the public policy transmission needs identified. There is no cost-benefit analysis performed, except for the validation of the CEERTS project being the least-cost solution. The CEERTS project may be the only solution proposed, in which case it would be accepted in accordance with the project sponsorship model being used within the FRCC. However, in the event there are equally effective alternative CEERTS project solutions that have been proposed to satisfy the public policy transmission needs, then the least-cost CEERTS project would be selected.<sup>120</sup>

69. Florida Parties propose to revise the verification process for CEERTS projects that address transmission needs driven by public policy requirements. Florida Parties' revised Attachment Ks state:

The FRCC [Planning Committee] will work with the identified project beneficiaries to verify the CEERTS public policy project benefits by confirming: that the identified needs exist, the level (in MW) of such needs, and that such needs could be satisfied by the project. The FRCC [Planning Committee] and the project beneficiaries, who are enrolled transmission providers, will consult with the retail and/or wholesale customers to determine if the proposed CEERTS

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<sup>119</sup> *Id.* P 320.

<sup>120</sup> *See, e.g.,* Florida Power & Light Co., Attachment K § 1.2.9.B.2 (emphasis added).

public policy project provides an opportunity to access resources that fulfill their state, federal, or local laws or regulation related to their public policy requirements and to confirm the quantity of megawatts of such access that is needed by such customers. The FRCC [Planning Committee] will then make a final determination and provide an explanation of why the CEERTS project does or does not provide an opportunity to satisfy the public policy needs based on an analysis of the information provided by the customers. If the benefits of the CEERTS public policy transmission project cannot be verified, then the public policy transmission needs may be resubmitted and reassessed in the next FRCC biennial planning cycle, if such needs remain.<sup>121</sup>

### iii. Commission Determination

70. We find that Florida Parties' proposal complies with the requirement to revise their Attachment Ks to provide 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.<sup>122</sup>

71. However, we find that Florida Parties' proposal does not comply with the requirement to describe how the benefits of a CEERTS project to address transmission needs driven by public policy requirements will be verified, such that the project can move forward in the evaluation process, other than by relying on confirmation of sufficient transmission service commitments. Florida Parties' proposal will verify benefits by requiring the retail and/or wholesale customers to confirm a quantity of megawatts that those customers need, which is inconsistent with the requirement that Florida Parties describe how they will verify benefits other than by relying on the confirmation of sufficient transmission service commitments. In addition, Florida Parties' proposal would allow the list of transmission needs driven by public policy requirements for which potential transmission solutions will be evaluated to be changed at the evaluation stage, after the transmission needs have been identified as ones for which transmission solutions will be evaluated. In particular, under the Florida Parties' process to identify transmission needs driven by public policy requirements that the Commission accepted in the Second Compliance Order, the FRCC Planning Committee will post on the FRCC website prior to March 1 of the first year of the biennial regional transmission planning cycle those transmission needs driven by public policy

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<sup>121</sup> See, e.g., Florida Power & Light Co., Attachment K § 1.2.9.

<sup>122</sup> See, e.g., *id.* § 1.2.9.B.2.

requirements for which a solution is required, as well as an explanation and record of those transmission needs driven by public policy requirements that were considered during the identification stage but were not selected for further evaluation.<sup>123</sup> Florida Parties may not at the evaluation stage determine, after identifying a transmission need driven by public policy requirements for which a transmission solution is required, that potential transmission solutions to address the transmission need will not be evaluated.<sup>124</sup> We therefore reject Florida Parties' verification proposal in its entirety because Florida Parties do not comply with the requirement to describe how the benefits of a CEERTS project to address transmission needs driven by public policy requirements will be verified other than by relying on confirmation of sufficient transmission service commitments and because their verification proposal is inconsistent with the already accepted process to identify transmission needs driven by public policy requirements for which transmission solutions will be evaluated. Accordingly, we direct Florida Public Utility Parties to revise their Attachment Ks to remove in its entirety the proposed language that would require identified project beneficiaries to verify the CEERTS public policy benefits of a transmission project being evaluated for potential selection in the regional transmission plan for purposes of cost allocation.<sup>125</sup> Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

**D. Cost Allocation**

**1. Cost Allocation Method for Reliability and Economic Transmission Projects**

**a. Second Compliance Order**

72. In the Second Compliance Order, the Commission found that Florida Parties' proposal to use avoided costs plus transmission line losses to measure benefits for

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<sup>123</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 161 (citing, for example, Florida Power & Light Co., Attachment K § 11.1).

<sup>124</sup> We note that customers are consulted at the identification stage. For example, 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 driven by public policy requirements 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. *See, e.g.*, Florida Power & Light Co., Attachment K § 11.1.

<sup>125</sup> *See, e.g., id.*, Appendix 3, §§ 1.A.1-2 for language Florida Public Utility Parties must remove from their Attachment Ks.

purposes of allocating the cost of reliability and economic projects complied with Regional Cost Allocation Principles 2, 3, and 6.<sup>126</sup> The Commission found this proposed cost allocation method for reliability and economic transmission projects partially complied with Regional Cost Allocation Principles 1, 4, and 5.<sup>127</sup>

73. Specifically, the Commission found that Florida Parties' proposal did not fully comply with Regional Cost Allocation Principle 1 because the scope of benefits that are identified by using avoided costs plus line losses is insufficient to ensure costs are allocated on a basis that is at least roughly commensurate with benefits.<sup>128</sup> Therefore, the Commission directed Florida Public Utility Parties to revise their regional cost allocation method for reliability and economic transmission projects to adopt the method used either by South Carolina Electric & Gas in its transmission planning region or by the Southeastern Regional Transmission Planning (SERTP) region, both of which the Commission found complied with Regional Cost Allocation Principle 1. Likewise, the Commission noted, Orlando should submit further revisions to its Attachment K consistent with this directive.<sup>129</sup>

74. In addition, the Commission found that that Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects did not fully comply with Regional Cost Allocation Principle 4 because it did not 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 did 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. Therefore, the Commission directed Tampa Electric, Florida Power, and Florida Power & Light to revise their Attachment Ks to address these requirements. The Commission stated that Orlando should likewise submit further revisions to its Attachment K consistent with this directive.<sup>130</sup>

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<sup>126</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 414.

<sup>127</sup> *Id.* P 415.

<sup>128</sup> *Id.* P 419.

<sup>129</sup> *Id.* PP 423-424.

<sup>130</sup> *Id.* P 428. We note that this directive also applied to CEERTS projects to address transmission needs driven by public policy requirements. Second Compliance Order, 148 FERC ¶ 61,172 at P 463.

75. The Commission also found that Florida Parties' proposed regional cost allocation method for reliability and economic transmission projects did not fully comply with Regional Cost Allocation Principle 5. Florida Parties proposed 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, to fully comply with Regional Cost Allocation Principle 5, the Commission directed Florida Public Utility Parties to revise their Attachment Ks 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. The Commission stated that Orlando also should likewise submit further clarifications to its Attachment K consistent with this directive.<sup>131</sup>

**b. Third Compliance Filings**

76. Regarding Cost Allocation Principle 1, Florida Parties state that they have revised the cost allocation approach for reliability and economic transmission projects by adopting an approach similar to the one used in the SERTP region.<sup>132</sup> Specifically, Florida Parties propose to revise their Attachment Ks to add a category of cost savings associated with a transmission project that addresses a regional reliability or economic transmission need for which no transmission projects are currently planned. Under the proposal, the costs of a regional reliability or economic transmission project selected in the regional transmission plan for purposes of cost allocation will be allocated to beneficiaries based on the associated cost savings. These costs savings would be based on the following: (1) the displacement of one or more currently planned transmission projects; (2) if the proposed regional transmission project addresses a transmission need for which no transmission projects are currently planned, the local and/or regional alternative transmission projects that would also fully and appropriately address the same transmission need; and (3) the reduction of transmission losses on the beneficiaries' transmission systems.<sup>133</sup>

77. Florida Parties propose to revise their Attachment Ks to provide that if a potential CEERTS project is identified that addresses a regional reliability or economic

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<sup>131</sup> *Id.* P 429.

<sup>132</sup> Florida Parties Filing at 20.

<sup>133</sup> *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K §§ 1.2.2.B.1, 1.2.9.C.

transmission need for which no transmission projects are currently planned, an analysis will be performed to identify local and/or regional alternative transmission projects that would also fully and appropriately address the same transmission need. Florida Parties' revised Attachment Ks state that these alternative transmission projects will be identified through comparative load flow studies, and will be used in the cost-benefit analysis of the proposed CEERTS project.<sup>134</sup> Florida Parties also propose to revise their Attachment Ks to state that when conducting the technical analysis to either develop CEERTS project information or validate information and analysis information provided by the CEERTS project sponsor, the FRCC Planning Committee and an independent consultant will examine whether it can be demonstrated through a technical evaluation that the CEERTS project is equal or superior to the alternative transmission projects that address the same transmission need. The revised Attachment Ks state that the FRCC Planning Committee will verify that the proposed CEERTS project addresses transmission needs for which there are no transmission projects currently planned, as well as that the alternative transmission projects could meet such needs. The revised Attachment Ks further state that the FRCC Planning Committee will then request that the entities responsible for the alternative transmission projects provide cost information for use in the cost-benefit analysis.<sup>135</sup>

78. In addition, Florida Parties propose to revise their Attachment Ks to describe how the independent consultant will calculate the benefits of a proposed CEERTS project that are associated with the costs of the identified alternative transmission projects. Florida Parties' revised Attachment Ks state that each enrolled transmission provider in the FRCC region that has one or more alternative transmission projects to a CEERTS project that addresses a transmission need for which there are no transmission projects currently planned is considered a beneficiary of the proposed CEERTS project. Florida Parties propose that such transmission providers must develop an original installed capital cost estimate for each alternative transmission project and indicate in what year each such project would need to be in service. Florida Parties propose that the independent consultant will review each cost estimate and may either use it for further calculations or determine that it is unreasonable and issue a revised cost estimate. If the independent consultant does not use the original cost estimate, the revised Attachment Ks provide that the independent consultant must justify its rejection in its report.<sup>136</sup>

79. Florida Parties propose that the independent consultant will calculate a comprehensive annual transmission revenue requirement associated with the original or

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<sup>134</sup> *See, e.g., id.*

<sup>135</sup> *See, e.g., id.* § 1.2.7.A.3.

<sup>136</sup> *See, e.g., id.* § 1.2.9.C.2.

revised cost estimate for each year that the alternative transmission project would have been expected to be in service but for the CEERTS project during the 20-year period. In calculating the estimated transmission revenue requirement, Florida Parties propose that 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, commitments regarding incentive rates, weighted average cost of capital, and on-going capital and operating expenses. The revised Attachment Ks state that the independent consultant will describe any relevant factors and assumptions used in the report. In addition, the revised Attachment Ks state that the independent consultant will determine the net present value of the estimated annual transmission revenue requirement for each alternative transmission project using the average discount rate of enrolled transmission providers weighted by their total capitalization.<sup>137</sup>

80. Florida Parties further propose to revise their Attachment Ks to include the benefits that are calculated using the costs of identified alternative transmission projects in the formula for determining the cost allocation for reliability and economic transmission projects.<sup>138</sup> Likewise, Florida Parties propose to revise the example in Appendix 4 of their Attachment Ks to reflect the revised formula.<sup>139</sup>

81. In addition, Florida Parties propose revisions to the calculation of the benefits associated with transmission line loss reductions to reflect the proposed consideration of benefits that are calculated using the costs of alternative transmission projects. Florida Parties propose to revise their Attachment Ks to provide that when the FRCC Planning Committee runs simulations of the approved transmission plan with all projects to establish base transmission losses for each enrolled transmission provider over the transmission planning horizon, it will adjust the plan, if necessary, to include the alternative transmission projects that were identified that would have been needed to satisfy a transmission need for which no transmission projects are currently planned. Similarly, Florida Parties propose that when modifying the transmission plan to analyze losses, the FRCC Planning Committee will include proposed CEERTS projects, remove all alternative transmission projects, and adjust or remove any affected or avoided transmission projects as well as any additional transmission projects that would be required. Florida Parties further propose to clarify that the change in losses for year ten

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<sup>137</sup> *See, e.g., id.*

<sup>138</sup> *See, e.g., id.* § 9.4.3.

<sup>139</sup> *See, e.g., id.* Appendix 4.

of the transmission planning horizon will be held constant for years 11 through 20 of the 20-year period over which losses are analyzed.<sup>140</sup>

82. To comply with Regional Cost Allocation Principle 4, Florida Parties propose to revise their Attachment Ks to state that if a CEERTS project is selected in the regional transmission plan for purposes of cost allocation that could potentially result in reliability impacts to a transmission system in an adjacent transmission planning region and either the relevant transmission provider in such adjacent region does not want the cost recovery provisions of the Attachment Ks<sup>141</sup> to apply or the cost recovery provisions are not eligible to be applied, the FRCC will coordinate with the neighboring transmission planning region and transmission provider on any further evaluation. Florida Parties propose to revise their Attachment Ks to further state that the costs associated with any required upgrades in such adjacent transmission planning region will not be included in the CEERTS project costs that are allocated under Attachment K.<sup>142</sup>

83. Finally, to comply with Regional Cost Allocation Principle 5, Florida Parties propose to revise their Attachment Ks to state that the FRCC Planning Committee will provide the CEERTS sponsor and stakeholders with an opportunity to review and provide input on a report that includes its findings from the cost-benefit analysis performed to determine how benefits and beneficiaries are identified and applied to a proposed CEERTS project.<sup>143</sup> Moreover, Florida Parties propose to revise their Attachment Ks to clarify that an enrolled transmission provider is a beneficiary of a CEERTS project if it has one or more transmission projects being displaced or has reduced losses.<sup>144</sup>

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<sup>140</sup> *See, e.g., id.* § 1.2.9.C.3.

<sup>141</sup> The referenced cost recovery provisions address the mechanisms through which both an incumbent transmission provider and a nonincumbent transmission developer will recover the costs of a CEERTS project selected in the regional transmission plan for purposes of cost allocation that it will develop. In addition, these provisions address cost recovery for related local transmission project costs and actual displacement costs. *See, e.g., id.* § 9.4.5.

<sup>142</sup> *See, e.g., id.* § 9.4.5.F.

<sup>143</sup> *See, e.g., id.* § 1.2.9.D.

<sup>144</sup> *See, e.g., id.* §§ 1.2.9.C.1, 1.2.9.C.3.

c. **Protest**

84. FMPA/Seminole state that Florida Parties appear to propose that the FRCC Planning Committee will identify alternative transmission projects if a potential CEERTS project is identified that addresses a regional reliability or economic transmission need for which no transmission projects are currently planned both when the potential CEERTS project is proposed by an individual project sponsor and when the potential CEERTS project is identified by the transmission providers pursuant to their affirmative obligation to plan. With respect to CEERTS projects proposed by an individual project sponsor, FMPA/Seminole state that Florida Parties' proposed revisions appear to comply with the Commission's directives, but are misplaced within the Attachment K. FMPA/Seminole contend that the proposed provision should be addressed in the paragraph of section 1.2.2 of Attachment K that addresses project sponsor proposals.<sup>145</sup>

85. FMPA/Seminole argue that, in contrast, Florida Parties' proposed revisions to identify alternative transmission projects when the transmission providers identify potential CEERTS projects pursuant to their affirmative obligation to plan do not comply with the directives of the Second Compliance Order. FMPA/Seminole contend that, as proposed, the identification of alternative transmission projects is a separate step that takes place after the FRCC Planning Committee has identified a potential CEERTS project through the regional analysis. FMPA/Seminole assert that Florida Parties should be identifying and evaluating alternative transmission projects to select the more efficient and cost-effective solution as part of their affirmative obligation to plan. According to FMPA/Seminole, if the FRCC Planning Committee identifies an additional alternative transmission project that is more efficient or cost-effective than a potential CEERTS project identified through the regional analysis when identifying the alternative transmission projects that would be needed in lieu of that potential CEERTS project, the more efficient or cost-effective alternative transmission project should be considered as a potential CEERTS project in its own right. Otherwise, FMPA/Seminole contend, the more efficient or cost-effective alternative transmission project could be used to ensure that the potential CEERTS project does not succeed in the cost-benefit analysis. FMPA/Seminole state that the more efficient or cost-effective transmission project should move forward in the regional transmission planning process as the potential CEERTS project, while the second-best transmission project should be treated as the alternative transmission project to perform the cost-benefit analysis and allocate the costs of the CEERTS project.<sup>146</sup>

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<sup>145</sup> FMPA/Seminole Protest at 5-6.

<sup>146</sup> *Id.* at 6-8.

86. FMPA/Seminole also argue that the FRCC Planning Committee and not the transmission providers should be required to identify the local or regional alternative transmission projects. They argue that the FRCC Planning Committee would provide a more objective analysis of potential transmission alternatives. FMPA/Seminole assert that if the transmission providers are responsible for identifying alternative transmission projects, the potential exists for transmission providers to select alternative local transmission projects that would influence the cost-benefit analysis in their favor.<sup>147</sup>

87. With respect to Florida Parties' proposed revisions to comply with Regional Cost Allocation Principle 4, FMPA/Seminole assert that the proposed revisions are ambiguous because they may foreclose all potential voluntary mechanisms for FRCC beneficiaries to pay for upgrades required in an adjacent transmission planning region as a result of a CEERTS project selected in the regional transmission plan for purposes of cost allocation. FMPA/Seminole state that the FRCC region should retain the discretion to move forward with a CEERTS project if the internal benefits of the project are such that allocating the external costs of minor upgrades required by a transmission provider in an adjacent transmission planning region within the FRCC region still makes good business sense for the affected beneficiaries.<sup>148</sup>

**d. Answers**

88. In response to FMPA/Seminole's concerns about the provision regarding the identification of alternative transmission projects associated with CEERTS projects proposed by individual sponsors, Florida Public Utility Parties agree to move the provision earlier in the process before the provisions on the affirmative obligation to plan.<sup>149</sup> Regarding FMPA/Seminole's objection over the timing of the identification of alternative transmission projects with respect to a potential CEERTS project that was identified through the regional analysis, Florida Public Utility Parties assert that they followed the Commission's directive by adopting a previously approved process.<sup>150</sup> Under that process, the transmission project that addresses a transmission need that is otherwise unmet by any other transmission project is identified first, and then an alternative transmission project that could address the same need is identified. Florida

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<sup>147</sup> *Id.* at 9.

<sup>148</sup> *Id.* at 27-28.

<sup>149</sup> Florida Parties Answer at 2-3. Florida Parties propose to move the provision from Florida Power & Light Co., FPL OATT, Attachment K § 1.2.2.B. to § 1.2.2.

<sup>150</sup> *Id.* at 3 (citing *Duke Energy Carolinas, LLC*, 147 FERC ¶ 61,241, at P 461 (2014)).

Public Utility Parties also assert that the tariff already provides that FRCC Planning Committee is responsible for the analysis of alternative transmission projects and that additional clarification, as requested by FMPA/Seminole, is unnecessary.<sup>151</sup> In its answer to Florida Public Utility Parties' answer, FMPA/Seminole argue that moving the provision regarding the identification of alternative transmission projects up in the tariff language without any additional revisions would eliminate any alternative transmission project provision applicable to potential CEERTS projects identified through the regional analysis. FMPA/Seminole argue that it is reasonable that an alternative transmission project needed in lieu of a potential CEERTS project may be more efficient or cost-effective than the potential CEERTS project when the potential CEERTS project is proposed by a project sponsor since project sponsors are not obligated to propose the most efficient or cost-effective transmission project. However, FMPA/Seminole contend, the transmission providers have an obligation to identify the more efficient or cost-effective transmission project such that an alternative transmission project needed in lieu of a potential CEERTS project should never be more efficient or cost-effective than the potential CEERTS project itself.<sup>152</sup>

89. With respect to their proposal to comply with Regional Cost Allocation Principle 4, Florida Public Utility Parties respond to FMPA/Seminole's protest by arguing that this provision will not end a potential CEERTS project with impacts on another region and instead clarifies that those costs are not to be allocated under the tariff. However, Florida Public Utility Parties argue that this does not prevent beneficiaries of a CEERTS project that requires upgrades in an adjacent transmission planning region from voluntarily negotiating cost allocation with the transmission owner in that region. Florida Public Utility Parties also request that the Commission accept the proposed language as it is consistent with language proposed in the SERTP region.<sup>153</sup>

**e. Commission Determination**

90. We find that Florida Parties' proposed revisions comply with the directives in the Second Compliance Order concerning Regional Cost Allocation Principle 1. Florida Parties have revised their regional cost allocation method for reliability and economic transmission projects to adopt the method used by the SERTP region, as directed in the Second Compliance Order. We find unnecessary FMPA/Seminole's proposal to move the provision regarding the identification of alternative transmission projects for potential CEERTS projects for which no transmission projects are currently planned so that it more

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<sup>151</sup> Florida Public Utility Parties Answer at 3-4.

<sup>152</sup> FMPA/Seminole Answer at 4-6.

<sup>153</sup> Florida Public Utility Parties Answer at 16-17.

clearly applies to potential CEERTS projects proposed by project sponsors. As drafted, the provision would apply to any potential CEERTS project that addresses a regional reliability or economic transmission need for which no transmission projects are currently planned, and is located such that the identification of alternative transmission projects is part of the analysis that the FRCC Planning Committee will perform.<sup>154</sup> For this reason, we also find unnecessary FMPA/Seminole's proposal that Florida Parties revise their Attachment Ks to clarify that the FRCC Planning Committee, and not the transmission providers, will identify alternative transmission projects.

91. We agree with FMPA/Seminole that if the FRCC Planning Committee identifies an additional alternative transmission project that is more efficient or cost-effective than a potential CEERTS project identified through the regional analysis when identifying the alternative transmission projects that would be needed in lieu of that potential CEERTS project, the more efficient or cost-effective alternative transmission project should be considered as the potential CEERTS project and the second-best transmission project should be treated as the alternative transmission project to perform the cost-benefit analysis and allocate the costs of the CEERTS project. However, we find that no tariff revisions are necessary because this will already occur under Florida Parties' proposed regional transmission planning process. Under Order No. 1000, Florida Parties have an obligation to conduct a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs.<sup>155</sup> Therefore, if the FRCC Planning Committee finds that an alternative transmission project is more efficient or cost-effective than the potential CEERTS project initially identified through the regional analysis that addresses a regional reliability or economic transmission need for which no transmission projects are currently planned, the FRCC Planning Committee must consider the alternative transmission project as a potential CEERTS project for the public utility transmission providers to satisfy their obligations under Order No. 1000. If the FRCC Planning Committee determines that the alternative transmission project is the more efficient or cost-effective solution, then it will solicit entities that may be interested in sponsoring this CEERTS project.<sup>156</sup> Thus, the Attachment Ks already provide a path for a transmission project that the FRCC Planning Committee initially identifies as an alternative to a CEERTS project to become a CEERTS project in its own right.

92. However, we find that Florida Parties do not comply with the directives of the Second Compliance Order regarding Regional Cost Allocation Principle 4. First, Florida Parties have not revised their Attachment Ks to provide that they will identify the

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<sup>154</sup> *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 1.2.2.B.

<sup>155</sup> First Compliance Order, 143 FERC ¶ 61,254 at P 56.

<sup>156</sup> *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 1.2.2.C.

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, as directed in the Second Compliance Order. Second, Florida Parties' proposed provision with respect to whether the FRCC region has agreed to bear the costs associated with any required upgrades in another transmission planning region is unclear. The revised Attachment Ks state that if a transmission provider in an adjacent transmission planning region whose system would potentially be impacted by a CEERTS project selected in the regional transmission plan for purposes of cost allocation does not want the cost recovery provisions of the Attachment Ks to apply or the cost recovery provisions are not eligible to be applied, the FRCC will coordinate with the neighboring transmission planning region and transmission provider on any further evaluation.<sup>157</sup> It is not clear to what the cost recovery provisions of the Attachment Ks would apply.<sup>158</sup> While Florida Public Utility Parties state in their answer that this provision will not end a potential CEERTS project with impacts on another transmission planning region, the provision appears to allow the affected transmission provider in the neighboring transmission planning region to determine whether or not the cost recovery provisions of the Attachment Ks will be applied. Such a proposal would not comply with Order No. 1000, which places an affirmative obligation on public utility transmission providers in a transmission planning region to select transmission solutions that may meet the region's transmission needs driven by public policy requirements more efficiently or cost-effectively.<sup>159</sup>

93. Therefore, we reject Florida Parties' proposed provision to address the directives in the Second Compliance Order with respect to Regional Cost Allocation Principle 4. We direct Florida Public Utility Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to (1) revise their Attachment Ks to provide that the regional transmission planning process will 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 and (2) address whether the FRCC region has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated within the FRCC region. Likewise, Orlando should also submit a further compliance filing to address this issue.

94. We find that Florida Parties' cost allocation method complies with Regional Cost Allocation Principle 5. Florida Parties proposed revisions now provide stakeholders an

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<sup>157</sup> *See, e.g., id.* § 9.4.5.

<sup>158</sup> *See, e.g., id.* § 9.4.5.6.

<sup>159</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 80, 148-149.

opportunity to review and comment on the independent consultant's report of its cost-benefit analysis, which will also allow stakeholders to determine how benefits and beneficiaries will be identified and applied to a proposed transmission facility.<sup>160</sup>

**2. Provisions Related to Cost Recovery and Displaced Transmission Projects**

**a. Second Compliance Order**

95. The Commission found in the Second Compliance Order that Florida Parties' proposal to allocate the total estimated CEERTS project costs (which includes estimated developer costs,<sup>161</sup> estimated related local transmission projects costs,<sup>162</sup> and estimated displacement costs<sup>163</sup>) did not make clear that, in accordance with Order No. 1000, the entire prudently incurred cost of a transmission project selected in the regional transmission plan for purposes of cost allocation would be fully allocated because the estimated developer costs included only the annual transmission revenue requirements during the transmission planning horizon. The Commission stated the same concern with respect to estimated related local transmission project costs. Thus, the Commission directed Florida Public Utility Parties to revise their Attachment Ks to provide that all prudently incurred CEERTS project costs and costs for a local transmission project that an enrolled transmission provider will need to construct in order to develop a CEERTS project will be fully allocated. Likewise, the Commission noted, Orlando should submit further revisions to its Attachment K consistent with this directive.<sup>164</sup>

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<sup>160</sup> See, e.g., Florida Power & Light Co., FPL OATT, Attachment K § 1.2.9.C.

<sup>161</sup> Estimated developer costs are the estimated capital costs that the transmission developer will incur to develop its proposed CEERTS project. See, e.g., Florida Power & Light Co., FPL OATT, Attachment K § 1.2.9.C.4.

<sup>162</sup> Estimated related local transmission project costs are the estimated costs of each local transmission project that an enrolled transmission provider will have to construct to implement a proposed CEERTS project. See, e.g., Florida Power & Light Co., FPL OATT, Attachment K § 1.2.9.C.4.

<sup>163</sup> Estimated displacement costs are the estimated costs that an enrolled transmission provider has incurred, or expects to incur, associated with a transmission project that is being displaced by a CEERTS project. See, e.g., Florida Power & Light Co., FPL OATT, Attachment K § 1.2.9.C.4.

<sup>164</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 433.

96. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to clarify and revise their Attachment Ks to address an inconsistency with Florida Parties' avoided cost benefit metric as it applies to the displacement of regional transmission projects. Specifically, the Commission directed Florida Public Utility Parties to specify that, if a regional transmission project displaces a different regional transmission project that was previously selected in 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, the Commission noted, Orlando should submit revisions to its Attachment K consistent with this directive.<sup>165</sup>

**b. Third Compliance Filings**

97. Florida Parties propose several revisions to their Attachment Ks to address the Commission's directive in the Second Compliance Order to ensure that all prudently incurred CEERTS project costs are fully allocated. Florida Parties explain that they have revised their Attachment Ks to provide for the recovery of actual, prudently incurred costs instead of tying recovery to cost estimates.<sup>166</sup> First, Florida Parties propose to revise their Attachment Ks to describe the three potential types of costs that can be allocated: developer costs, related local transmission project costs, and displacement costs.<sup>167</sup> Florida Parties propose to further revise their Attachment Ks to provide that the general principle is to allocate all of the prudently-incurred costs of a CEERTS project to the entities that benefit from the project in proportion to the benefits received. However, the revised Attachment Ks also state that a transmission developer may accept a cost cap for the developer costs, in which case the transmission developer's costs up to the cost cap will be allocated.<sup>168</sup> Florida Parties propose a related revision to clarify that a transmission developer may submit a binding agreement to accept a cost cap for the developer cost of its proposed CEERTS project.<sup>169</sup>

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<sup>165</sup> *Id.* P 434.

<sup>166</sup> Florida Parties Filing at 23.

<sup>167</sup> *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 9.4.1.

<sup>168</sup> *See, e.g., id.* § 9.4.1.

<sup>169</sup> *See, e.g., id.* § 1.2.4.B.2.

98. Additionally, Florida Parties propose to revise their Attachment Ks to clarify that cost allocations are determined in terms of percentages, with each beneficiary allocated a percentage of the cost of the CEERTS project.<sup>170</sup> Specifically, the revised Attachment Ks provide that the cost allocation dollar amounts calculated using estimated cost information will be further translated into a percentage for each beneficiary as a ratio of their allocated share of the total estimated cost of a CEERTS project. The revised Attachment Ks further state that this percentage will be used to allocate actual recoverable CEERTS project costs.<sup>171</sup>

99. Florida Parties also propose revisions to address the issue of cost recovery for the three potential types of costs that can be allocated and the development of CEERTS projects by non-jurisdictional transmission developers. First, Florida Parties propose to revise their Attachment Ks to state that if an incumbent transmission provider that is not Commission-jurisdictional develops a CEERTS project, it will make any requisite filings with the Commission through the declaratory order process rather than under FPA section 205.<sup>172</sup> Florida Parties also propose revisions to clarify that a nonincumbent transmission developer that develops a CEERTS project will file with the Commission for authorization to recover its developer costs.<sup>173</sup> Florida Parties propose to add a provision to their Attachment Ks that states that enrolled transmission providers will be responsible for recovering their related local transmission project costs from the beneficiaries allocated such costs through a FPA section 205 filing if the transmission provider is Commission-jurisdictional, or through the Commission's declaratory order process if the transmission provider is a non-public utility.<sup>174</sup> As discussed above, Florida Parties also propose to add a new provision that governs an enrolled transmission provider's recovery of actual displacement costs.<sup>175</sup>

100. Finally, Florida Parties propose to address the inconsistency in the avoided cost metric as it applies to the displacement of regional transmission projects that were previously selected in the regional transmission plan for purposes of cost allocation by

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<sup>170</sup> *See, e.g., id.* § 9.4.1.

<sup>171</sup> *See, e.g., id.* §§ 9.4.3, 9.4.4.

<sup>172</sup> *See, e.g., id.* § 9.4.5.A.

<sup>173</sup> *See, e.g., id.* § 9.4.5.B.

<sup>174</sup> *See, e.g., id.* § 9.4.5.D.

<sup>175</sup> *See, e.g., id.* § 9.4.5.E.

clarifying that an enrolled transmission provider may include a CEERTS project developer whose CEERTS project would be displaced by a different CEERTS project.<sup>176</sup>

**c. Protest**

101. FMPA/Seminole object to Florida Parties' revisions to the various descriptions of the cost allocation percentages. FMPA/Seminole argue that Florida Parties use different language to describe the cost allocation for the three different types of CEERTS project costs it proposes. FMPA/Seminole state that it appears that Florida Parties intend to utilize the same allocation percentage for all three types of costs, but each section uses different language to describe the types of cost allocation for each type. FMPA/Seminole assert the different descriptions are confusing if the same cost allocations are to be applied equally and that the Commission should direct Florida Parties to use consistent language to describe the applicable cost allocation percentages.<sup>177</sup>

102. In addition, FMPA/Seminole assert that Florida Parties proposal includes a distinction between jurisdictional public entities and non-jurisdictional entities that does not consider that non-public utility entities can be nonincumbent transmission developers. FMPA/Seminole request that the Florida Parties amend their Attachment Ks to recognize that non-jurisdictional entities may develop CEERTS projects by providing a mechanism for a non-jurisdictional nonincumbent transmission developer to recover from the incumbent transmission providers the allocated share of its CEERTS project developer costs in the form of a transmission revenue requirement by submitting a petition for declaratory order to the Commission.<sup>178</sup>

103. FMPA/Seminole express two concerns with Florida Parties' proposal that non-jurisdictional transmission developers should seek to recover their costs through the Commission's declaratory order process. First, FMPA/Seminole contend that the proposal will not work unless the Commission confirms that it is willing and able to rule on the merits of the CEERTS project-related transmission revenue requirements of non-jurisdictional entities that file petitions for declaratory order. According to FMPA/Seminole, while the Commission has previously used a section 205-like process to review and rule on the reasonableness of the transmission revenue requirements of certain non-jurisdictional entities, that transmission revenue requirement was an input to

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<sup>176</sup> *See, e.g., id.* § 1.2.9.C.1.

<sup>177</sup> FMPA/Seminole Protest at 10-12.

<sup>178</sup> *Id.* at 12-13.

the jurisdictional rates of an independent system operator.<sup>179</sup> Therefore, FMPA/Seminole request that the Commission clarify whether it is willing and able to review non-jurisdictional entities' transmission revenue requirements and, if it is not, that the Commission reject Florida Parties' proposal.<sup>180</sup>

104. Second, FMPA/Seminole request that the Commission require Florida Parties to revise their Attachment Ks to clarify that they will be responsible for paying their allocated percentage of CEERTS project costs incurred by non-jurisdictional entities because non-jurisdictional entities will not have a rate schedule on file with the Commission. FMPA/Seminole further state that Florida Parties should revise their Attachment Ks to clarify that related local transmission project costs and displacement costs will be subject to cost recovery in the form of a transmission revenue requirement from the incumbent transmission providers in accordance with their cost responsibilities as determined by the regional cost allocation methods. FMPA/Seminole contend that Florida Parties should also add provisions enabling the incumbent transmission providers to include their allocated transmission revenue requirement costs in their respective tariff rates.<sup>181</sup>

105. Finally, FMPA/Seminole contend that Florida Parties' proposed revisions appear to make an existing CEERTS transmission project developer whose project is being displaced by a new CEERTS project a beneficiary of the new CEERTS project, such that the transmission developer will be responsible for a portion of the costs of the new CEERTS project.<sup>182</sup> FMPA/Seminole argue that the Second Compliance Order required that those costs be assigned to the beneficiaries of the displaced CEERTS project, and not to the transmission developer.<sup>183</sup>

**d. Answers**

106. Florida Public Utility Parties disagree with FMPA/Seminole's argument that additional clarification is needed to clarify the description of the allocation percentages used for cost allocation and cost recovery. Florida Public Utility Parties argue the

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<sup>179</sup> *Id.* at 15 (citing *City of Vernon, California*, 124 FERC ¶ 61,005, at P 14 (2008)).

<sup>180</sup> *Id.* at 15-16.

<sup>181</sup> *Id.* at 16-17.

<sup>182</sup> *Id.* at 18-19.

<sup>183</sup> *Id.* at 19 (citing Second Compliance Order, 148 FERC ¶ 61,172 at P 434).

Attachment Ks are clear that a single set of percentages is used to allocate costs and these same percentages are then used for cost recovery.<sup>184</sup>

107. Regarding FMPA/Seminole's concern of distinguishing that non-jurisdictional entities can be nonincumbent transmission developers, Florida Public Utility Parties disagree. Florida Public Utility Parties argue that a nonincumbent transmission developer includes both non-jurisdictional and jurisdictional entities. They state under the proposal, any nonincumbent transmission developer shall recover developer costs by filing for authorization. Florida Public Utility Parties state that provision does not specify the type of filing a nonincumbent transmission developer can submit to the Commission because Florida Parties were accommodating both jurisdictional and non-jurisdictional entities. Therefore, Florida Public Utility Parties assert additional clarification is unnecessary.<sup>185</sup>

108. As to the Commission's commitment to review transmission revenue requirement filings by non-jurisdictional entities, Florida Public Utility Parties state that given the Commission's approval of this provision, they expect that the Commission will review the transmission revenue requirement of the nonincumbent CEERTS developer where that transmission developer is non-jurisdictional. As to FMPA/Seminole's concern over Florida Parties' commitment to pay their share of CEERTS project costs, Florida Public Utility Parties argue that by enrolling in the FRCC transmission planning region, they have agreed to abide by the tariff provisions, including those governing cost allocation. Moreover, Florida Public Utility Parties contend, a non-jurisdictional transmission developer may file a non-jurisdictional tariff reflecting the cost allocation for a CEERTS project, which it can enforce in court.<sup>186</sup>

109. Regarding costs of a displaced CEERTS project, Florida Public Utility Parties argue that FMPA/Seminole failed to consider the entire cost allocation formula, and instead only focused on the transmission developer of the displaced project. Florida Public Utility Parties assert that the regional cost allocation method dictates the cost responsibility for a CEERTS project, and that under that formula, if a new CEERTS project displaces a previous one, the beneficiaries of the previous CEERTS project will be allocated the cost of the new CEERTS project. Florida Public Utility Parties offer, in

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<sup>184</sup> Florida Public Utility Parties Answer at 4 (citing Florida Power & Light Co., FPL OATT, Attachment K, §§ 9.4.3 & 9.4.4).

<sup>185</sup> *Id.* at 5.

<sup>186</sup> *Id.* at 5-7.

a further compliance filing, to include a hypothetical example of the cost allocation for displaced projects.<sup>187</sup>

110. In their answer to Florida Public Utility Parties' answer, FMPA/Seminole state that they appreciate Florida Parties' clarification that the costs of reliability and economic projects will be allocated based on a single set of percentages.<sup>188</sup> However, FMPA/Seminole request additional clarification in in the Attachment Ks describing the allocation percentages applicable to all CEERTS projects.<sup>189</sup>

111. FMPA/Seminole also request further clarification in the tariffs ensuring that "non-jurisdictional enrolled transmission providers are treated comparably with regard to recovery of CEERTS project developer costs, related local project costs, and displacement costs." In the alternative, FMPA/Seminole request that the Commission confirm that it agrees with Florida Public Utility Parties' interpretation. In addition, FMPA/Seminole request that the Commission clarify that non-jurisdictional enrolled transmission providers need not file a non-jurisdictional tariff to recover the CEERTS project costs that they incur.<sup>190</sup>

112. Regarding the transmission developers of displaced projects, FMPA/Seminole argue that the tariff language causes confusion regarding whether the transmission developer of a displaced project or the beneficiaries of the displaced project may be designated as the beneficiaries of the new CEERTS project. While FMPA/Seminole agree that the hypothetical proposed by Florida Public Utility Parties would help, they also request clarifying tariff language.<sup>191</sup>

**e. Commission Determination**

113. We find that Florida Parties' revisions related to cost recovery partially comply with the Commission's directives in the Second Compliance Order. Florida Parties have revised their Attachment Ks to provide that all prudently incurred CEERTS project costs

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<sup>187</sup> *Id.* at 8-9.

<sup>188</sup> FMPA/Seminole Answer at 7. FMPA/Seminole also note Florida Parties' clarification that for public policy projects, the allocation percentages for all types of CEERTS projects will be determined by section 9.4.4. *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* at 8-9.

<sup>191</sup> *Id.* at 9-10.

and costs for a local transmission project that an enrolled transmission provider will need to construct to implement a CEERTS project will be fully allocated. Specifically, Florida Parties have revised their Attachment Ks to provide that developer costs, related local project costs, and displacement costs will be allocated and that all prudently-incurred costs of a CEERTS project will be allocated to entities that benefit from the project in proportion to the benefits received.<sup>192</sup>

114. We disagree with FMPA/Seminole's concerns regarding the description of allocation percentages in the Attachment Ks. As Florida Public Utility Parties explain in their answer, the allocation percentages apply to all three types of transmission projects – reliability, economic and public policy – and the allocation percentages used for cost allocation are described the same way in the Attachment Ks.<sup>193</sup> The provision FMPA/Seminole argues must be revised is related to cost recovery, not cost allocation, and, in any event, the provision indicates that the same allocation percentages calculated for cost allocation purposes will be used for cost recovery purposes.<sup>194</sup> Therefore, no further clarification is needed.

115. We also disagree with FMPA/Seminole's argument that revisions are needed to make clear that nonincumbent transmission developers include both public utilities and non-public utilities. As Florida Public Utility Parties correctly note in their answer,<sup>195</sup> the term nonincumbent transmission developer is already inclusive of both public utilities and non-public utilities. There is also nothing in the provisions FMPA/Seminole cite that would otherwise limit a nonincumbent transmission developer to only a public utility or a non-public utility. To recover costs, a nonincumbent transmission developer must submit a filing with the Commission,<sup>196</sup> which can take the form of a filing under section 205 if the developer is a public utility or as a request for a declaratory order if the developer is not a public utility. We also find unconvincing FMPA/Seminole's argument that the Attachment Ks must be revised to address the ability for a non-public utility to submit a

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<sup>192</sup> See, e.g., Florida Power & Light Co., FPL OATT, Attachment K, § 9.4.1.

<sup>193</sup> Florida Public Utility Parties Answer at 4 (citing Florida Power & Light Co., FPL OATT, Attachment K, §§ 9.4.3 & 9.4.4).

<sup>194</sup> “These percentages will be used to allocate actual CEERTS project costs that are recoverable pursuant to the applicable subsection of section 9.4.5 [Transmission Project Funding and Rate Base/Cost Recovery].” See, e.g., Florida Power & Light Co., FPL OATT, Attachment K, §§ 9.4.3 & 9.4.4.

<sup>195</sup> Florida Public Utility Parties Answer at 4-5.

<sup>196</sup> See, e.g., Florida Power & Light Co., FPL OATT, Attachment K, § 9.4.5.B.

request for declaratory order with the Commission and the Commission's willingness to consider such a request. A nonincumbent transmission developer that is not a public utility may submit a request for a declaratory order at the Commission for authorization to recover costs related to a CEERTS project, and the Commission will consider such request just as it would any request for a declaratory order submitted pursuant to the Commission's rules and regulations.<sup>197</sup> Similarly, a non-public utility may, but is not required to, submit a reciprocity OATT for Commission review.

116. As to FMPA/Seminole's request for clarification that the CEERTS process will result in a binding commitment from Florida Parties to pay their allocated share of CEERTS project costs, we agree with Florida Public Utility Parties that such additional clarification is unnecessary. As enrolled transmission providers in the FRCC transmission planning region, Florida Parties are subject to the binding cost allocation provisions the Commission has accepted to comply with Order No. 1000.

117. However, we find that Florida Parties have not complied with the requirement to specify that, if a regional transmission project displaces a different regional transmission project that was previously selected in 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.<sup>198</sup> To comply with this directive, Florida Parties propose to add language to their Attachment Ks stating that, "An enrolled transmission provider may include a CEERTS project developer whose CEERTS project would be displaced by a different CEERTS project."<sup>199</sup> While this statement may be true, it does not comply with the Commission's directive. In addition, Florida Public Utility Parties state in their answer that if a new CEERTS project displaces a previous one, the beneficiaries of the previous CEERTS project will be allocated the cost of the new CEERTS project, but this is not clear in their Attachment Ks. Therefore, we direct Florida Public Utility Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to specify in their Attachment Ks that, if a regional transmission project displaces a different regional transmission project that was previously selected in 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

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<sup>197</sup> 18 C.F.R. §. 385.207 (2014).

<sup>198</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 434.

<sup>199</sup> *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.C.1.

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. We also accept Florida Parties' offer to include in their Attachment Ks a hypothetical example of the cost allocation process for displaced transmission projects and direct them to include those revisions in the further compliance filings. Likewise, Orlando also should submit revisions to its Attachment K consistent with this directive.

### **3. Cost Recovery**

#### **a. Second Compliance Order**

118. Under Florida Parties proposal, if incumbent transmission providers are the only transmission developers for a particular CEERTS project, they have two options in the initial transmission project funding and subsequent recovery of developer costs. Under payment option 1, incumbent transmission providers may fund the CEERTS project in proportion to their cost responsibility for the project.<sup>200</sup> In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks to explicitly state that incumbent transmission providers that intend to elect payment option 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 this into account. Likewise, the Commission noted, Orlando should submit further revisions to its Attachment K consistent with this directive.<sup>201</sup>

#### **b. Third Compliance Filing**

119. In their third compliance filings, Florida Parties propose to revise their Attachment Ks to require that if the CEERTS project sponsor is an incumbent, it must indicate which funding option it intends to select when it submits information about its proposed CEERTS project.<sup>202</sup>

#### **c. Protest and Answer**

120. FMPA/Seminole argue that because a CEERTS project sponsor need not be a transmission developer, the Commission should require further revisions such that only a transmission developer must indicate which funding option it intends to select.

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<sup>200</sup> *See, e.g., id.* § 9.4.5.

<sup>201</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 474.

<sup>202</sup> *See, e.g., Florida Power & Light Co., Attachment K* § 1.2.4.B.

FMPA/Seminole further contend that if Florida Parties intend that incumbent transmission providers that are paying the CEERTS project costs may also select a funding option, the Commission should require further revisions to Florida Parties' Attachment Ks because the Attachment Ks do not currently provide such option.<sup>203</sup>

121. Florida Public Utility Parties respond to FMPA/Seminole's protest, arguing that they complied with the Commission's directive and request that the Commission reject FMPA/Seminole's request to rewrite the tariff language.<sup>204</sup>

**d. Commission Determination**

122. We find that Florida Parties' proposed revision complies with the Commission's directive in the Second Compliance Order. We accept Florida Parties' proposal to revise their Attachment Ks to state that if a CEERTS project sponsor is an incumbent transmission provider, it must indicate which funding option for initial transmission project funding and subsequent recovery of developer costs it intends to select when it submits information about its proposed CEERTS project. Contrary to FMPA/Seminole's arguments, the Attachment Ks already indicate that this information requirement applies only to a CEERTS project sponsor that intends to develop the proposed CEERTS project.<sup>205</sup> Similarly, because the ability to select a funding option is related to cost recovery for incumbent *developers* of a transmission project, the requirement to indicate a funding option does not apply to an incumbent transmission owner that is a beneficiary of a transmission project but not a developer. We therefore find FMPA/Seminole's proposed revision unnecessary.

**E. Other Compliance Directives**<sup>206</sup>

123. In the Second Compliance Order, the Commission directed Tampa Electric, Duke Energy, and Florida Power & Light to remove the proposed provision that would limit

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<sup>203</sup> FMPA/Seminole Protest at 26.

<sup>204</sup> Florida Public Utility Parties Answer at 16.

<sup>205</sup> "Those project sponsors that intend to be the project developer shall so indicate and shall submit the following information... If the project sponsor is an incumbent, it must indicate which funding option set forth in section 9.4.5.A it intends to select." *See, e.g.,* Florida Power & Light Co., Attachment K § 1.2.4.B.

<sup>206</sup> For each directive from the Second Compliance Order that is described in this section of the order, the Commission also noted that Orlando should submit further revisions to its Attachment K consistent with the relevant directive.

enrollment in the FRCC region to transmission providers that already control transmission facilities in the FRCC. The Commission found that this requirement would bar a transmission provider with transmission facilities adjacent to the FRCC region, as well as a transmission developer selected to develop a transmission project that did not yet control any transmission facilities in the FRCC region, from requesting to enroll in the FRCC region.<sup>207</sup> In their third compliance filings, Florida Parties propose to amend the enrollment requirement as follows: “Transmission Providers that own or control or have been approved to own or control transmission facilities in the FRCC region may enroll in the FRCC regional planning process.”<sup>208</sup> Florida Parties also propose to amend their Attachment Ks to state that, if a NERC-registered Transmission Service Provider or Transmission Owner that owns or provides transmission service over facilities located adjacent to, and interconnected with, transmission facilities within the FRCC region submits an application to enroll in the FRCC regional transmission planning process, then the FRCC will consider the request.

124. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their proposed 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.<sup>209</sup> In their third compliance filings, Florida Parties propose to revise their Attachment Ks to state that any withdrawing non-public utility transmission provider will continue to be able to recover costs allocated to beneficiaries of CEERTS projects pursuant to Florida Parties’ Attachment Ks until it has recovered such costs.<sup>210</sup>

125. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks to clarify that Florida Parties’ regional transmission planning process for CEERTS projects “applies to economic, public policy and reliability regional transmission projects.”<sup>211</sup> In their third compliance filings, Florida Parties propose to revise their Attachment Ks to state that the regional transmission planning

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<sup>207</sup> Likewise, the Commission noted, Orlando should also submit a further compliance filing to address this issue. Second Compliance Order, 148 FERC ¶ 61,172 at P 43.

<sup>208</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 5.4.

<sup>209</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 45.

<sup>210</sup> *See, e.g.*, Florida Power & Light Co., FPL OATT, Attachment K § 5.5.

<sup>211</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 93.

process for CEERTS projects applies to all three types of regional transmission projects.<sup>212</sup>

126. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to remove from their OATTs the proposed minimum threshold that would require a CEERTS project to cross a county line to be eligible for selection in the regional transmission plan for purposes of cost allocation.<sup>213</sup> In their third compliance filings, Florida Parties propose to remove this provision from their Attachment Ks.<sup>214</sup>

127. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks to revise the proposed definition of upgrades so that only the replacement of a part of an existing transmission facility can be considered an upgrade.<sup>215</sup> In their third compliance filings, Florida Parties propose to modify the definition of upgrades to state that the term “upgrade” refers to an improvement to, addition to, or replacement of a part of an existing transmission facility.<sup>216</sup>

128. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks 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.<sup>217</sup> In their third compliance filings, Florida Parties propose to delete from their Attachment Ks the provision exempting 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.<sup>218</sup> Moreover, Florida Parties propose to revise their Attachment Ks to provide that both incumbent and nonincumbent transmission developers must demonstrate that they meet the qualification criteria.<sup>219</sup>

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<sup>212</sup> See, e.g., Florida Power & Light Co., Attachment K § 1.2.1.

<sup>213</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 140.

<sup>214</sup> Florida Parties Filing at 5.

<sup>215</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 189.

<sup>216</sup> See, e.g., Florida Power & Light Co., Attachment K § 1.2.10.A.

<sup>217</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 206.

<sup>218</sup> Florida Parties Filing at 9.

<sup>219</sup> See, e.g., Florida Power & Light Co., Attachment K § 1.2.11.A.

129. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to specify in their Attachment Ks that, with respect to the proposed deposit to cover the costs of the FRCC's review of a prospective transmission developer's qualification application, they will provide the transmission developer with an accounting of the actual costs and how the costs were calculated.<sup>220</sup> In their third compliance filings, Florida Parties propose to revise their Attachment Ks to state that the transmission developer will be provided with an accounting of the actual costs and how the costs were calculated, as well as an explanation of how the costs were calculated for the costs of the CEERTS project analysis.<sup>221</sup>

130. In the Second Compliance Order, the Commission accepted Florida Public Utility Parties' proposal to remove the proposed financial qualification provision requiring the transmission developer to maintain a certain level of capitalization or to provide a performance bond.<sup>222</sup> In their third compliance filings, Florida Parties propose to remove this provision from their Attachment Ks.<sup>223</sup>

131. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks to clarify 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.<sup>224</sup> In their third compliance filings, Florida Parties propose to amend their Attachment Ks to state that a transmission developer must provide, to the extent available, a high-level summary of who will own, operate and maintain the proposed CEERTS project.<sup>225</sup>

132. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks so that the standard they use to evaluate proposed CEERTS projects is to identify the more efficient *or* cost-effective, rather than the more efficient *and* cost-effective, transmission solutions to regional needs.<sup>226</sup> In their third

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<sup>220</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 225.

<sup>221</sup> *See, e.g.*, Florida Power & Light Co., Attachment K §§ 1.2.4.D, 1.2.11.A.

<sup>222</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 228.

<sup>223</sup> Florida Parties Filing at 10.

<sup>224</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 250.

<sup>225</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 1.2.4.B.4.

<sup>226</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 285.

compliance filings, Florida Parties propose to revise their Attachment Ks to reflect the more efficient or cost-effective standard.<sup>227</sup>

133. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks 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.<sup>228</sup> In their third compliance filings, Florida Parties propose to revise their Attachment Ks to provide that an independent contractor will estimate the level of displacement costs that a transmission provider that has expended funds on a displaced transmission project will recover by assuming that the enrolled transmission provider will be permitted to recover 100 percent of such displacement costs. The revised Attachment Ks further provide that, taking into account relevant factors and assumptions that it will describe in its report to the FRCC Planning Committee, the independent consultant will calculate an annual transmission revenue requirement associated with the displacement cost estimate for each year that the displacement costs would be recovered during a 20-year period.<sup>229</sup>

134. In the Second Compliance Order, the Commission required Florida Public Utility Parties to revise their Attachment Ks so that the cost-benefit analysis uses a 20-year period rather than a ten-year period.<sup>230</sup> In their third compliance filings, Florida Parties propose to revise their Attachment Ks to state that the cost-benefit analysis will consider estimated costs and benefits for the ten-year period of the planning horizon that is used to prepare the regional transmission plan, plus an additional, sequential ten-year period and to make corresponding edits throughout their Attachment Ks.<sup>231</sup>

135. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks to remove the following elements from consideration when determining whether a CEERTS project has been delayed or abandoned: (1) cost recovery treatment (including provision for payment and cost recovery by all entities allocated CEERTS project costs); (2) liability issues associated

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<sup>227</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 1.2.9.E. Florida Parties Filing at 15.

<sup>228</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 305.

<sup>229</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 1.2.9.C.4.

<sup>230</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 306.

<sup>231</sup> *See, e.g.*, Florida Power & Light Co., Attachment K §§ 1.2.9.C-1.2.9.C.4.

with CEERTS facilities; and (3) provision for necessary enabling agreements among all affected entities.<sup>232</sup> Similarly, the Commission directed Florida Public Utility Parties to remove or justify the following element: Commission requirements for providing transmission service over CEERTS facilities.<sup>233</sup> In their third compliance filings, Florida Parties propose to delete all of these provisions.<sup>234</sup>

136. In the Second Compliance Order, the Commission directed Florida Public Utility Parties 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 provides that notice of potential CEERTS projects is posted on the FRCC website by May 1.<sup>235</sup> In their third compliance filings, Florida Parties revised their Attachment Ks accordingly.<sup>236</sup>

137. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to revise their Attachment Ks to make clear that the public utility transmission providers must file a petition for declaratory order or submit a separate section 205 filing with the Commission prior 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.<sup>237</sup> In their third compliance filings, Florida Parties propose to revise their Attachment Ks to state that enrolled transmission providers will be responsible for recovering their actual displacement costs, if applicable, through a FPA section 205 filing if the transmission provider is Commission-jurisdictional, or through the Commission’s declaratory order process if the transmission owner is a non-public utility. The revised Attachment Ks further provide that in such filing, the transmission providers must allocate displacement costs in the same manner as the CEERTS project costs are allocated.<sup>238</sup>

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<sup>232</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 339.

<sup>233</sup> *Id.* P 341.

<sup>234</sup> Florida Parties Filing at 19-20.

<sup>235</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 358.

<sup>236</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 1.2.2.C.ii.

<sup>237</sup> Second Compliance Order, 148 FERC ¶ 61,172 at PP 431-432.

<sup>238</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 9.4.5.E.

138. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to clarify that the costs reflected in FERC Account 107 and Account 101 are for accounting purposes only.<sup>239</sup> Florida Parties propose revisions to clarify that transmission costs identified in a CIAC filing will be recorded in FERC Account 107 and once unitized will be moved to FERC Account 101 for accounting purposes only. Furthermore, Florida Parties propose to explicitly state that Commission approval is needed to include construction work in progress in rates.<sup>240</sup>

139. In the Second Compliance Order, the Commission directed Florida Public Utility Parties to remove from their Attachment Ks both the provision that stated that there must be sufficient confirmed transmission service requests for a CEERTS project to address a transmission need driven by public policy requirements to proceed and references to confirmed transmission needs.<sup>241</sup> In their third compliance filings, Florida Parties propose to remove from their Attachment Ks the provision that required that a CEERTS project to address transmission needs driven by public policy requirements must have sufficient confirmed transmission service requests to proceed in the regional transmission planning process.<sup>242</sup> Florida Parties also reiterate how they have revised their regional transmission planning processes such that the FRCC Planning Committee will work with the beneficiaries to verify the benefits of a CEERTS project to address a transmission need driven by public policy requirements.<sup>243</sup>

140. We find that Florida Parties have complied with the above directives.

## **F. Miscellaneous Issues**

### **1. New Enrollees**

141. Florida Parties request that the Commission accept the amended tariff provisions adding FMPA, Seminole, and the City of Tallahassee, Florida as enrolled transmission providers in FRCC's regional transmission process. Florida Parties request the Commission accept the amended tariff provisions adding these three non-public utility

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<sup>239</sup> Second Compliance Order, 148 FERC ¶ 61,172 at PP 484-485.

<sup>240</sup> *See, e.g.*, Florida Power & Light Co., Attachment K § 9.4.5.A.1.

<sup>241</sup> Second Compliance Order, 148 FERC ¶ 61,172 at P 459.

<sup>242</sup> Florida Parties Filing at 25.

<sup>243</sup> Florida Parties Filing at 25 (citing, for example, Florida Power & Light Co. Attachment K § 1.2.9.B.2).

transmission providers effective January 1, 2015. We accept the Florida Parties' amended tariff provisions with the newly enrolled transmission providers effective January 1, 2015.

## 2. Filing Errors

### Protest

142. FMPA/Seminole request that the Commission require Florida Parties to review their third compliance filings with stakeholders. FMPA/Seminole argue that they have not had sufficient opportunity to thoroughly examine the filings for potential lesser errors, which FMPA/Seminole argue appear to be inadvertent, but can have substantive consequences.<sup>244</sup> For example, FMPA/Seminole note a misplaced comma in the second paragraph of section 1.2.9.B.2, which FMPA/Seminole assert would make this clause an unnecessary relative clause, instead of a necessary relative clause.<sup>245</sup> FMPA/Seminole also note that it appears that Florida Parties inserted the word “enrolled” before the phrase “transmission providers” in most instances, but not all.<sup>246</sup>

143. Florida Public Utility Parties request that the Commission reject FMPA/Seminole's request and argue that FMPA/Seminole have overstated the need to correct these errors. Florida Public Utility Parties assert that over time they will make any corrections they deem necessary and that the Commission should reject FMPA/Seminole's attempt to participate in drafting or revising their tariff language.<sup>247</sup>

## 3. Commission Determination

144. We share FMPA/Seminole's concerns regarding errors in the individual tariffs, such as the misplaced comma in section 1.2.9.B.2 and failing to insert the word enrolled before “transmission provider” in every instance. In addition to the errors FMPA/Seminole point out, we note that Tampa Electric's Attachment K as filed in eTariff is missing numerous sections including: the second page of the introduction thru section 1.1, sections 1.2.12, 1.2.14-1.2.18, 1.3 – 1.3.1, end of 1.4.3, 2.1-2.5, 3.1-3.6, 4.1-4.5, 5.1-5.2, 7.1-7.5, 8.1, 9.2-9.3.8.2. Furthermore, Appendix 1 appears to be missing 3

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<sup>244</sup> FMPA/Seminole Protest at 28-30.

<sup>245</sup> *Id.* at 29 (objecting to the comma after “Providers” and before “who”) found in second paragraph, line 5 of section 1.2.9.B.2 (public policy project selection).

<sup>246</sup> *Id.* (noting the omission in sections 1.2.9.C.1 and 1.2.9.C.2).

<sup>247</sup> Florida Public Utility Parties Answer at 17.

pages including section J, Appendix 6, sections 2-4. Additionally, Florida Power & Light's eTariff filing includes some mislabeled sections,<sup>248</sup> misaligned margins resulting in the first few words in each section to be missing,<sup>249</sup> and a "K" that was marked for deletion in the redline version, but still legible in the eTariff version.<sup>250</sup> Finally, Florida Power & Light's eTariff is also missing several sections in which the section numbers have changed or other ministerial changes, including: sections: 1.3 – 1.4; 1.4.2, 1.4.3, 2.1-2.3, 2.5, 3.1-3.6, 4.1-4.5, 5.1-5.3, 6.1, 7.2-7.3, 7.5, 8.1-9.3.1, 9.3.3 – 9.3.4, 9.3.6, 9.4.2, and 9.4.6. Therefore, we direct Florida Public Utility Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to correct these errors. Likewise, Orlando should also submit a further compliance filing to address these errors.

145. Additionally, we note there are several other errors in the Florida Parties' clean and redline versions of the tariffs attached to their respective filings, such as language being missing, mis-marked accepted as the filed rate, or mis-marked as newly proposed language. While these issues are not present in the versions filed in eTariff, which are considered the rate on file, we note that Florida Parties should be careful to ensure that their next set of compliance filings do not have these types of ministerial errors in the redline and clean versions.<sup>251</sup>

146. We are also concerned by Florida Public Utility Parties' apparent objection to allowing stakeholders to provide input on proposed changes to their Attachment Ks to comply with Order No. 1000 prior to the changes being filed.<sup>252</sup> The Commission expected public utilities to work with stakeholders to develop their proposals to comply with Order No. 1000.<sup>253</sup> Thus, Florida Parties should allow stakeholders to provide input

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<sup>248</sup> See, e.g., Florida Power & Light Co. Attachment K §§ 1.1, 1.2.

<sup>249</sup> See, e.g., *id.* §§ 1.2.7.2 - 4.

<sup>250</sup> See, e.g., *id.* § 9.4.4

<sup>251</sup> See, e.g., *Electronic Tariff Filings*, Order No. 714-A, 79 Fed. Reg. 29,075 (May 21, 2014), FERC Stats. & Regs. ¶ 31,356 (2014 (cross-referenced at 147 FERC ¶ 61,115 (2014))).

<sup>252</sup> "FMPA/Seminole's attempt to induce the Commission to allow FMPA/Seminole to participate in drafting or revising the Florida Sponsors' tariff language should be rejected." Florida Public Utility Parties Answer at 17.

<sup>253</sup> See, e.g., Order No. 1000-A, 139 FERC ¶ 61,132 at P 289 ("As part of the stakeholder process to develop the regional transmission planning processes in  
(continued...)

into any proposed changes prior to those changes being filed in the next compliance filings. This input will likely also allow Florida Parties to address many of the errors that were made in their third compliance filings.

The Commission orders:

(A) The requests for rehearing and clarification are hereby granted in part and denied in part, as discussed in the body of this order.

(B) Florida Parties' respective compliance filings and amendments are hereby accepted, effective January 1, 2015, subject to further compliance filings, as discussed in the body of this order.

(C) Tampa Electric, Duke Energy, and Florida Power & Light are hereby directed to submit further compliance filings within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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compliance with Order No. 1000, concerned stakeholders have the ability to participate and seek changes to those individual processes, subject to Commission review on compliance.”). *See also, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP, 11, 62, 588, 671, 793, & 794.