

147 FERC ¶ 61,126  
 UNITED STATES OF AMERICA  
 FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
 Philip D. Moeller, John R. Norris,  
 and Tony Clark.

South Carolina Electric & Gas Company

Docket Nos. ER13-107-003  
 ER13-107-005

ORDER ON REHEARING AND COMPLIANCE

(Issued May 15, 2014)

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1. On April 18, 2013, the Commission issued an order accepting, subject to modifications,<sup>1</sup> the compliance filing that South Carolina Electric & Gas Company (SCE&G) made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.<sup>2</sup>
2. On May 20, 2013, requests for rehearing of the First Compliance Order were filed by various entities, as discussed further below.
3. On October 16, 2013, SCE&G submitted, pursuant to section 206 of the Federal Power Act (FPA),<sup>3</sup> revisions to Attachment K of its Open Access Transmission Tariff (OATT) to comply with the First Compliance Order. For the reasons discussed below, we grant in part and deny in part the requests for rehearing and deny rehearing as to all other issues. We also accept in part, and reject in part SCE&G's proposed OATT revisions, subject to conditions, and direct SCE&G to submit further revisions to its OATT in a further compliance filing due within 60 days of the date of issuance of this order.<sup>4</sup>

## **I. Background**

4. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, regarding regional transmission planning, Order No. 1000 amended the

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<sup>1</sup> *So. Carolina Elec. & Gas Co.*, 143 FERC ¶ 61,058 (2013) (First Compliance Order).

<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, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

<sup>3</sup> 16 U.S.C. § 824e (2012).

<sup>4</sup> We note that the same or similar issues are addressed in the following orders that have issued or are being issued contemporaneously with this order: *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,198 (2014); *PacifiCorp*, 147 FERC ¶ 61,057 (2014); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 (2014); and *Maine Public Service Co.*, 147 FERC ¶ 61,129 (2014).

transmission planning requirements of Order No. 890<sup>5</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.

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

6. On October 11, 2012, SCE&G submitted revisions to Attachment K of its OATT to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000. On April 18, 2013, the Commission accepted SCE&G's compliance filing, effective April 19, 2013, subject to further modifications.

## **II. Requests for Rehearing or Clarification**

7. On May 20, 2013, SCE&G and LS Power Transmission, LLC and LS Power Holdings, LLC (collectively, LS Power) submitted timely requests for rehearing or clarification of the First Compliance Order. Also on May 20, 2013, the National Association of Regulatory Utility Commissioners (NARUC) and South Carolina Office of Regulatory Staff (SC Regulatory Staff) filed motions to intervene out-of-time and requests for rehearing of the First Compliance Order.

## **III. Compliance Filing**

8. In response to the First Compliance Order, SCE&G has submitted further revisions to its local and regional transmission planning processes to comply with the Commission's directives in the First Compliance Order, including modifications to its OATT relating to the regional transmission planning requirements, consideration of transmission needs driven by public policy requirements, nonincumbent transmission developer reforms, and cost allocation. SCE&G states that given the magnitude of

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<sup>5</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).

instructions and directives in the First Compliance Order, SCE&G undertook a comprehensive review of its entire OATT to ensure compliance with the First Compliance Order and made additional changes for clarity and internal consistency. SCE&G requests an effective date for its compliance filings of January 1 of the year following Commission acceptance of the instant filing.

9. Notice of SCE&G's compliance filing was published in the *Federal Register*, 78 Fed. Reg. 63,175 (2013), with interventions and protests due on or before November 14, 2013.

#### IV. Discussion

##### A. Procedural Matters

10. As an initial matter, we address NARUC's and SC Regulatory Staff's motions to intervene out-of-time and requests for rehearing. NARUC and SC Regulatory Staff state that the Commission should grant their out-of-time requests for intervention, arguing that "[c]ompelling and unique circumstances" surround their requests.<sup>6</sup> NARUC and SC Regulatory Staff state that they have good cause for not timely filing their interventions given that they could not have foreseen the First Compliance Order's "potential profound and far reaching impacts to transmission siting policy."<sup>7</sup> NARUC avers that this late request could not have been avoided unless it filed interventions in every Order No. 1000 compliance docket filing. In addition, NARUC and SC Regulatory Staff contend that they agree to accept the record as it stands at the time of its intervention so that permitting NARUC's and SC Regulatory Staff's interventions will not disrupt the proceeding or prejudice any party. NARUC also states that the filing deadlines in the proceeding besides those for rehearing requests have passed. Finally, NARUC argues that, absent its intervention, its interests would not be adequately represented.<sup>8</sup> SC Regulatory Staff also states that, at the discretion of the executive director, they have a duty to "provide legal representation of the public interest" before federal agencies and courts where the proceedings "could affect the rates or service of any public utility."

11. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late

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<sup>6</sup> NARUC Motion to Intervene and Petition for Rehearing, Docket Nos. ER13-107-000 and ER13-107-001 (filed May, 20, 2013) (NARUC Rehearing).

<sup>7</sup> NARUC Rehearing at 3-4; SC Regulatory Staff Rehearing at 3.

<sup>8</sup> NARUC Rehearing at 4.

intervention may be substantial.<sup>9</sup> We find no such prejudice here, and we grant NARUC and SC Regulatory Staff's motions to intervene out of time.

12. We note that the tariff records SCE&G submitted here in response to the First Compliance Order also include language pending in tariff records that SCE&G separately filed on July 10, 2013, to comply with the interregional transmission coordination and cost allocation requirements of Order No. 1000. The tariff records SCE&G submitted in its interregional compliance filing are pending before the Commission and will be addressed in a separate order. Therefore, any acceptance of the tariff records in the instant filing that include tariff provisions submitted to comply with the interregional transmission coordination and cost allocation requirements of Order No. 1000 is made subject to the outcome of the Commission order addressing SCE&G's interregional compliance filing in Docket No. ER13-1935-000.

## **B. Substantive Matters**

13. We grant in part and deny in part rehearing, as discussed more fully below.

14. We find that SCE&G's compliance filing partially complies with the directives in the First Compliance Order. Accordingly, we accept SCE&G's compliance filing, subject to a further compliance filing, as discussed below. We direct SCE&G to submit the further compliance filing within 60 days of the date of issuance of this order.

### **1. Overview of the Regional Transmission Planning Process**

15. SCE&G proposes to coordinate with the South Carolina Public Service Authority (Santee Cooper), a non-public utility transmission provider, for purposes of regional transmission planning.<sup>10</sup>

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<sup>9</sup> The Commission looks with disfavor on interventions filed at the rehearing stage of a proceeding. *Cent. Ill. Pub. Serv. Co.*, 59 FERC ¶ 61,219, at 61,753-54 (1992); *Western Res., Inc.*, 83 FERC ¶ 61,077, at 61,379 (1998); *PJM Interconnection, L.L.C.*, 88 FERC ¶ 61,039, at 61,091 (1999); *ISO New England, Inc.*, 90 FERC ¶ 61,053, at 61,224 (2000); *Am. Elec. Power Serv. Corp.*, 90 FERC ¶ 61,244, at 61,809 (2000); *Cal. Power Exch. Corp.*, 90 FERC ¶ 61,343, at 62,130-31 (2000); *Tenn. Power Co.*, 91 FERC ¶ 61,271, at 61,923-24 (2000); *Southern Co. Servs., Inc.*, 92 FERC ¶ 61,167, at 61,565-66 (2000). *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

<sup>10</sup> For purposes of this order, references to SCE&G's regional transmission planning process refer to the combined regional transmission planning process of

(continued...)

16. SCE&G's cycle for local transmission planning for reliability and economic transmission needs runs annually, covering future needs of the system over a ten year period.<sup>11</sup> The regional transmission planning cycle and the public policy planning cycle (for both local and regional public policy projects) is a two year planning cycle. SCE&G's local and regional transmission planning cycles begin in October of the planning year(s) during which transmission owners present their existing local and regional transmission plans for input from stakeholders.<sup>12</sup>

17. Using the local and regional transmission planning cycles beginning in October 2016 for illustration, in the fourth quarter of 2016, SCE&G will host the first meeting of the local and regional planning cycles, present the prior year(s) local and regional plans, and allow stakeholders to provide input into the study processes and assumptions for the 2016 local reliability planning cycle. At that time, SCE&G will establish a schedule of when reliability transmission planning studies will be completed. Also at that time, SCE&G will announce the transmission needs driven by local and regional public policy requirements that will be evaluated in the current planning cycle as transmission solutions, from among those that previously were identified by stakeholders.<sup>13</sup>

18. During the first quarter of 2017, stakeholders will identify and request sensitivity studies for the local economic transmission planning cycle and "submit local solutions to identified Transmission Needs driven by Public Policy Requirements."<sup>14</sup> By January 15, 2017, stakeholders may submit proposed regional transmission projects to be evaluated for inclusion in the regional transmission plan.<sup>15</sup> If the stakeholder submitting the

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SCE&G and Santee Cooper. SCE&G's OATT collectively refers to SCE&G and Santee Cooper as the Transmission Providers.

<sup>11</sup> SCE&G, Fifth Revised Vol. No. 5, Attachment K (4.0.0), § IV (Local Transmission Planning). (Herein after, all following references to SCE&G's 5<sup>th</sup> Revised Attachment K (4.0.0), will be referred to as "SCE&G Attachment K," unless otherwise indicated.

<sup>12</sup> SCE&G Attachment K §§ III.E.1 (Local Transmission Planning Process), III.E.2 (Regional Transmission Planning Process).

<sup>13</sup> *Id.* §§ III.E.1 (Local Transmission Planning Process), III.E.2 (Regional Transmission Planning Process). As noted below, the deadline for stakeholders to identify transmission needs driven by Public Policy Requirements is July 15.

<sup>14</sup> *Id.* § III.E.1 (Local Transmission Planning Process).

<sup>15</sup> *Id.* § III.E.2 (Regional Transmission Planning Process).

proposed regional transmission project also intends to develop the regional project as a Qualified Developer, it may request regional cost allocation for the project at that time.<sup>16</sup>

19. During the second quarter of 2017, stakeholders will be able to submit comments on the following: proposed regional transmission projects, the local solutions proposed to meet transmission needs driven by public policy requirements, the results of the Transmission Providers' regional and interregional reliability transmission planning studies, and any revisions to the local transmission plan.<sup>17</sup>

20. During the third quarter of 2017, SCE&G will discuss the local or regional results of any requested economic power transfer sensitivity studies, including impacted facilities and solutions options. SCE&G and stakeholders may also discuss the proposed regional transmission projects and stakeholder comments during this time.<sup>18</sup> At that time, the current local transmission planning cycle ends. Because SCE&G's local transmission planning process is ongoing and perpetual, the next cycle will begin in the fourth quarter of 2017.

21. By October 15, 2017, SCE&G will provide a list of regional transmission projects that satisfy certain Initial Screening Criteria.<sup>19</sup> SCE&G states that its determination will

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<sup>16</sup> *Id.* § VII.C (Submitting a Regional Project for Initial Screening). To be a Qualified Developer, an entity has to meet certain financial and technical qualification criteria. These criteria are set forth in *Id.* § VII.E (Qualification Criteria to Establish Developer Eligibility to Request Cost Allocation for a Proposed Regional Transmission Project).

<sup>17</sup> *Id.* §§ III.E.1 (Local Transmission Planning Process), III.E.2 (Regional Transmission Planning Process). All comments on the regional transmission projects must be submitted by June 15.

<sup>18</sup> *Id.* §§ III.E.1 (Local Transmission Planning Process), III.E.2 (Regional Transmission Planning Process).

<sup>19</sup> *Id.* § III.E.2 (Regional Transmission Planning Process). The Initial Screening Criteria include whether the proposed regional project addresses a transmission need; whether any additional projects, or changes to other planned projects (local or regional), are required; the ability of the proposed regional project to fulfill the identified need practically; the technical and operational feasibility of the proposal; operational benefits/constraints or issues; and whether the project can be constructed and integrated into the transmission system by the required in-service date. These criteria are outlined in *id.* § VII.F.

be sufficiently detailed enough for stakeholders to understand why a particular proposed project meets the Initial Screening Criteria.<sup>20</sup>

22. During the first quarter of 2018, SCE&G will announce the local solutions for transmission needs driven by Public Policy Requirements.<sup>21</sup> Also, January 15, 2018 is the deadline for a Qualified Developer to request regional cost allocation for transmission projects that satisfy the Transmission Providers' Initial Screening Criteria.<sup>22</sup>

23. By April 15, 2018, stakeholders may submit comments on all requests for regional cost allocation submitted by Qualified Developers. During the second quarter of 2018, Transmission Providers and stakeholders may discuss any such requests.<sup>23</sup>

24. During the third quarter of 2018, SCE&G will announce the proposed regional transmission projects selected in the regional transmission plan for purposes of cost allocation.<sup>24</sup> SCE&G's determinations will be based on the cost-effectiveness of the proposed projects, and SCE&G will consider the benefit-to-cost ratios that the proposals generate.<sup>25</sup> By July 15, 2018, stakeholders may identify local and regional transmission needs driven by Public Policy Requirements to be addressed during the next planning cycle.<sup>26</sup>

## 2. Regional Transmission Planning Requirements

25. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that produces a regional transmission plan and that complies with the identified transmission planning principles of Order No. 890.<sup>27</sup>

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<sup>20</sup> *Id.* § VII.F (Evaluation of Proposals for Eligibility to Receive Cost Allocation).

<sup>21</sup> *Id.* § III.E.1 (Local Transmission Planning Process).

<sup>22</sup> *Id.* § III.E.2 (Regional Transmission Planning Process).

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

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* § VII.G. (Evaluation of Proposals for Selection in the Regional Transmission Plan).

<sup>26</sup> *Id.* §§ III.E.1 (Local Transmission Planning Process, discussion of Meeting 8), III.E.2 (Regional Transmission Planning Process, discussion of Meeting 8).

<sup>27</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

The regional transmission planning reforms required public utility transmission providers to consider and select, in consultation with stakeholders, transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related transmission needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.<sup>28</sup>

**a. Transmission Planning Region**

26. Order No. 1000 required each public utility transmission provider to participate in a transmission planning region, which is a region in which public utility transmission providers, in consultation with stakeholders and affected states, agree to participate for purposes of regional transmission planning.<sup>29</sup> The scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.<sup>30</sup> However, an individual public utility transmission provider cannot, by itself, satisfy Order No. 1000.<sup>31</sup>

27. In addition, Order No. 1000 required public utility transmission providers to explain how they will determine which transmission facilities are subject to the requirements of Order No. 1000.<sup>32</sup> Order No. 1000 also required public utility transmission providers in each transmission planning region to have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region<sup>33</sup> and, thus, become eligible to be allocated costs under the regional cost allocation method.<sup>34</sup> Order No. 1000 also required that each public utility transmission provider include in its OATT a list of all the public utility and non-public utility transmission providers enrolled as transmission providers in the transmission planning region.<sup>35</sup>

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<sup>28</sup> *Id.* PP 11, 148.

<sup>29</sup> *Id.* P 160.

<sup>30</sup> *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* PP 65, 162.

<sup>33</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>34</sup> *Id.* PP 276-277.

<sup>35</sup> *Id.* P 275.

**i. First Compliance Order**

28. In the First Compliance Order, the Commission found that, with the enrollment of Santee Cooper, the South Carolina Regional Transmission Planning (SCRTP) region would satisfy the scope requirements set forth in Order No. 1000.<sup>36</sup> However, the Commission found that SCE&G had not met the requirement to have a clear enrollment process defining how entities, including non-public utility transmission providers such as Santee Cooper, make the choice to become part of the transmission planning region. Additionally, the Commission found that SCE&G had not included in its OATT a list of all public and non-public utility transmission providers that have enrolled in the SCRTP region.<sup>37</sup> Accordingly, the Commission directed SCE&G to file a further compliance filing that established a defined enrollment process and listed the entities enrolled as Order No. 1000 transmission providers.<sup>38</sup>

29. The Commission also found that SCE&G had proposed an appropriate effective date, and accepted SCE&G's revised OATT, effective April 19, 2013, subject to a further compliance filing.<sup>39</sup>

**ii. Summary of Compliance Filings**

30. In its second compliance filing, SCE&G proposes to revise its OATT to state that SCE&G and Santee Cooper will serve as the enrolled Transmission Providers in the SCRTP region.<sup>40</sup> SCE&G also proposes to include an appendix to the OATT that lists SCE&G and Santee Cooper as the enrolled transmission providers in the SCRTP region.<sup>41</sup>

31. SCE&G also proposes to add provisions outlining the process by which an entity can enroll as a transmission provider in the SCRTP region, as well as procedures to terminate enrollment. In order to enroll as a transmission provider in the SCRTP region, an entity "must offer transmission service under a publically [sic] available transmission

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<sup>36</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 20.

<sup>37</sup> *Id.* P 22.

<sup>38</sup> *Id.* P 23.

<sup>39</sup> *Id.* P 24.

<sup>40</sup> SCE&G Attachment K § I.

<sup>41</sup> *Id.* Appendix K-7.

tariff,” and “must be registered with NERC as a Planning Authority and a Transmission Service Provider within the regional footprint.”<sup>42</sup> Under the proposal, an entity who wishes to enroll in the SCRTP region must submit a written request via email.<sup>43</sup> SCE&G’s revised OATT states that enrollment in the SCRTP will subject an enrollee to cost allocation if, during the period in which it is enrolled, the enrollee is determined to be a beneficiary of a new transmission project or projects selected in the regional transmission plan for purposes of cost allocation, provided that the enrollee has not withdrawn.<sup>44</sup>

32. SCE&G proposes that, in order to terminate enrollment, a transmission provider must provide to the other enrolled transmission providers written notice of its intent to do so at least 60 days prior to the effective date of such termination.<sup>45</sup> SCE&G’s revised OATT states that Santee Cooper and any other enrolled non-public utility transmission provider may withdraw from the SCRTP. In addition, SCE&G proposes to revise its OATT to state:

In order to avoid regional or interregional cost allocation, such enrollee must withdraw prior to the execution of any [Coordination Agreement] (as referenced in Section VII.H) where the withdrawing enrollee has been identified as a beneficiary of the project and allocated costs associated with the project. The withdrawing enrollee is not responsible for regional or interregional costs allocated pursuant to this Attachment K associated with the planning cycle resulting in costs to which enrollee’s notice of withdrawal responds. Should a non-public utility transmission provider enrollee exercise its rights under this section any impacted project will be reevaluated, using the methods described in this Attachment K.<sup>46</sup>

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<sup>42</sup> *Id.* § III.B.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* § I.

<sup>45</sup> *Id.* § III.B.

<sup>46</sup> *Id.* § VII.H provides that “Regional Transmission Project Coordination Agreement (Coordination Agreement) must be executed prior to a proposed Regional Project being selected in the Regional Transmission Plan.”

SCE&G requests an effective date for the proposed revisions to its OATT of January 1 of the year following the Commission's acceptance of its compliance filing.<sup>47</sup>

**iii. Commission Determination**

33. We find that the enrollment process and proposed effective date outlined in SCE&G's filing partially complies with the directives of the First Compliance Order. Order No. 1000 required public utility transmission providers in each transmission planning region to have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region<sup>48</sup> and thus become eligible to be allocated costs under the regional cost allocation method.<sup>49</sup> We find that SCE&G's proposal outlining the process by which an entity can enroll as a transmission provider is consistent with the requirements of Order No. 1000 and the directives of the First Compliance Order. SCE&G has also listed itself and Santee Cooper as the entities enrolled as transmission providers in the SCRTP region in its OATT, as directed.

34. We further accept SCE&G's proposed OATT provision governing the withdrawal of enrolled transmission providers from the SCRTP region. The Commission stated in Order No. 1000-A that, to accommodate the participation of non-public utility transmission providers, the relevant tariffs or agreements governing the regional transmission planning process could establish the terms and conditions of orderly withdrawal for non-public utility transmission providers that are unable to accept the allocation of costs pursuant to a regional or interregional cost allocation method.<sup>50</sup> As noted above, that proposed provision states that an enrolled transmission provider that wishes to terminate its enrollment in the SCRTP region must provide at least 60 days written notice before the withdrawal becomes effective, and that to avoid the allocation of costs, the enrollee must withdraw before the execution of a Coordination Agreement, which is discussed in the Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation section of this order, where that enrollee has been identified as a beneficiary of the project.<sup>51</sup> The provision further states that the withdrawing enrollee is not responsible for allocated costs

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<sup>47</sup> SCE&G Transmittal at 1.

<sup>48</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>49</sup> *Id.* PP 276-277.

<sup>50</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at n.734.

<sup>51</sup> SCE&G Attachment K § III.B.

associated with the transmission planning cycle to which the withdrawal responds. We find that the proposed withdrawal provision will provide certainty to stakeholders and transmission developers of when an enrolled transmission provider's withdrawal from the SCRTP region will become effective and, in turn, how such withdrawal affects the allocation of costs for transmission facilities selected in the regional transmission plan for purposes of cost allocation.

35. We also find SCE&G's proposal to include a provision in its OATT that states that in order to enroll as a transmission provider in the SCRTP region an entity "must offer transmission service under a publicly available transmission tariff"<sup>52</sup> to be consistent with Order No. 1000. Requiring that an entity have a publicly available transmission tariff to enroll in the SCRTP region is reasonable because it will provide greater transparency about how the regional transmission planning and cost allocation processes will be implemented given the participation of non-public utility transmission providers.

36. Finally, we reject SCE&G's newly proposed effective date as inconsistent with the First Compliance Order. In the First Compliance Order, we accepted SCE&G's proposed effective date of April 19, 2013 as appropriate and consistent with Order No. 1000. Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing that reestablishes the originally proposed effective date of April 19, 2013.

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

37. Order No. 1000 required that the regional transmission planning process result in a regional transmission plan<sup>53</sup> and satisfy the Order No. 890 transmission planning principles of (1) coordination, (2) openness, (3) transparency, (4) information exchange, (5) comparability, (6) dispute resolution, and (7) economic planning studies.<sup>54</sup>

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<sup>52</sup> *Id.*

<sup>53</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

<sup>54</sup> *Id.* PP 146, 151. These transmission planning principles are explained more fully in Order No. 890.

**i. First Compliance Order**

38. In the First Compliance Order, the Commission found that SCE&G's proposal complied with the coordination,<sup>55</sup> openness,<sup>56</sup> dispute resolution,<sup>57</sup> and economic planning studies<sup>58</sup> principles. The Commission required SCE&G to make further OATT revisions to comply with the transparency, information exchange, and comparability principles.

**(a) Transparency**

**(1) First Compliance Order**

39. In the First Compliance Order, the Commission found that SCE&G's filing partially complied with the transparency principle. The Commission noted that SCE&G's OATT has adequate provisions addressing transparency that apply to SCE&G's local transmission planning process.<sup>59</sup> However, the Commission found that, in compliance with Order No. 1000, SCE&G proposed only that stakeholders will be provided access to data and models used in the regional transmission planning process. SCE&G did not explain how and to which models and data stakeholders would have access. The Commission found that SCE&G's OATT must be clear on this issue so that stakeholders can understand what they can expect to access as part of the regional transmission planning process.<sup>60</sup> Accordingly, the Commission directed SCE&G to revise its OATT to clarify what would be made available to stakeholders.

**(2) Summary of Compliance Filing**

40. SCE&G has proposed to revise its OATT to state that the regional transmission planning process establishes a transparent and non-discriminatory process for stakeholder involvement, including access to models and data used in the regional transmission planning process in a manner consistent with the access given to stakeholders through the

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<sup>55</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 31.

<sup>56</sup> *Id.* P 36.

<sup>57</sup> *Id.* P 56.

<sup>58</sup> *Id.* P 60.

<sup>59</sup> *Id.* P 40.

<sup>60</sup> *Id.*

Order No. 890 local transmission planning process.<sup>61</sup> SCE&G states that because it employs a bottom-up transmission planning process, the local data and models used in the local transmission planning process are also relevant information for regional transmission planning.<sup>62</sup> SCE&G also proposes to revise its OATT to state that SCE&G will make available, during stakeholder meetings and/or on the SCRTP website, sufficient information concerning the basic methodology, criteria and processes used to allow stakeholders and third parties to replicate the results of transmission studies.<sup>63</sup>

41. SCE&G also proposes to amend the section of its OATT that outlines its protection of Critical Energy Infrastructure Information (CEII) and to also apply that protection to confidential information. SCE&G proposes to provide stakeholders who meet SCE&G's eligibility requirements access to confidential information and CEII on a secured portion of SCRTP's website. Under the proposal, SCE&G will utilize the Application for Access to the SCRTP Secure Website and the Non-disclosure Agreement posted on the SCRTP website to determine a stakeholder's eligibility to receive confidential information and/or CEII. The proposed revisions state that this protection applies to local, regional and interregional transmission planning. Existing OATT language states that SCE&G classifies information as CEII based upon the Commission's most current definition of CEII.<sup>64</sup>

### (3) Commission Determination

42. We find that SCE&G's proposed revisions to its OATT to address the transparency principle comply with the directives in the First Compliance Order. SCE&G has proposed changes to its OATT that provide stakeholders with access to models and data in the regional transmission planning process in a manner consistent with the access granted in the SCE&G local transmission planning process, which the Commission accepted in compliance with Order No. 890.<sup>65</sup> In addition, SCE&G will make available during stakeholder meetings and/or on the SCRTP website sufficient information concerning the basic methodology, criteria, and processes used to allow stakeholders and third parties to replicate the results of transmission studies used in the regional transmission planning process. We also find that SCE&G's proposal regarding

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<sup>61</sup> SCE&G Attachment K § III.A.

<sup>62</sup> SCE&G Transmittal Letter at 3.

<sup>63</sup> SCE&G Attachment K § III.E.

<sup>64</sup> *Id.* § III.D.

<sup>65</sup> *See S. Carolina Elec. & Gas Co.*, 124 FERC ¶ 61,266, at P 24 (2008).

confidential information and CEII establishes appropriate safeguards while also allowing stakeholders to access information necessary to participate in the regional transmission planning process.

(b) **Information Exchange**

(1) **First Compliance Order**

43. In the First Compliance Order, the Commission found that SCE&G's filing did not comply with the information exchange principle.<sup>66</sup> The Commission found that SCE&G failed to revise its OATT to meaningfully address the information exchange principle as it relates to the regional transmission planning process in compliance with Order No. 1000. The Commission noted that the tariff language accepted by the Commission in SCE&G's Order No. 890 compliance proceeding is still in SCE&G's OATT, but found it applies only to the local transmission planning process.<sup>67</sup> Furthermore, the Commission found no specific language regarding the issues that information exchange is intended to cover, such as customer load forecasts and projected service information, and existing and planned demand response resources provided by customers and stakeholders that are used to develop the regional transmission plan. The Commission stated that to the extent SCE&G is relying on information exchange that is part of its Order No. 890-compliant transmission planning process, it failed to explain why this is an appropriate means of compliance with Order No. 1000. Finally, the Commission found that SCE&G proposed no guidelines or schedule for the submittal of customer and stakeholder information, as required under the information exchange principle. Accordingly, SCE&G was directed to revise its OATT to address these issues.<sup>68</sup>

(2) **Summary of Compliance Filings**

44. SCE&G states that it will use information customers submit during the first meeting of the local transmission planning process<sup>69</sup> in identifying and evaluating local *and* regional transmission solutions. SCE&G states that once it receives this information from customers during the local transmission planning process, it will use the information to build the models for both local and regional transmission planning processes. SCE&G states that it would be duplicative and burdensome to require that the information be

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<sup>66</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 46.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* P 47.

<sup>69</sup> SCE&G Attachment K § III.E.1.

submitted twice.<sup>70</sup> SCE&G also proposes that the South Carolina Regional Stakeholder Group (Stakeholder Group) voting members, not all stakeholders, will vote on which economic power transfer sensitivities will be studied under the Economic Transmission Planning Studies process, if more than five sensitivities are requested to be studied.<sup>71</sup> SCE&G explains that it has always been the intent of SCE&G that the Stakeholder Group voting members would vote on such a determination, as opposed to all stakeholders.<sup>72</sup>

### (3) Commission Determination

45. We find that SCE&G's proposal to comply with the information exchange principle partially complies with the directives in the First Compliance Order. We find SCE&G's proposal regarding the limitation on the voting of which economic power transfer sensitivities will be studied under the Economic Transmission Planning Studies process, if more than five sensitivities are requested to be studied, to Stakeholder Group voting members, and not all stakeholders, is reasonable. We also find it reasonable for SCE&G to use in its regional transmission planning process the information it receives under the previously-accepted guidelines and schedule for the submittal of customer and stakeholder information in its local transmission planning process; however, while SCE&G indicates in its transmittal letter that it will use this procedure, it has not implemented this proposal in its OATT. Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to revise its OATT to state that the customer and stakeholder information submitted at the beginning of each local transmission planning cycle is also used in the regional transmission planning process.

#### (c) Comparability

##### (1) First Compliance Order

46. In the First Compliance Order, the Commission noted that SCE&G had not addressed how the regional transmission planning process complied with the comparability principle and, therefore, found SCE&G's filing did not comply with the comparability principle. The Commission also found that SCE&G had not provided any justification that its existing Order No. 890-compliant tariff language governing the comparable treatment of transmission, generation, and demand response alternatives, which specifically refers to the local transmission planning process, complies with the

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<sup>70</sup> SCE&G Transmittal at 4.

<sup>71</sup> SCE&G Attachment K §§ III.E.1., V.A.

<sup>72</sup> SCE&G Transmittal at 20.

requirement that the comparability principle apply to the Order No. 1000-compliant regional transmission planning process. Therefore, the Commission directed SCE&G to submit a further compliance filing to address how its proposed regional transmission planning process complies with the comparability principle.<sup>73</sup>

47. The Commission also directed SCE&G on compliance to revise its OATT to provide that the regional transmission planning process, after considering the data and comments supplied by customers and other stakeholders, will develop a regional transmission plan that meets the specific service requests of all transmission customers and otherwise treats similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning.<sup>74</sup>

### (2) **Summary of Compliance Filing**

48. To address the requirement that it meet the specific service requests of all transmission customers and treat similarly-situated customers comparably, SCE&G proposes to revise its tariff to state that its “Regional Transmission Plan is designed to meet the specific service requests of all customers taking service under the SCE&G OATT and treats similarly-situated customers comparably.”<sup>75</sup> To meet the requirement regarding the comparable treatment of transmission, generation, and demand response alternatives in the regional transmission planning process, SCE&G proposes to revise its OATT to state that when evaluating proposed regional transmission projects for selection in the regional transmission plan for purposes of cost allocation, it will treat “all types of resources on a comparable basis and gives consideration that is technologically neutral to every viable alternative solution to identified Transmission Needs.”<sup>76</sup>

### (3) **Commission Determination**

49. We find that SCE&G’s proposal complies with the comparability principle. SCE&G has revised its OATT to state that the regional transmission plan will meet specific service requests of all customers and that it will treat similarly-situated customers comparably.<sup>77</sup> SCE&G has also revised its OATT to state that, as part of its evaluation of

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<sup>73</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 51.

<sup>74</sup> *Id.* P 52.

<sup>75</sup> SCE&G Transmittal at 4-5; SCE&G Attachment K §§ I, VII.A.

<sup>76</sup> SCE&G Attachment K §§ VII.G.2, IV.C.

<sup>77</sup> *Id.* § VII.A.

whether to select a transmission facility in the regional transmission plan for purposes of cost allocation, it will treat transmission, generation, and demand response alternatives on a comparable basis and will give consideration that is technologically neutral to every viable alternative solution to identified transmission needs.<sup>78</sup> Both of these proposed OATT revisions comply with the directives in the First Compliance Order. SCE&G has identified where stakeholders can propose potential solutions (whether a transmission, generation, or demand resource) in the regional transmission planning process. SCE&G states that “[a]ny entity may propose a regional project to meet the region’s transmission needs. A proposed project will first be evaluated by the Transmission Providers in accordance with Section VII.F to determine whether it meets the Initial Screening Criteria.”<sup>79</sup> SCE&G also states that proposed regional projects must be submitted by January 15 as part of Meeting 2, which in SCE&G’s annual transmission planning cycle will be held sometime in January-March time frame and is the meeting whereby transmission providers and stakeholders will discuss the proposed regional transmission projects.<sup>80</sup> We conclude that these OATT provisions address the concerns the Commission raised in the First Compliance Order, and we therefore accept them.

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

50. Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.<sup>81</sup> Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the transmission planning region identify and evaluate the set of potential solutions that may meet the region’s needs more efficiently or cost-effectively.<sup>82</sup> In addition, whether or not public utility transmission providers within a transmission planning region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their

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<sup>78</sup> *Id.* § VII.G.2.

<sup>79</sup> *Id.* § VII.A.

<sup>80</sup> *Id.* § III.E.2.

<sup>81</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

<sup>82</sup> *Id.* P 149.

combined view of whether the transmission facility is a more efficient or cost-effective solution to their needs.<sup>83</sup>

51. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer<sup>84</sup> must provide to the regional transmission planning process to allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.<sup>85</sup>

52. Finally, the regional transmission planning process developed by public utility transmission providers, in consultation with stakeholders, must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's transmission needs.<sup>86</sup> Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

**i. Affirmative Obligation to Plan**

**(a) First Compliance Order**

53. In the First Compliance Order, the Commission found that SCE&G's filing did not comply with the requirement of Order No. 1000 that public utility transmission providers participate in a transmission planning region that conducts a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs. Specifically, SCE&G's proposed tariff revisions suggested that SCE&G will rely solely on qualified transmission developers to propose more efficient or cost-effective transmission solutions, with no indication that the transmission providers in the SCRTP region will conduct their own regional analysis to identify such transmission solutions.<sup>87</sup> The Commission noted, for example, that SCRTP would identify projects to

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<sup>83</sup> *Id.* P 331.

<sup>84</sup> Order No. 1000 defines merchant transmission projects as projects "for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates." *Id.* P 119.

<sup>85</sup> *Id.* P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

<sup>86</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

<sup>87</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 66.

resolve any potential reliability violations, but only rely on interested parties to propose regional reliability projects that replace components of the local transmission plans of multiple transmission owners.

54. The Commission stated that Order No. 1000 addressed the deficiencies in the existing requirements of Order No. 890 by, among other requirements, placing an affirmative obligation on public utility transmission providers to participate in a regional transmission planning process that produces a regional transmission plan.<sup>88</sup> The Commission further explained that it is not sufficient for a transmission planning region to merely “roll-up” local transmission plans without analyzing whether the regional needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution.<sup>89</sup> Public utility transmission providers must conduct a regional analysis themselves to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider. Accordingly, the Commission directed SCE&G to revise its OATT to set forth the affirmative obligation to identify transmission solutions that more efficiently or cost-effectively meet reliability requirements, address economic considerations, and meet transmission needs driven by public policy requirements.<sup>90</sup> The Commission stated that these OATT revisions must describe the process SCE&G will use to identify more efficient or cost-effective transmission solutions and explain how the region will conduct that regional analysis through power flow studies, production cost analyses, and/or other methods.<sup>91</sup>

**(b) Summary of Requests for Rehearing or Clarification**

55. SCE&G states that it currently meets, or will meet through its Order No. 1000 regional transmission planning process, Order No. 1000’s regional transmission planning requirements, arguing that Order No. 1000 does not require a top-down approach to

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<sup>88</sup> *Id.* P 68 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148).

<sup>89</sup> *Id.* P 67.

<sup>90</sup> The Commission further noted that any additional OATT procedures proposed to implement this directive must also comply with the Order No. 890 transmission planning principles. In particular, the Commission directed SCE&G to evaluate, as it developed further Attachment K revisions, whether additional changes were required to satisfy the transparency principle. *Id.* PP 42, 66.

<sup>91</sup> *Id.* P 69.

regional transmission planning.<sup>92</sup> First, SCE&G explains that the SCRTP process complies with Order No. 1000's requirement that the regional transmission planning process produce a regional transmission plan because the SCRTP process will produce a regional transmission plan that will include transmission projects determined to be more efficient or cost-effective through the Order No. 1000 process. Second, SCE&G explains that it and Santee Cooper not only ensure the simultaneous feasibility of their combined local transmission plans, but also evaluate those plans in concert with stakeholders through existing Order No. 890 processes to determine the most efficient and cost-effective transmission solutions. SCE&G further states that, when solutions are identified and selected as the preferred transmission expansion option, those solutions are included in each company's transmission expansion plan. Thus, SCE&G contends, it also complies with Order No. 1000's requirement that public utility transmission providers evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers.<sup>93</sup>

56. SCE&G further states that it and Santee Cooper already plan for the needs of the SCRTP region.<sup>94</sup> In support, SCE&G explains that it and Santee Cooper conduct numerous joint transmission assessment studies of transmission constraints and reliability issues,<sup>95</sup> the results of which inform the SCRTP local and regional transmission planning processes by providing information on system conditions and areas where transmission expansion may be needed. SCE&G also asserts that, when issues arise on multiple systems, the affected parties work together to determine possible joint solutions that could be more efficient and cost-effective than the individual system plans. According to SCE&G, these planning activities are presented to the SCRTP stakeholder group, providing opportunities for feedback, discussion, and involvement in the transmission planning processes.<sup>96</sup>

57. SCE&G argues that the First Compliance Order strongly implies that the Commission is requiring SCE&G to adopt a "top-down" approach to regional

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<sup>92</sup> SCE&G Rehearing at 17-18 (citing Order No. 1000 FERC Stats. & Regs. ¶ 31,323 at PP 148, 149, 157-158).

<sup>93</sup> *Id.* at 18.

<sup>94</sup> *Id.* at 15-16.

<sup>95</sup> *Id.* at 15 (citing SCE&G Revised Attachment K § IX).

<sup>96</sup> *Id.* at 15-16.

transmission planning.<sup>97</sup> Thus, SCE&G contends, the First Compliance Order interferes with SCE&G's state integrated resource planning process<sup>98</sup> and is inconsistent with Order No. 1000, which SCE&G states provided for flexibility and either a top-down or bottom-up approach to regional transmission planning.<sup>99</sup> Noting the Commission's holding in the First Compliance Order that it is insufficient for a transmission planning region to merely "roll up" local transmission plans without analyzing whether the regional transmission needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution, SCE&G further argues that if the Commission now construes Order No. 1000 to require something different than or additional to a bottom-up approach to regional transmission planning, the Commission is acting arbitrarily and capriciously.<sup>100</sup> SCE&G argues that Order No. 1000 did not require a top-down approach to regional transmission planning, but instead provided that a public utility transmission provider may use "a 'top-down' approach, a 'bottom-up' approach, or some other approach so long as the public utility transmission provider complies with [Order No. 1000]."<sup>101</sup> Therefore, SCE&G asserts, if a top-down approach to regional transmission planning is required, then the First Compliance Order is arbitrary and capricious, not supported by substantial evidence<sup>102</sup> and the Commission effectively amended Order No. 1000 in the First Compliance Order.<sup>103</sup> SCE&G argues that this constitutes reversible

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<sup>97</sup> *Id.* at 14 (citing First Compliance Order, 143 FERC ¶ 61,058 at PP 68, 69).

<sup>98</sup> *Id.* at 18-19.

<sup>99</sup> *Id.* at 15, 18-19 (citing Order No. 1000, FERC Stats. & Regs. 31,323 at PP 157-158) ("...[w]e allow public utility transmission providers developing the regional transmission planning processes to craft, in consultation with stakeholders, requirements that work for their transmission planning region. . . . Additionally, we note that a public utility transmission provider's regional transmission planning process may utilize a "top down" approach, a "bottom up" approach, or some other approach so long as the public utility complies with the requirements of this Final Rule...") *Id.*

<sup>100</sup> *Id.* at 18-19 (citing *East Texas Elec. Coop. v. FERC*, 218 F.3d 750, 754 (D.C. Cir. 2000); *McElroy Elec. Corp. v. FCC*, 990 F.2d 1351, 1353 (D.C. Cir. 1993)).

<sup>101</sup> *Id.* at 16 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 158).

<sup>102</sup> *Id.* (citing *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29 (1983); *Tenneco Gas v. FERC*, 969 F.2d 1187, 1214 (D.C. Cir. 1992)).

<sup>103</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 68 (where the Commission found that Order No. 1000 placed an affirmative obligation on public utility transmission providers to participate in a regional transmission planning process that produces a regional transmission plan).

error, since a final rule adopted through a rulemaking process may only be amended or revised through a subsequent rulemaking proceeding,<sup>104</sup> and that the Commission may not abandon its prior policies without providing a reasonable explanation for changes.<sup>105</sup> SCE&G further finds error in the Commission's implicit conclusion that it possesses authority under the FPA to compel regional transmission planning. SCE&G argues that the FPA does not provide the Commission with authority to direct regional transmission planning. Rather, according to SCE&G, FPA section 202(a) makes it clear that the

Commission is authorized to promote regional transmission planning on a voluntary basis only.<sup>106</sup>

**(c) Summary of Compliance Filings**

58. SCE&G proposes to revise its OATT to describe the process by which the transmission providers will evaluate whether there are more efficient or cost-effective transmission solutions to meet regional reliability, economic or public policy transmission needs on a regional basis.<sup>107</sup> Specifically, SCE&G has revised its OATT to state:

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<sup>104</sup> SCE&G Rehearing at 16-17 (citing *Alaska Professional Hunters Assoc. v. FAA*, 177 F.3d 1030, 1035 (D.C. Cir. 1999); *Paralyzed Veterans of Am. V. DC Arena*, 117 F.3d 579, 586 (D.C. Cir. 1997)).

<sup>105</sup> *Id.* at 17 (citing *Panhandle E. Pipe Line Co. v. FERC*, 196 F.3d 1273, 1275 (D.C. Cir. 1999); *Hill v. McLaughlin*, 864 F.2d 868, 872 (D.C. Cir. 1989); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970)).

<sup>106</sup> *Id.* at 21 (citing 16 U.S.C. § 824a (2012)). Section 202(a) of the FPA provides in part:

For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest.

<sup>107</sup> SCE&G Transmittal at 5.

Through the joint studies conducted as part of the Transmission Providers' local transmission planning processes, the Transmission Providers conduct analysis to ensure Transmission Needs are addressed, including those driven by economics and Public Policy Requirements. Such analysis is conducted, for example, through power flow, dynamic, and short circuit analysis, as necessary, for the ten year transmission planning horizon. The Transmission Providers will identify potential regional transmission projects that may be more efficient or cost effective solutions to address Transmission Needs. To the extent that regional cost allocation is sought for any needed regional solutions, the Transmission Providers will submit such regional solutions for consideration[.]<sup>108</sup>

59. In addition, SCE&G proposes to define "Transmission Needs" as:

Physical transmission capacity required to fulfill a long-term (i.e., one year or more) firm transmission commitment(s) associated with reliability, economics, or Public Policy Requirements. Such commitments consist of Transmission Customers' long-term Service Agreements under the Tariff and the transmission service required to serve the needs of Native Load Customers.<sup>109</sup>

60. SCE&G states that, by making these additions to its OATT, it has explained how it will identify potentially more efficient or cost-effective transmission solutions and not rely exclusively on proposals from stakeholders.<sup>110</sup>

**(d) Commission Determination**

61. We deny SCE&G's request for rehearing. Additionally, we find that SCE&G's proposed revisions to the regional transmission planning process partially comply with Order No. 1000 and the directives in the First Compliance Order.

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<sup>108</sup> SCE&G Attachment K § VII.A.

<sup>109</sup> *Id.* § II.H.

<sup>110</sup> SCE&G Transmittal at 5.

62. As to the arguments raised by SCE&G on rehearing that it meets the requirements of Order No. 1000 pursuant to its existing transmission planning efforts, we affirm the finding in the First Compliance Order that under Order No. 1000, SCE&G and the other transmission providers in the transmission planning region must conduct a regional analysis themselves to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider. Thus, in conducting this regional analysis, SCE&G may not rely exclusively on proposals from interested parties as the transmission planning region's only means to identify more efficient or cost-effective regional transmission solutions.<sup>111</sup>

63. More specifically, in Order No. 1000 the Commission found action was needed to remedy deficiencies in Order No. 890-compliant local transmission planning processes. In explaining the need for Order No. 1000's reforms, the Commission stated that "[a]fter careful review of the voluminous record in this proceeding" it concluded that "the additional reforms adopted herein are necessary at this time to ensure that rates for Commission-jurisdictional service are just and reasonable in light of changing conditions in the industry."<sup>112</sup> The deficiencies in the existing Order No. 890 transmission planning processes that were identified by Order No. 1000 included the lack of an affirmative obligation on public utility transmission providers to plan for regional transmission needs.<sup>113</sup> Thus, the Commission found that it had an obligation under the FPA to ensure that Commission-jurisdictional services resulting from regional transmission planning processes are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential, and that regional transmission planning processes must include the affirmative obligation on public utility transmission providers to plan in order to satisfy the FPA's just and reasonable standard.<sup>114</sup>

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<sup>111</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 69.

<sup>112</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 1; *id.* P 116 ("[F]or the pro forma OATT (and, consequently, public utility transmission providers' OATTs) to be just and reasonable and not unduly discriminatory or preferential, it must be revised in the context of transmission planning to include the requirement that regional transmission planning processes result in the production of a regional transmission plan using a process that satisfies the specified Order No. 890 transmission planning principles and that provides an opportunity to consider transmission needs driven by Public Policy Requirements.").

<sup>113</sup> *Id.* PP 147-148.

<sup>114</sup> *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 55, 147-148.

64. Under its pre-Order No. 1000 OATT, SCE&G had no affirmative obligation to plan for the region's transmission needs that culminated in a regional transmission plan that reflects the evaluation of whether alternative regional transmission solutions may be more efficient or cost-effective than transmission solutions identified in local transmission planning processes.<sup>115</sup> In its initial compliance filing, SCE&G did not explain in either its proposed OATT revisions or its transmittal letter how it would comply with the requirement to undertake an affirmative obligation to plan for the region's transmission needs in the absence of requests by stakeholders. The Commission thus appropriately concluded that SCE&G had failed to satisfy this requirement of Order No. 1000. SCE&G has addressed this requirement in its second round compliance filing and, as addressed more fully below in this section, we find that SCE&G partially complies with this obligation.

65. In requiring SCE&G to affirmatively plan for the needs of the transmission planning region, we disagree with SCE&G that we are ignoring Order No. 1000's statement that a region could continue to use a "bottom up" approach to transmission planning. Nothing in Order No. 1000 or the First Compliance Order requires SCE&G to abandon its bottom up approach. Indeed, this approach can be used as the basis for SCE&G's regional transmission planning process. For instance, as SCE&G's OATT provides, in developing its local transmission plan, SCE&G can continue to identify local transmission needs and local transmission facilities.<sup>116</sup> SCE&G can then roll up its local transmission plan along with Santee Cooper's local transmission plan. The First Compliance Order does not require SCE&G to change its process in this regard. However, once the local transmission plans are rolled up and analyzed, Order No. 1000 requires public utility transmission providers in the transmission planning region to take the additional step of determining whether there are more efficient or cost-effective transmission solutions to meet the transmission needs of the region, which would be conducted through the regional analysis undertaken by SCE&G and Santee Cooper.

66. Similarly, we reject SCE&G's argument that Order No. 1000's affirmative obligation to plan runs counter to, or otherwise interferes with, state-regulated integrated resource planning. As an initial matter, we reiterate the Commission's finding in Order No. 1000-A that the regional transmission planning requirements "will provide more information and more options for consideration by public utility transmission providers and state regulators and, therefore, can hardly be seen as detrimental to state-sanctioned

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<sup>115</sup> As defined in Order No. 1000, the "local" transmission planning process is the transmission planning process that a public utility transmission provider performs for its individual retail distribution service territory or footprint pursuant to the requirements of Order No. 890. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 68.

<sup>116</sup> SCE&G Attachment K § IV.

integrated resource planning.”<sup>117</sup> Public utility transmission providers can use the results of the Order No. 1000 regional transmission planning process to inform their state-regulated integrated resource planning process, just as they can use the results of their integrated resource planning process to inform the regional transmission planning process. However, nothing in Order No. 1000 requires that public utility transmission providers modify their state integrated resource plans.<sup>118</sup> The regional transmission planning requirements of Order No. 1000 are not the vehicle by which state integrated resource planning is conducted, which “may be a separate obligation imposed on public utility transmission providers under the purview of the states.”<sup>119</sup> Thus, to the extent SCE&G’s Order No. 1000 regional transmission planning process results in the identification of transmission facilities that could provide access to lower-cost resources than those that were approved in a state-regulated integrated resource planning process, neither Order No. 1000 nor the First Compliance Order requires that SCE&G modify its resource selections or the transmission facilities that it plans as part of the state-level integrated resource planning process to access those resources identified in the integrated resource plan. We therefore disagree with SCE&G that the First Compliance Order is inconsistent with, or disruptive to, integrated resource planning requirements.

67. Further, as discussed above, Order No. 1000 identified deficiencies in existing transmission planning processes, and thus concluded that the regional transmission planning reforms are necessary. These deficiencies included the lack of an affirmative obligation on public utility transmission providers within a transmission planning region to develop a single transmission plan for the region that reflects their determination of the set of transmission facilities that more efficiently or cost-effectively meets the region’s transmission needs.<sup>120</sup> Thus, the Commission found that it had an obligation under the FPA to ensure that Commission-jurisdictional services resulting from regional transmission planning processes are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential, and that regional transmission planning processes must include the affirmative obligation on public utility

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<sup>117</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 190; *see also id.* P 192 (responding to argument that regional transmission planning would disrupt integrated resource planning).

<sup>118</sup> *Id.* PP 168-179.

<sup>119</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 154; *see also id.* P 107 (explaining that Order No. 1000’s reforms “in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning....”).

<sup>120</sup> *Id.* PP 147-148.

transmission providers to plan for the region's transmission needs in order to satisfy the FPA's just and reasonable standard.<sup>121</sup> The Commission reviewed SCE&G's compliance filing to determine whether SCE&G had complied with these requirements and concluded that SCE&G failed to specify in its OATT how it will comply with the affirmative obligation to plan for the region's transmission needs. Thus, it was reasonable for the Commission to find in the First Compliance Order that SCE&G had not complied with this requirement.

68. In connection with its rehearing arguments about the relationship of integrated resource planning and its proposed avoided cost allocation method, which are discussed below in the Cost Allocation section of this order, SCE&G argues that integrated resource planning must be respected under FPA section 217(b)(4).<sup>122</sup> We agree with SCE&G that integrated resource planning is important and recognize that SCE&G must comply with the requirements of that process. As noted above, we find that the directives of the First Compliance Order are not inconsistent with integrated resource planning. We further find that these requirements are consistent with section 217(b)(4) because they support the development of needed transmission facilities that benefit load-serving entities. Nothing in Order No. 1000 is intended to prevent or restrict a load-serving entity from fully implementing resource decisions made under state authority.

69. We find that SCE&G's arguments as to whether the Commission has jurisdiction over regional transmission planning are a collateral attack on Order Nos. 1000 and 1000-A, where these issues were addressed. In Order No. 1000, the Commission explained that it had identified deficiencies in the Order No. 890-compliant transmission planning processes and, because transmission planning is a practice affecting transmission rates, the Commission had an obligation under the FPA to ensure that Commission-jurisdictional services resulting from regional transmission planning processes are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential.<sup>123</sup> Order Nos. 1000 and 1000-A also fully responded to arguments that FPA section 202(a) limited the Commission's jurisdiction over regional transmission planning.<sup>124</sup> We therefore reject SCE&G's collateral attack on Order Nos. 1000 and 1000-A.

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<sup>121</sup> See, e.g., Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 55, 147-148.

<sup>122</sup> SCE&G Rehearing at 11 (citing 16 U.S.C. § 825q(b)(4) (2012)).

<sup>123</sup> See, e.g., Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 55, 147-148.

<sup>124</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 100-106; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 121-158.

70. We find that SCE&G's proposal on compliance partially complies with the requirements of the First Compliance Order. In general, SCE&G's proposed OATT revision providing that it and Santee Cooper will conduct an analysis to ensure that "Transmission Needs" are addressed, including economic and public policy requirement-related transmission needs, and that the analysis will be conducted through power flow, dynamic, and short-circuit analysis, as necessary, through the planning horizon, complies with the requirements in the First Compliance Order.<sup>125</sup> These OATT revisions provide more detail than what SCE&G had initially proposed with respect to how the SCRTP process will try to identify more efficient or cost-effective transmission solutions through a regional analysis.

71. We are concerned, however, with SCE&G's proposed definition of "Transmission Needs" (a new term) because it unreasonably limits the universe of transmission projects that could be considered to address regional transmission needs to those associated with a long-term commitment for transmission service. We find that this definition is inconsistent with Order No. 1000 because a commitment for long-term firm transmission service should not be a prerequisite for consideration of a transmission need. In Order No. 890, the Commission addressed arguments regarding the adequacy of addressing individual requests for service under the OATT. There, the Commission noted that the process addressing individual requests for service under the OATT is adequate for customers who request specific transmission rights to purchase power from a particular resource in a particular location during a defined time period. The Commission found, however, that such a process does not provide an opportunity for customers to consider whether potential upgrades or other investments could reduce congestion costs or otherwise integrate new resources on an aggregated or regional basis outside of a specific request for interconnection or transmission service.<sup>126</sup> We therefore reject the proposed definition of "Transmission Needs," and direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to remove it from its OATT.

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<sup>125</sup> However, as discussed below in the Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation section of this order, we find unclear SCE&G's proposal that the Transmission Providers will submit needed regional transmission solutions identified through the regional analysis for consideration to the extent that regional cost allocation is sought for such solutions and direct SCE&G to clarify the proposal.

<sup>126</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 543.

ii. **Definition of Local and Regional Projects**

(a) **First Compliance Order**

72. In the First Compliance Order, the Commission found that SCE&G's proposal clearly distinguished between local transmission facilities and regional transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>127</sup> Additionally, the Commission found SCE&G's proposal to define a local project as "a transmission facility located solely within one Transmission Provider's footprint" together with language in the OATT stating that transmission providers may continue to meet their reliability needs or service obligations by choosing to build new transmission facilities that are located solely within their individual Balancing Areas or footprints and that are not submitted for regional cost allocation, to be consistent with the definition of local transmission facility in Order No. 1000.<sup>128</sup> However, the Commission found that SCE&G's definition of regional transmission projects was inconsistent with Order No. 1000 because it limited a regional transmission project to one that displaces a facility in a transmission provider's local transmission plan.<sup>129</sup> The Commission stated that Order No. 1000 defines a regional transmission facility that is selected in a regional transmission plan for purposes of cost allocation as one "that has been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purpose of cost allocation because it is a more efficient or cost-effective solution to regional transmission needs."<sup>130</sup> The Commission explained that, as discussed in the previous section of this order, transmission providers have an affirmative obligation to plan and it is not sufficient for a transmission planning region to "roll-up" local transmission plans without analyzing whether the regional transmission needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution. Thus, under Order No. 1000, a regional transmission facility could be selected in the regional transmission plan

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<sup>127</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 86.

<sup>128</sup> *Id.* n.100 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63).

<sup>129</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 87. SCE&G proposed to define a regional transmission project as "a project selected by the SCRTP pursuant to the SCRTP process for inclusion in the regional transmission plan for purposes of regional cost allocation because it is a more efficient or cost-effective solution to meet a regional transmission need than transmission solutions identified in the local transmission planning processes." *Id.* P 73.

<sup>130</sup> *Id.* P 87 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63).

for purposes of cost allocation even if it was not included in any of the local transmission provider local transmission plans.<sup>131</sup>

73. Furthermore, the Commission found that SCE&G's proposed minimum thresholds<sup>132</sup> could limit transmission projects that would otherwise be considered regional transmission projects eligible for selection in the regional transmission plan for purposes of cost allocation from receiving any consideration.<sup>133</sup> In particular, the Commission found that SCE&G's proposed threshold requirements may be too restrictive because they could exclude from evaluation transmission facilities that provide significant benefits to the transmission planning region. The Commission stated that in establishing specific threshold requirements for the SCRTP transmission planning region, SCE&G must not be so limiting as to preclude from evaluation transmission projects that may provide regional benefits. The Commission stated that if SCE&G wished to retain the proposed minimum thresholds, SCE&G must provide additional justification for its proposed threshold requirements and identify transmission facilities that are likely to have regional benefits if they meet the proposed thresholds. The Commission stated that SCE&G could, for example, provide a historical analysis of which existing transmission facilities within the transmission planning region would have been eligible for evaluation for selection in the regional transmission plan for purposes of cost allocation under the proposed minimum threshold requirements.<sup>134</sup>

74. Regarding SCE&G's proposal to require a transmission owner to turn over functional control of any transmission facility selected in the regional transmission plan for purposes of cost allocation, the Commission disagreed with SCE&G that it is necessary in all circumstances for a nonincumbent transmission developer to turn over functional control of a transmission facility to SCE&G or Santee Cooper in order to

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

<sup>132</sup> SCE&G proposed that, to be eligible to be selected as a regional transmission project for purposes of cost allocation a regional transmission project must meet, among other things, the following minimum thresholds: (1) be 230 kV or above; (2) be over 50 miles in length; (3) be beneficial to both systems in the region; (4) have an estimated cost \$10 million or above; (5) be a green-field facility; (6) be materially different from transmission projects currently in the regional and local transmission plans; and (7) be constructed and integrated into the transmission system by the required in-service date. First Compliance Order, 143 FERC ¶ 61,058 at P 73.

<sup>133</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 88.

<sup>134</sup> *Id.* P 89.

ensure adequate transmission planning, outage coordination, and reliability.<sup>135</sup> The Commission found that SCE&G did not explain why the requirement to turn over functional control to it or Santee Cooper is necessary as a separate criterion in order for a transmission project to qualify as a regional transmission facility eligible for selection in the regional transmission plan for purposes of cost allocation. Thus, the Commission required SCE&G to further justify this provision or remove the provision from its tariff.<sup>136</sup>

(b) **Requests for Rehearing or Clarification**

(1) **Summary of Requests for Rehearing or Clarification**

75. SCE&G argues that the Commission erred in finding that SCE&G's definition limiting a regional transmission project to one that displaced a transmission facility in a transmission provider's local transmission plan is inconsistent with Order No. 1000.<sup>137</sup> According to SCE&G, because Order No. 1000 defines a regional transmission facility as one "that has been selected pursuant to ... a regional transmission plan for purposes of cost allocation because it is a more efficient or cost-effective solution to regional transmission needs," there must be a comparison of the proposed regional transmission project and some other transmission project.<sup>138</sup> SCE&G contends that Order No. 1000 explicitly provides that this comparison should be between a proposed regional transmission project and transmission projects identified in the transmission providers' local transmission planning process, consistent with SCE&G's proposed definition of a regional transmission project.<sup>139</sup> Therefore, SCE&G seeks clarification as to what it must compare a regional transmission project to in order to determine whether the proposed

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<sup>135</sup> *Id.* P 90.

<sup>136</sup> *Id.*

<sup>137</sup> SCE&G Rehearing at 3 (citing First Compliance Order, 143 FERC ¶ 61,058 at P 87).

<sup>138</sup> *Id.* at 3-4 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63).

<sup>139</sup> *Id.* at 4-5 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 78, 81, 148). For example, SCE&G asserts that Order No. 1000 requires that public utility transmission providers "evaluate transmission alternatives at the regional level that may resolve the transmission planning region's needs more efficiently or cost-effectively than alternatives identified by individual public utility transmission providers in their local planning processes." SCE&G Rehearing at 4.)

regional transmission project is more efficient or cost-effective. To the extent that the Commission found in the First Compliance Order that a proposed regional transmission project need not be more efficient or cost-effective than local transmission projects identified by public utility transmission providers in their local transmission planning processes, SCE&G seeks rehearing of the Commission's rejection of SCE&G's definition of a regional transmission project. SCE&G argues that such a finding would be an unexplained departure from Order No. 1000, effectively amending the rulemaking, and would thus be arbitrary and capricious.<sup>140</sup>

## (2) Commission Determination

76. We deny SCE&G's request for rehearing of the First Compliance Order's directive to require SCE&G to revise its definition of a regional transmission project. SCE&G proposed to define a regional transmission project as "a project selected by the SCRTP pursuant to the SCRTP process for inclusion in the regional transmission plan for purposes of regional cost allocation because it is a more efficient or cost-effective solution to meet a regional transmission need than transmission solutions identified in the local transmission planning process."<sup>141</sup> As the Commission explained in the First Compliance Order, Order No. 1000 specifically defines transmission facilities selected in a regional transmission plan for purposes of cost allocation as "transmission facilities that have been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs."<sup>142</sup> SCE&G's definition of a regional transmission project as originally proposed is inconsistent with Order No. 1000 because it limits a regional transmission project to one that displaces a facility in a transmission provider's local transmission plan and, therefore, the finding that SCE&G must revise its definition to make it consistent with the one in Order No. 1000 is correct.

77. We also deny SCE&G's request for clarification as to what it must compare a regional transmission project to in order to determine whether the proposed regional transmission project is more efficient or cost-effective. The Commission already provided sufficient explanation of this issue in the First Compliance Order. The Commission explained that a regional transmission planning process may consider whether a proposed regional transmission facility would displace transmission facilities in a local transmission plan. Thus, SCE&G may compare a proposed regional

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<sup>140</sup> *Id.* at 5.

<sup>141</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 73.

<sup>142</sup> *Id.* P 87 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63).

transmission project to transmission facilities in its local transmission plan.<sup>143</sup> However, the Commission found that SCE&G's proposal to rely *solely* on a comparison to transmission facilities in its local transmission plan would not adequately assesses the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs on a regional basis and may not account for transmission needs not identified or identified in isolation, and thus not resolved, in the local transmission planning processes.<sup>144</sup> The Commission has also accepted other types of comparisons in other transmission planning regions, such as a comparison between: (1) an entity's production costs with and without a proposed regional transmission project;<sup>145</sup> (2) the reserve sharing requirement an entity would have to maintain with and without a proposed regional transmission project;<sup>146</sup> (3) the level of energy losses with and without a proposed regional transmission project;<sup>147</sup> and (4) the number of megawatts of public policy resources an entity would be able to access with and without a proposed regional transmission project.<sup>148</sup>

78. We note that SCE&G's arguments in its rehearing request about the definition of a regional transmission project are also related more broadly to the Commission's finding in the First Compliance Order that SCE&G's proposal to rely solely on an avoided cost method did not comply with the cost allocation requirements of Order No. 1000. For example, SCE&G seeks clarification here as to what it must compare a regional transmission project to in order to determine whether the proposed regional transmission project is more efficient or cost-effective, which is essentially an argument about whether SCE&G can rely on a single avoided cost method to account for benefits related to a regional transmission project that is selected in the regional transmission plan for purposes of cost allocation. Therefore, we address those arguments below in the Cost Allocation section of this order.

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<sup>143</sup> *Id.* P 232.

<sup>144</sup> *Id.* P 231.

<sup>145</sup> *Pub. Serv. Co. of Colorado.*, 142 FERC ¶ 61,206, at P 314 (2013).

<sup>146</sup> *PacifiCorp*, 143 FERC ¶ 61,151, at P 240 (2013).

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

<sup>148</sup> *Pub. Serv. Co. of Colorado.*, 142 FERC ¶ 61,206 at P 317.

(c) **Compliance**

(1) **Summary of Compliance Filing**

79. SCE&G proposes to revise its OATT to define a regional transmission project as a project that is proposed for purposes of regional cost allocation and meets the minimum threshold criteria in the OATT for eligibility to be selected in the regional transmission plan for purposes of cost allocation.<sup>149</sup> SCE&G also proposes to delete its definition of local transmission project.

80. As for the minimum thresholds, SCE&G proposes to delete the following requirements: (1) a proposed transmission line must be at least 50 miles in length; (2) the estimated cost of the project must be at least \$10 million or above; (3) the project must be a green field facility; and (4) the project must be materially different from projects that have been previously considered in the regional transmission expansion planning process.<sup>150</sup> SCE&G also proposes to delete the provision requiring that the owner of the regional transmission project turn over functional control to the transmission provider and proposes to delete as a minimum threshold the requirement that a proposed transmission project be able to be constructed and integrated into the transmission system by the required in-service date.<sup>151</sup> SCE&G proposes to retain minimum threshold criteria limiting regional transmission projects to those that: (a) operate at a voltage of 230 kV or above; (b) are beneficial to both systems in the region; (c) are not an upgrade to an existing facility; and (d) are materially different from projects currently in the regional or local transmission plans.<sup>152</sup> SCE&G proposes to define an upgrade as “[a]n improvement to, addition to, or replacement of a part of an existing transmission facility.”<sup>153</sup>

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<sup>149</sup> SCE&G Attachment K § II.G.

<sup>150</sup> SCE&G Transmittal at 7.

<sup>151</sup> However, SCE&G proposes to now include the requirement that a transmission project be able to be constructed and integrated into the transmission system by the required in-service date as a criterion that is considered in the evaluation stage of the regional transmission planning process. We address this proposal below in the Evaluation Process section of this order.

<sup>152</sup> SCE&G Attachment K § VII.A.a-d. The proposed language also states that, for example, an entity proposing a transmission project may not simply “bundle” several local projects into a single project and claim that it is a regional project. Attachment K, § VII.A.d.

<sup>153</sup> *Id.* § II.I.

81. SCE&G states that the Commission should permit it to restrict regional transmission projects to those with a minimum voltage of 230 kV. SCE&G states that 230 kV transmission lines are the “backbone” of SCE&G’s transmission system and convey bulk transfers throughout SCE&G’s service territory.<sup>154</sup> SCE&G states that its system has 1,147 circuit miles of 230 kV transmission lines and 1,772 circuit miles of 115 kV lines. SCE&G states that the 230 kV transmission lines are used to connect generating resources and load centers, while 115 kV lines are primarily used for load connections. SCE&G states that 4,694 MW of generation is currently connected to the 230 kV system and 1,465 MW is connected to the 115 kV system. However, SCE&G maintains that due to planned and announced generator retirements and additions, by 2019, 5,922 MW, or 88 percent of generation, will be connected to the 230 kV system and only 830 MW will be connected to the 115 kV system.<sup>155</sup>

82. In addition, SCE&G contends that the Commission should accept its proposed minimum voltage of 230 kV for the same reasons it accepted the 300 kV minimum threshold proposed by public utility transmission providers in the SERTP region.<sup>156</sup> SCE&G notes that the Commission agreed that, in the SERTP region, 300 kV transmission facilities are the backbone of SERTP region and these facilities convey the bulk transfers on the SERTP system, integrating generation to large load centers. SCE&G argues that, consistent with Order No. 1000’s regional focus, the proposed minimum voltage requirement would allow the SCRTP region to focus on identifying and evaluating proposed transmission projects on a regional scale.<sup>157</sup>

83. SCE&G states that the Commission should allow it to also limit regional transmission projects to those that benefit both transmission providers in the region (i.e., SCE&G and Santee Cooper).<sup>158</sup> SCE&G contends that because the SCRTP region is comprised of SCE&G and Santee Cooper, and because Order No. 1000 focuses on meeting the transmission needs within the region, it is reasonable to conclude that both transmission providers must benefit in order for a project to be a regional one. Moreover, SCE&G notes that the Commission has determined that an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning

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<sup>154</sup> SCE&G Transmittal at 7 and Exhibit A (map of SCE&G transmission system).

<sup>155</sup> *Id.* at 7.

<sup>156</sup> *Id.* at 7-8 (citing *Louisville Gas & Elec. Co.*, 144 FERC ¶ 61,054, at P 76 (2013)).

<sup>157</sup> *Id.* at 8.

<sup>158</sup> *Id.*

requirements of Order No. 1000.<sup>159</sup> SCE&G asserts, therefore, that if a proposed transmission project only benefits one of the two transmission systems in the SERTP region, it would not be properly considered a regional transmission project.<sup>160</sup>

84. SCE&G states that it is appropriate to restrict regional transmission projects to those that are not upgrades.<sup>161</sup> SCE&G argues that the Commission stated in Order No. 1000 that an incumbent transmission provider would be permitted to maintain a federal right of first refusal for upgrades to its own facilities.<sup>162</sup> SCE&G states that this provision is intended to reflect this determination.

85. SCE&G states that it is also appropriate to restrict regional transmission projects to those that are materially different than projects currently in the regional or local transmission plans.<sup>163</sup> SCE&G states that this provision is necessary to prevent gaming of its Order No. 1000 regional transmission planning process and to protect stakeholders and developers who have proposed transmission projects under consideration from having duplicative proposals interrupt or slow the transmission planning process. SCE&G states that it would be counterproductive to re-analyze substantially similar transmission proposals with similar benefits and likely similar results.<sup>164</sup>

## (2) Commission Determination

86. We find that SCE&G's proposed revisions to the regional transmission planning process partially comply with the directives in the First Compliance Order. SCE&G's proposed definition of a regional transmission project addresses the Commission's concern in the First Compliance Order because it no longer limits a regional transmission project to one that displaces a facility in a transmission provider's local transmission plan. We also accept SCE&G's proposal to eliminate several of its previously proposed minimum threshold requirements. Regarding the minimum threshold requirements SCE&G proposes to retain, we find that SCE&G has provided adequate support for its proposed minimum threshold requirement that requires that a transmission project

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<sup>159</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 9.

<sup>162</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

operate at a voltage of 230 kV or greater to be eligible for selection in the regional transmission plan for purposes of cost allocation. As SCE&G explains, transmission facilities that operate at or above 230 kV make up the “backbone” of the transmission facilities that convey bulk transfers throughout the SCE&G service territory, integrating generation to load centers, as compared to 115 kV facilities that are primarily used to connect to load. In addition, SCE&G states that, by 2019, 88 percent of the generation connected to the SCE&G transmission system will be connected to 230 kV transmission facilities.<sup>165</sup> Therefore, we accept SCE&G’s proposed minimum threshold requirement of transmission projects that operate at or above 230 kV as an acceptable threshold for the transmission planning region.

87. Similarly, we find that SCE&G’s proposal to require a regional transmission project that is selected in the regional transmission plan for purposes of regional cost allocation to benefit both transmission providers is consistent with Regional Cost Allocation Principle 2, which requires that those that receive no benefit from transmission facilities not be involuntarily allocated any of the costs of those transmission facilities.<sup>166</sup> We note that if another transmission provider were to enroll in the SCRTP region, SCE&G would have to revise the requirement so that a selected transmission project need benefit any two (rather than “both”) transmission providers in the SCRTP region. However, the transmission planning region, and not the transmission developer, should determine whether a proposed transmission project will benefit both transmission providers after a transmission developer proposes a transmission project for potential selection in the regional transmission plan for purposes of cost allocation. Therefore, SCE&G may not require that a transmission developer demonstrate that a proposed transmission project *will* benefit both transmission providers in the SCRTP region as a prerequisite to the developer proposing a transmission project for potential selection in the regional transmission plan for purposes of cost allocation; rather, it is part of the transmission providers’ affirmative obligation to plan to identify whether a proposed transmission project provides regional benefits. We therefore direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to revise its OATT to make clear that a transmission developer is not responsible for determining whether a regional transmission project benefits both transmission providers currently enrolled in the SCRTP region and that the SCRTP process will determine the beneficiaries of any proposed transmission project.

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<sup>165</sup> *Id.* at 7.

<sup>166</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 637. Regional Cost Allocation Principle 2 is discussed more fully below in the Cost Allocation section of this order.

88. Regarding SCE&G's proposed OATT revisions concerning upgrades to existing transmission facilities, Order No. 1000 does not limit an incumbent transmission owner's right to build, own and recover costs for upgrades to transmission facilities it owns.<sup>167</sup> As discussed below in the Federal Rights of First Refusal section of this order, we find that SCE&G's proposed definition of an upgrade complies with Order No. 1000. Thus, we find that this proposed revision is consistent with Order No. 1000.

89. Finally, we find that the provision that restricts regional transmission projects to those that are materially different from projects currently in the regional or local transmission plans partially complies with Order No. 1000 and the directives in the First Compliance Order. We understand SCE&G's concerns over the possibility of having to study substantially similar transmission projects and the potential delays that could result in the development of needed regional transmission facilities. However, SCE&G has not defined or sufficiently explained how it will determine whether a proposed transmission project is "materially different" from transmission projects that are currently in the regional or local transmission plans. While the proposed language in the OATT states that, for example, an entity may not simply bundle several local transmission projects into a single project and claim that it is a regional transmission project,<sup>168</sup> this does not provide transmission developers with sufficient information to determine whether a potential transmission project is materially different from one in the existing regional or local transmission plans. To address this concern and the concern that incumbent transmission providers would have undue discretion to decide whether a proposal is "materially different," we require SCE&G to make transparent any determination that a proposed transmission facility is not materially different than a project already under consideration. To satisfy this requirement, SCE&G must revise its OATT to: (1) clarify how it will determine whether a proposed transmission project is materially different from a transmission project currently in the local or regional transmission plans; and (2) require a posting be made for stakeholders in the SCRTP process of any determinations made by the transmission providers that a proposed transmission project is not "materially different," which also may include an explanation regarding cost estimates. This posting will provide affected stakeholders with an opportunity to challenge that decision before the Commission, if they so desire. Such a requirement is consistent with Order No. 1000's requirement that public utility transmission providers provide to stakeholders "a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation."<sup>169</sup> We direct SCE&G to

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<sup>167</sup> *Id.* P 319.

<sup>168</sup> SCE&G Attachment K § VII.A(d).

<sup>169</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328.

submit, within 60 days of the date of issuance of this order, a further compliance filing revising its OATT with these changes.

**iii. Merchant Developers**

**(a) First Compliance Order**

90. In the First Compliance Order, the Commission found that SCE&G's proposed definition of a merchant transmission developer did not comply with the requirements of Order No. 1000.<sup>170</sup> The Commission stated that Order No. 1000 defines a merchant transmission developer as one that "seeks cost recovery through negotiated instead of cost based rates."<sup>171</sup> However, SCE&G proposed to define a merchant transmission developer as one "that seeks to develop, is developing, or has developed a Regional Project within the SCRTP footprint for which cost recovery is not sought pursuant to this Tariff."<sup>172</sup> The Commission found that the proposed definition suggested that nonincumbent transmission developers that wish to establish their own OATT, and thus seek cost recovery under that tariff rather than the SCE&G OATT, are deemed to be merchant transmission developers in SCRTP, although they would not have negotiated rates. The Commission therefore directed SCE&G to revise its definition of merchant developers to be consistent with the definition in Order No. 1000.<sup>173</sup>

91. In addition, the Commission stated that Order No. 1000 did not require a merchant transmission developer to (1) demonstrate that its transmission facility will not compromise local or regional reliability or a history of constructing, owning, operating, or maintaining comparable transmission facilities; and (2) turn over functional control of its transmission facilities to the transmission provider.<sup>174</sup> The Commission noted that all owners and operators of bulk-power system transmission facilities, including merchant transmission developers, are already required to comply with all applicable reliability standards.<sup>175</sup> The Commission found that the additional provisions in SCE&G's tariff

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<sup>170</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 99.

<sup>171</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 11; Order No. 1000-A, 139 FERC ¶ 61,132 at P 299).

<sup>172</sup> SCE&G Attachment K § II.D.

<sup>173</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 99.

<sup>174</sup> *Id.* P 100.

<sup>175</sup> *Id.* P 101 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 365).

stating the demonstrations a merchant transmission developer must make in order to construct, own, operate, and maintain transmission facilities, including requiring merchant transmission developers to turn over functional control, appear to be unnecessary and beyond the scope of this compliance proceeding. The Commission thus directed SCE&G to remove these provisions from its OATT.<sup>176</sup>

**(b) Summary of Compliance Filing**

92. SCE&G proposes to revise its OATT to define a merchant transmission developer as “[a]n entity that seeks to develop, is developing, or has developed a transmission project within the SCRTP footprint for which cost recovery is sought through negotiated rates instead of cost based rates.”<sup>177</sup> SCE&G also removed the provisions that required merchant transmission developers to: (1) turn over functional control of their transmission facilities to the transmission provider; and (2) demonstrate a history of constructing, owning, operating or maintaining transmission facilities.<sup>178</sup>

**(c) Commission Determination**

93. We find that SCE&G’s proposed revisions regarding merchant transmission developers comply with the requirements of Order No. 1000 and the directives in the First Compliance Order. First, we find that SCE&G’s revised definition of a merchant transmission developer in its OATT complies with the directives in the First Compliance Order and is consistent with the definition of merchant transmission developer in Order No. 1000.<sup>179</sup> Second, we accept SCE&G’s proposal to delete OATT provisions that required a merchant transmission developer to turn over functional control of their transmission facilities to the transmission provider and demonstrate a history of constructing, owning, operating or maintaining transmission facilities.

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

94. Order No. 1000 required public utility transmission providers to amend their OATTs to include procedures for the consideration of transmission needs driven by

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<sup>176</sup> *Id.* P 101.

<sup>177</sup> SCE&G Attachment K § II.B.

<sup>178</sup> SCE&G Transmittal at 10.

<sup>179</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 11; Order No. 1000-A, 139 FERC ¶ 61,132 at P 299.

Public Policy Requirements in both the local and regional transmission planning processes.<sup>180</sup> Public Policy Requirements are requirements established by local, state or federal laws or regulations (i.e., enacted statutes passed by the legislature and signed by the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).<sup>181</sup>

95. The Commission in Order No. 1000 explained that, to consider transmission needs driven by Public Policy Requirements, public utility transmission providers must adopt procedures to (1) identify transmission needs driven by Public Policy Requirements and (2) evaluate potential solutions to meet those identified needs.<sup>182</sup> More specifically, public utility transmission providers must adopt procedures in their local and regional transmission planning processes for identifying transmission needs driven by Public Policy Requirements that give all stakeholders a meaningful opportunity to provide input and to offer proposals regarding what they believe are transmission needs driven by Public Policy Requirements.<sup>183</sup> Each public utility transmission provider must explain how it will determine at both the local and regional level, the transmission needs driven by Public Policy Requirements for which solutions will be evaluated<sup>184</sup> and must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that were identified for evaluation for potential solutions in the local and regional transmission planning processes and (2) why other proposed transmission needs driven by Public Policy Requirements were not selected for further evaluation.<sup>185</sup>

96. Order No. 1000 also required public utility transmission providers, in consultation with stakeholders, to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements, including transmission facilities proposed by stakeholders.<sup>186</sup> The evaluation procedures must give

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<sup>180</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

<sup>181</sup> *Id.* P 2. Order No. 1000-A clarified that Public Policy Requirements included local laws and regulations passed by a local governmental entity, such as a municipal or county government. Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

<sup>182</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

<sup>183</sup> *Id.* PP 206-209; Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

<sup>184</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 208-209.

<sup>185</sup> *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

<sup>186</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211 & n.191.

stakeholders the opportunity to provide input and enable the Commission and stakeholders to review the record created by the process.<sup>187</sup>

**i. Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements**

**(a) First Compliance Order**

97. In the First Compliance Order, the Commission found that SCE&G's filing partially complied with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements. The Commission found SCE&G's definition of a public policy requirement, which SCE&G proposed in both the regional and local transmission planning processes, as a requirement that is stated in state, federal, or local law or regulation (including an order of a state, federal, or local agency), to be consistent with Order No. 1000.<sup>188</sup> The Commission also found that SCE&G's proposal to allow stakeholders to identify transmission needs driven by public policy requirements in both the local and regional transmission planning processes complied with the requirement to establish procedures to identify transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input and offer proposal regarding the transmission needs they believe are driven by public policy requirements.<sup>189</sup> In addition, the Commission found that SCE&G's proposal complied with respect to 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 transmission 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>190</sup>

98. However, the Commission found that SCE&G's proposal failed to explain the just and reasonable and not unduly discriminatory process by which it would identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated, as required by Order No. 1000.<sup>191</sup>

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<sup>187</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 320-321.

<sup>188</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 114.

<sup>189</sup> *Id.* P 115.

<sup>190</sup> *Id.* P 117.

<sup>191</sup> *Id.* P 116 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209).

The Commission also found that while SCE&G proposed to allow stakeholders to propose potential transmission solutions to identified transmission needs driven by public policy requirements in its local and regional transmission planning processes, it allowed only qualified developers to actually submit such regional transmission solutions in the regional transmission planning process.<sup>192</sup> The Commission noted that Order No. 1000 requires that public utility transmission providers establish procedures in their tariffs to evaluate at the regional level potential transmission solutions to identified transmission needs driven by public policy requirements proposed by all stakeholders, not just qualified transmission developers.<sup>193</sup> The Commission directed SCE&G to revise its OATT accordingly.<sup>194</sup>

99. Regarding the evaluation of potential transmission solutions to transmission needs driven by public policy requirements, the Commission found that both SCE&G's local and regional transmission planning processes complied with Order No. 1000's requirement that stakeholders be provided an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs driven by public policy requirements.<sup>195</sup> However, the Commission found that SCE&G's proposal did not adequately address how potential transmission solutions to identified transmission needs driven by public policy requirements would be evaluated at either the local or regional level.<sup>196</sup> The Commission noted that, while SCE&G stated in its transmittal letter that proposed transmission solutions to address transmission needs driven by public policy requirements will be evaluated in the same open and nondiscriminatory manner as other proposed regional transmission solutions for purposes of cost allocation, such information is not set forth in its tariff.<sup>197</sup> The Commission found that, moreover, SCE&G did not explain how potential transmission solutions to identified transmission needs driven by public policy requirements will be evaluated in the local transmission planning process. Accordingly, the Commission directed SCE&G to revise its tariff to describe how it complies with Order No. 1000's requirement that each public utility transmission provider establish procedures to evaluate at the regional and local level

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<sup>192</sup> *Id.* P 118.

<sup>193</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211).

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* P 119.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* (citing SCE&G Transmittal Letter at 4).

potential transmission solutions to identified transmission needs driven by public policy requirements.<sup>198</sup>

100. In addition, the Commission expressed concern about SCE&G's proposal to limit the consideration of transmission needs driven by public policy requirements to those transmission needs that are currently unmet under the existing local or regional transmission plans. While Order No. 1000 does not require that public utility transmission providers identify any particular set of transmission needs driven by public policy requirements for evaluation, the Commission was concerned that SCE&G's proposal would categorically preclude SCE&G from considering whether a regional transmission solution may more efficiently or cost-effectively meet transmission needs driven by public policy requirements.<sup>199</sup> Moreover, the Commission stated that, even if a transmission need driven by public policy requirements is already being met under a regional transmission plan, there may be another more efficient or cost-effective transmission solution to that need that should be considered if, for example, the previously planned transmission facility is still in the development stage. The Commission therefore directed SCE&G to remove this aspect of the proposal from its OATT.<sup>200</sup>

**(b) Summary of Compliance Filing**

101. SCE&G proposes to revise its OATT to state that it will consider in both its local and regional transmission planning processes "Transmission Needs" driven by public policy requirements.<sup>201</sup> In addition, SCE&G proposes to revise the definition of public policy requirements to add that a public policy requirement must be one "that is applicable and enforceable to the Transmission Providers."<sup>202</sup>

102. SCE&G states that it has revised its local and regional transmission planning processes to describe the just and reasonable and not unduly discriminatory process through which it will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs driven by public policy requirements for which

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<sup>198</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 211, 220).

<sup>199</sup> *Id.* P 120 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 210).

<sup>200</sup> *Id.*

<sup>201</sup> SCE&G Attachment K §§ VI, VII.B.

<sup>202</sup> *Id.* § II.D.

transmission solutions will be evaluated.<sup>203</sup> Specifically, SCE&G proposes to revise its OATT to state that, in both the regional and local transmission planning processes, “Transmission Providers will evaluate proposed Transmission Needs based upon the following factors: (1) the feasibility of addressing the potential need; (2) the extent to which addressing the potential need would also address other potential needs; and (3) the factual basis supporting the potential need.”<sup>204</sup> SCE&G asserts that the Commission should approve these factors since they are similar to criteria that the Commission has previously approved for use in another transmission planning region.<sup>205</sup>

103. Additionally, SCE&G proposes to revise its OATT to remove the limitation that only qualified developers may propose potential transmissions solutions to transmission needs driven by public policy requirements in the regional transmission planning process.<sup>206</sup> SCE&G proposes to also include language in the OATT stating that any entity may propose a regional transmission project for consideration in the regional transmission planning process.<sup>207</sup> SCE&G also proposes to remove the language from its OATT that limited the consideration of transmission projects to those that would address transmission needs that were currently unmet under the existing local or regional transmission plans.<sup>208</sup>

104. SCE&G has also proposed revisions to meet the requirement to establish procedures to evaluate at the regional level potential transmission solutions to identified transmission needs driven by public policy requirements. Specifically, SCE&G’s OATT now states that the evaluation process in the OATT for potential selection in the regional transmission plan for purposes of cost allocation “will be comparable for solutions proposed to address Transmission Needs driven by reliability, economics, and Public Policy Requirements.”<sup>209</sup>

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<sup>203</sup> SCE&G Transmittal at 11.

<sup>204</sup> SCE&G Attachment K §§ VI, VII.B.

<sup>205</sup> SCE&G Transmittal at 12 (citing *Avista Corp.*, 143 FERC ¶ 61,255 (2013)).

<sup>206</sup> SCE&G Transmittal at 12.

<sup>207</sup> SCE&G Attachment K §§ VII.B, VII.C.

<sup>208</sup> SCE&G Transmittal at 12.

<sup>209</sup> SCE&G Attachment K § VII.G.1.

105. To meet the requirement to establish procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements, SCE&G proposes revisions to its local transmission planning process stating that it will use coordinated models, assumptions, power flow, transient stability, power transfer and short circuit studies and stakeholder comments to evaluate proposed transmission projects in the local transmission planning process.<sup>210</sup> In addition, SCE&G proposes to evaluate proposed transmission projects against all federal, state and regional reliability standards.<sup>211</sup> SCE&G also proposes OATT language stating that it will use its planning guidelines and criteria, as well as stakeholder comments in the local transmission planning process, to determine:

- (a) Whether the proposed project addresses a Transmission Need driven by a Public Policy Requirement;
- (b) Whether any additional projects, or changes to other planned projects (local or regional), are required due to the proposed project;
- (c) The ability of the proposed project to fulfill the identified transmission need driven by a Public Policy Requirement practically;
- (d) The technical and operational feasibility of the proposal;
- (e) Operational benefits/constraints or issues.<sup>212</sup>

106. SCE&G also proposes language stating that its determination will be sufficiently detailed for stakeholders to understand why a particular proposed transmission project was included the local transmission plan.<sup>213</sup> Finally, SCE&G proposes to revise its OATT to clarify that proposals for local transmission solutions to address transmission needs driven by public policy requirements selected to be evaluated for potential solutions may be submitted by January 15 of each transmission planning cycle.<sup>214</sup>

**(c) Commission Determination**

107. We find that SCE&G's filing partially complies with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements.

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<sup>210</sup> *Id.* § VI.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* § VI.a-e.

<sup>213</sup> *Id.* § VI.

<sup>214</sup> *Id.*

108. We find that SCE&G's proposal to revise the definition of public policy requirements to add that a public policy requirement must be one "that is applicable and enforceable to the Transmission Providers"<sup>215</sup> does not comply with Order No. 1000. This added provision to the definition of public policy requirements would prevent stakeholders from proposing, for example, transmission needs driven by public policy requirements that are applicable to customers or other entities. We also note that the Commission in the First Compliance Order did not require SCE&G to revise the definition of public policy requirements and, therefore, the proposed change is beyond the scope of this compliance filing.<sup>216</sup> Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to remove the requirement that a public policy requirement be applicable and enforceable to the Transmission Providers and to instead reestablish SCE&G's original proposed definition of a public policy requirement in both the regional and local transmission planning processes as a requirement that is stated in state, federal, or local law or regulation (including an order of a state, federal, or local agency), which the Commission found to be consistent with Order No. 1000.

109. We find that SCE&G's proposal complies with the requirement to describe in the local and regional transmission planning processes the just and reasonable and not unduly discriminatory process through which it will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs driven by public policy requirements for which transmission solutions will be evaluated. SCE&G proposes to revise its OATT to state that in both the regional and local transmission planning processes, "Transmission Providers will evaluate proposed Transmission Needs based upon the following factors: (1) the feasibility of addressing the potential need; (2) the extent to which addressing the potential need would also address other potential needs; and (3) the factual basis supporting the potential need."<sup>217</sup> We find that these revisions comply with the requirements of Order No. 1000.<sup>218</sup>

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<sup>215</sup> *Id.* § II.D.

<sup>216</sup> *See* First Compliance Order, 143 FERC ¶ 61,058 at P 114 (finding SCE&G's proposal to define a public policy requirement in both the regional and local transmission planning processes as a requirement that is stated in state, federal, or local law or regulation (including an order of a state, federal, or local agency) was consistent with the definition of public policy requirements in Order No. 1000).

<sup>217</sup> SCE&G Attachment K §§ VI, VII.B.

<sup>218</sup> As discussed above in the Affirmative Obligation to Plan section of this order, SCE&G proposes to define "Transmission Needs" as the "physical transmission capacity required to fulfill a long-term (i.e., one year or more) firm transmission commitment(s)  
(continued...)

110. We also find that SCE&G has complied with the requirement to remove the limitation that only qualified transmission developers may propose potential transmission solutions to transmission needs driven by public policy requirements in the regional transmission planning and to remove language from its OATT that limited the consideration of transmission projects to those that would address transmission needs that were currently unmet under the existing local or regional transmission plans.

111. Regarding how potential transmission solutions to identified transmission needs driven by public policy requirements will be evaluated at the regional level, SCE&G states that transmission needs driven by public policy requirements will be evaluated in the same open and nondiscriminatory manner as other proposed regional transmission solutions for purposes of cost allocation. SCE&G proposes to specify in the OATT that the evaluation process in the OATT for potential selection in the regional transmission plan for purposes of cost allocation “will be comparable for solutions proposed to address Transmission Needs driven by reliability, economics, and Public Policy Requirements.”<sup>219</sup> We find that this provision sufficiently addresses how potential transmission solutions to identified transmission needs driven by public policy requirements will be evaluated at the regional level and is compliant with Order No. 1000.<sup>220</sup>

112. We also find that SCE&G’s proposed revisions to its local transmission planning process to address the requirement to explain how potential transmission solutions to identified transmission needs driven by public policy requirements will be evaluated in the local transmission planning process partially comply with the requirements of Order No. 1000. Specifically, SCE&G proposes to evaluate proposed projects in the local

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associated with reliability, economics, or Public Policy Requirements.” SCE&G’s revised OATT further provides that such commitments consist of transmission customers’ long-term service agreements and the transmission service required to serve the needs of native load customers. Also as discussed above in the Affirmative Obligation to Plan section, we find that this definition is inconsistent with Order No. 1000 because a commitment for long-term firm transmission service should not be a prerequisite for consideration of a transmission need and may unreasonably limit the universe of regional transmission needs considered in the regional transmission planning process. *Id.* § II.H.

<sup>219</sup> SCE&G Attachment K § VII.G.1.

<sup>220</sup> The specifics of SCE&G’s proposal to evaluate potential transmission solutions to identified transmission needs driven by public policy requirements are discussed in the Evaluation Process for Transmission Proposals Selection in the Regional Transmission Plan for the Purposes of Cost Allocation section of this order.

transmission planning process against all federal, state and regional reliability standards<sup>221</sup> and revised its OATT to clarify that proposals for local transmission solutions to address transmission needs driven by public policy requirements selected to be evaluated for potential solutions may be submitted by January 15 of Year 1. However, we find that SCE&G has not justified and does not explain the need to consider as separate factors: (1) whether the proposed regional transmission project meets a transmission need driven by public policy requirements<sup>222</sup> and (2) the ability of the proposed regional transmission project to fulfill the identified transmission need driven by public policy requirements practically.<sup>223</sup> We find the second factor is redundant and unnecessary. Therefore, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing deleting the provision stating that the transmission providers will consider the ability of the proposed regional transmission project to fulfill the identified transmission need driven by public policy requirements practically. In addition, SCE&G's revisions appear to include an inconsistency in when stakeholders may identify local transmission needs driven by public policy projects. Section VI of the OATT states that stakeholders may identify potential transmission needs by July 15 of the first year of the planning cycle,<sup>224</sup> while Appendix K-3 suggests that this identification occurs by July 15 of the second year of the planning cycle. We direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to revise its OATT to clarify when stakeholders may identify local transmission needs, or to explain whether it intended to allow for such submissions by July 15 of each year in order to provide additional opportunities for identifying transmission needs driven by public policy requirements.<sup>225</sup>

### 3. Nonincumbent Transmission Developer Reforms

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

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<sup>221</sup> SCE&G Attachment K § VI.

<sup>222</sup> *Id.* § VI.a.

<sup>223</sup> *Id.* § VI.c.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

**a. Federal Rights of First Refusal**

114. Order No. 1000 required each public utility transmission provider to remove provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.<sup>226</sup> The requirement to eliminate a federal right of first refusal does not apply to local transmission facilities,<sup>227</sup> or to the right of an incumbent transmission provider to build, own, and recover costs for upgrades to its own transmission facilities, regardless of whether an upgrade has been selected in the regional transmission plan for purposes of cost allocation.<sup>228</sup> In addition, the requirement does not remove, alter, or limit an incumbent transmission provider's use and control of its existing rights-of-way under state law.<sup>229</sup>

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<sup>226</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. In Order No. 1000-A, the Commission clarified that the phrase "a federal right of first refusal" refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

<sup>227</sup> *Id.* PP 226, 258, 318. Order No. 1000 defined local transmission facilities as transmission facilities located solely within a public utility transmission provider's retail distribution service territory or footprint that are not selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63. The Commission clarified in Order No. 1000-A that a local transmission facility is one that is located within the geographical boundaries of a public utility transmission provider's retail distribution service territory, if it has one; otherwise the area is defined by the public utility transmission provider's footprint. In the case of an RTO or ISO whose footprint covers the entire region, local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owning members. Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

<sup>228</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

<sup>229</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

**i. First Compliance Order**

115. In the First Compliance Order, the Commission found that the proposed provisions in SCE&G's compliance filing concerning federal rights of first refusal partially complied with the requirements of Order No. 1000.<sup>230</sup> The Commission found that SCE&G's OATT, prior to the time of its first compliance filing, did not have an existing federal right of first refusal provision that SCE&G would be required to remove.<sup>231</sup> However, the Commission rejected SCE&G's proposal to require that, for a proposed transmission project to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, the incumbent transmission providers' use or control of existing rights-of-way may not be altered unless agreed to by the transmission providers. The Commission found that SCE&G's proposal would effectively grant an incumbent transmission owner a federal right of first refusal associated with an existing right-of-way was not permitted by Order No. 1000.<sup>232</sup>

116. The Commission noted that, in Order No. 1000, it acknowledged that its reforms "are not intended to alter an incumbent transmission provider's use and control of its existing rights-of-way[.]" that Order No. 1000 does not "grant or deny transmission developers the ability to use rights-of-way held by other entities, even if transmission facilities associated with such upgrades or uses of existing rights-of-way are selected in the regional transmission plan for purposes of cost allocation[.]" and that the "retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way."<sup>233</sup> The Commission stated, however, that it did not find that, as part of its compliance filing, a public utility transmission provider may add a federal right of first refusal for a "new transmission facility"<sup>234</sup> based on an existing right-of-way.<sup>235</sup>

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<sup>230</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 130.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31, 323 at P 319).

<sup>234</sup> Order No. 1000 defines new transmission facilities as transmission facilities that are subject to evaluation, or reevaluation, within a public utility transmission provider's local or regional transmission planning process after the effective date of the public utility transmission provider's filing adopting the relevant requirements of Order No. 1000. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65.

<sup>235</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 130.

117. However, the Commission noted that, while rights-of-way may not be used to automatically exclude proposals to develop more efficient or cost-effective transmission solutions to regional transmission needs, it may be permissible to consider rights-of-way at appropriate points in the regional transmission planning process.<sup>236</sup> The Commission found that it would be appropriate for SCE&G to consider whether an entity has existing rights-of-way as well as whether the entity has the experience or ability to acquire rights-of-way as part of the process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.<sup>237</sup>

118. Additionally, the Commission found that, consistent with its answer explaining the term “upgrade,”<sup>238</sup> SCE&G must revise its OATT to define an upgrade as an improvement to, addition to, or replacement of a part of an existing transmission facility. The Commission explained that this would provide greater transparency as to what transmission facilities may be considered in the regional transmission planning process for selection in the regional transmission plan for purposes of cost allocation.<sup>239</sup>

**ii. Requests for Rehearing or Clarification**

**(a) Summary of Requests for Rehearing or Clarification**

119. NARUC, SC Regulatory Staff, and SCE&G assert that the Commission erred in requiring SCE&G to remove from its OATT the language preventing a proposed transmission project from being submitted for selection in the regional transmission plan for purposes of cost allocation if the project alters the transmission provider’s use and control of its rights-of-way. NARUC, SC Regulatory Staff, and SCE&G argue that the Commission’s determination is inconsistent with Order No. 1000, citing its statements that Order No. 1000 is “not intended to alter an incumbent transmission provider’s use and control of its existing rights-of-way”<sup>240</sup> and that “[n]othing in this Final Rule is

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<sup>236</sup> *Id.* P 131.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* P 129.

<sup>239</sup> *Id.* P 132.

<sup>240</sup> NARUC Rehearing at 7 (quoting First Compliance Order, 143 FERC ¶ 61,058 at P 126); SC Regulatory Staff Rehearing at 4 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319); SCE&G Rehearing at 19 (citing same). SC Regulatory Staff and SCE&G also cite the Commission’s statement that Order No. 1000 provides that the “retention, modification, or transfer of rights-of-way remain subject to relevant law or

(continued...)

intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.”<sup>241</sup> SC Regulatory Staff and SCE&G also point out that, in Order No. 1000, the Commission “acknowledges that there may be restrictions on the construction of transmission facilities by nonincumbent transmission providers under rules or regulations enforced by other jurisdictions.”<sup>242</sup>

120. SC Regulatory Staff asserts that in requiring SCE&G to consider proposed transmission projects that would require the use of SCE&G’s rights-of-way, the First Compliance Order both requires SCE&G to evaluate transmission projects that, if constructed, may violate state law and fails to recognize the distinction between a right of first refusal created voluntarily by transmission providers and a restriction on the conveyance of an easement mandated by state law.<sup>243</sup> SC Regulatory Staff and SCE&G explain that rights-of-way acquired by SCE&G are negotiated between SCE&G and landowners, the terms of which are contained in the easement associated with the property and govern whether or not SCE&G may apportion its allowed use to a third party. Therefore, SC Regulatory Staff and SCE&G argue that, regardless of whether SCE&G would agree to apportion its rights to a third party, the easement may contain restrictions on such conveyance.<sup>244</sup> SCE&G further asserts that its easements are obtained and held as part of its local planning, arguing that, in contrast, Order No. 1000 requires the removal of federal rights of first refusal in the *regional* transmission planning process.<sup>245</sup>

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regulation granting the rights-of-way.” SC Regulatory Staff Rehearing at 4 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319); SCE&G Rehearing at 19 (citing same).

<sup>241</sup> *Id.* at 6 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 227, 287 n.231); SC Regulatory Staff Rehearing at 4 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 227, 287 n.231); SCE&G Rehearing at 19-20 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 287).

<sup>242</sup> SC Regulatory Staff Rehearing at 4 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 287); SCE&G Rehearing at 19 (quoting same).

<sup>243</sup> *Id.* at 5.

<sup>244</sup> *Id.*; SCE&G Rehearing at 20.

<sup>245</sup> SCE&G Rehearing at 20 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 284) (emphasis added).

121. SCE&G also contends that merely recognizing the rights and restrictions relating to the conveyance of an easement mandated by state law does not, in itself, create a federal right of first refusal.<sup>246</sup> Similarly, NARUC states that a reference in a tariff that state law shall apply when otherwise applicable does not create a federal right of first refusal,<sup>247</sup> while SC Regulatory Staff argues that SCE&G's proposed OATT language does not create a federal right of first refusal but rather acknowledges relevant state law.<sup>248</sup> NARUC further asserts that Order No. 1000 recognizes that the Commission may not and would not infringe on the state's authority over transmission siting, integrated resource planning, or other local laws or regulations that may impact whether or not transmission developers are more likely to build a transmission line. Thus, NARUC contends, in requiring SCE&G to remove the proposed OATT language stating that a transmission developer must secure its own rights-of-way and that the transmission provider's use or control of existing rights-of-way may not be altered without its agreement, the Commission went beyond its directive to simply remove federal right of first refusal provisions from transmission providers' OATTs and may be misapplying that directive in a manner that abrogates state law.<sup>249</sup>

122. SC Regulatory Staff argues that requiring transmission providers to consider proposals for transmission projects that could never be constructed without violating state law is an inefficient use of resources and transforms the regional transmission planning process into a meaningless exercise. In contrast, SC Regulatory Staff contends, SCE&G's restriction of proposed transmission projects to those that do not use SCE&G's right-of-way recognizes that state laws and regulations may limit the ability of nonincumbent transmission developers to construct transmission projects, and, in doing so, supports the timely construction of transmission projects.<sup>250</sup>

123. SCE&G states that, while its proposed OATT language states in one place that "the Transmission Providers' use or control of existing [rights-of-way] may not be altered *unless agreed to by Transmission Providers[,]*" but later omits the phrase "unless agreed

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<sup>246</sup> SCE&G Rehearing at 20.

<sup>247</sup> NARUC Rehearing at 7.

<sup>248</sup> SC Regulatory Staff Rehearing at 4, 5.

<sup>249</sup> NARUC Rehearing at 6-7.

<sup>250</sup> SC Regulatory Staff Rehearing at 5-6 (citing *Request for Rehearing of the North Carolina Utilities Commission and the Public Staff of the North Carolina Utilities Commission*, in Docket Nos. ER13-198-000 and ER13-98-001 at 3 (filed Apr. 22, 2013)).

to by the Transmission Provider”.<sup>251</sup> SCE&G seeks clarification regarding whether adding the explanatory phrase “unless agreed to by the Transmission Provider” when it discusses the use of its rights-of-ways will be an adequate remedy when it submits its compliance filing. To the extent that it is not, SCE&G seeks rehearing, arguing that the Commission has exceeded its jurisdiction and otherwise acted in an arbitrary and capricious manner.<sup>252</sup>

124. In its request for clarification, LS Power states that, in the First Compliance Order, the Commission stated that “[i]t would be appropriate for SCE&G to consider whether an entity has existing rights-of-way . . . as part of its process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.”<sup>253</sup> While LS Power does not seek rehearing of the Commission’s determination that right-of-way ownership can be considered when selecting a transmission facility in the regional transmission plan for purposes of cost allocation, LS Power states that, to ensure that such ownership is not given inappropriate weight, the Commission should require SCE&G to revise its OATT to provide that a transmission developer with existing rights-of-way must “indicate whether it would incur any incremental costs in connection with placing new and additional facilities on such existing rights-of-way.”<sup>254</sup>

**(b) Commission Determination**

125. On rehearing, petitioners argue that SCE&G’s proposed OATT provision requiring that only projects that do not alter the transmission providers’ use or control of rights-of-way will be considered for inclusion in the regional [transmission] plan for purposes of cost allocation merely recognizes state laws and regulations and does not create a federal right of first refusal. Upon reconsideration, we agree and grant the requests for rehearing with respect to this provision.

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<sup>251</sup> SCE&G Rehearing at 20 (emphasis added).

<sup>252</sup> SCE&G Rehearing at 20.

<sup>253</sup> LS Power Rehearing at 1-2 (citing First Compliance Order, 143 FERC ¶ 61,058 at P 131).

<sup>254</sup> *Id.* at 2 (citing *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057, at P 238 (2013)). LS Power states that although the California Independent System Operator voluntarily offered to add this language to its tariff, SCE&G could also incorporate the language in its tariff when making its further compliance filing.

126. Noting that federal rights of first refusal create a barrier to entry that discourages nonincumbent transmission developers from proposing alternative transmission solutions for consideration at the regional level,<sup>255</sup> the Commission required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.<sup>256</sup> Order No. 1000 concluded that such reforms were necessary to eliminate practices that have the potential to undermine the identification and evaluation of more efficient or cost-effective alternatives to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and unreasonable, or otherwise result in undue discrimination by public utility transmission providers.<sup>257</sup> Nothing has changed the Commission's view that Order No. 1000's requirement to remove federal rights of first refusal is in the public interest. As the Commission made clear in several orders, Order No. 1000 requires that federal rights of first refusal must be eliminated from Commission-jurisdictional tariffs and agreements.<sup>258</sup>

127. We continue to require the elimination of federal rights of first refusal from Commission-jurisdictional tariffs or agreements, but that is not the issue here. Rather, the issue is whether it is appropriate for the Commission to prohibit SCE&G from merely recognizing state or local laws or regulations relating to "the use and control of rights-of-way"<sup>259</sup> when deciding whether to consider a proposed transmission project for selection in the regional transmission plan for purposes of cost allocation. On balance, we conclude that the Commission should not prohibit SCE&G from recognizing state or local laws and regulations as a threshold issue. Regardless of whether state or local laws

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<sup>255</sup> See, e.g., Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 257.

<sup>256</sup> *Id.* P 313.

<sup>257</sup> *Id.* P 226. See also Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 286 (stating that "Indeed, the Supreme Court has said that 'the history of Part II of the Federal Power Act indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.' In requiring the elimination of federal rights of first refusal from Commission-jurisdictional tariffs and agreements, we are acting in accordance with our duty to maintain competition.").

<sup>258</sup> See, e.g., *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057, at P 118 (2013); *ISO New England Inc.*, 143 FERC ¶ 61,150, at P 227 (2013); First Compliance Order, 142 FERC ¶ 61,215 at P 200.

<sup>259</sup> SCE&G, Third Revised Vol. No. 5, Attachment K, § VII.C.g.

or regulations are expressly referenced in SCE&G's OATT, some such laws or regulations may independently prohibit a nonincumbent transmission developer from developing a particular transmission project in South Carolina, even if the nonincumbent transmission developer's transmission project would otherwise be selected in the regional transmission plan for purposes of cost allocation under the SCRTP process. Indeed, in response to arguments about existing references to state-granted rights of first refusal in Commission-approved tariffs or agreements, the Commission explained that "such a right based on a state or local law or regulation would still exist under state or local law even if removed from the Commission-jurisdictional tariff or agreement and nothing in Order No. 1000 changes that law or regulation, for Order No. 1000 is clear that nothing therein is 'intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities.'"<sup>260</sup>

128. We find compelling the arguments petitioners expressed on rehearing regarding the potential for inefficiencies and delays that may occur if SCE&G must remove the provision requiring that, "only projects that do not alter the [t]ransmission [p]roviders' use or control of rights-of-way will be considered for inclusion in the regional plan for purposes of cost allocation."<sup>261</sup> In light of these arguments, we conclude that requiring SCE&G to remove this provision from its OATT would result in a regional transmission planning process that does not efficiently account for the existence of state or local laws or regulations that impact the siting, permitting, and construction of transmission facilities. In particular, we find that ignoring these state or local laws or regulations at the outset of the regional transmission planning process would be counterproductive and inefficient, as it would require SCE&G's regional transmission planning process to expend time and resources to evaluate potential transmission projects that, under state or local laws or regulations, cannot be developed by a nonincumbent transmission developer. Moreover, the selection of a transmission project proposed by a nonincumbent transmission developer in the regional transmission plan for purposes of cost allocation that the nonincumbent transmission developer is not eligible under state or local laws or regulations to develop could hinder the possibility that needed transmission facilities would move forward. It could also unnecessarily delay the development of needed transmission facilities because SCE&G would still be required to evaluate proposed transmission projects for potential selection in the regional transmission plan for purposes of cost allocation that only the incumbent transmission developer may develop under state or local laws or regulations. Indeed, one purpose of Order No. 1000

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<sup>260</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 381.

<sup>261</sup> SCE&G, Third Revised Vol. No. 5, Attachment K, § VII.C.g.

is to facilitate the likelihood that needed transmission facilities will move forward.<sup>262</sup> Petitioners have persuaded us that it is appropriate for SCE&G to recognize state or local laws and regulations as a threshold matter in the regional transmission planning process and, accordingly, we grant rehearing and find that SCE&G may retain its proposed provisions providing that only projects that do not alter the transmission providers' use or control of rights-of-way will be considered for inclusion in the regional plan for purposes of cost allocation.<sup>263</sup>

129. As discussed in next section of this order, we reject as moot SCE&G's proposal to require a transmission developer as part of the information requirements to explain whether the developer has existing rights-of-way or the ability to acquire rights-of-way necessary for the proposed transmission project. Therefore, we similarly reject as moot LS Power's clarification request that SCE&G revise its OATT to require a transmission developer to indicate whether it would incur any incremental costs in connection with placing new and additional facilities on an existing rights-of-way.

### iii. Compliance

#### (a) Summary of Compliance Filing

130. SCE&G proposes to remove from its OATT the originally proposed language that allowed only transmission projects that do not alter the transmission providers' use or control of rights-of-way to be considered for selection in the regional transmission plan for purposes of cost allocation.<sup>264</sup> However, SCE&G has revised its OATT to add rights-of-way as a factor to consider during the initial screening process. Specifically, SCE&G proposes that an entity proposing a transmission project for potential selection in the regional transmission plan for purposes of cost allocation must explain "[w]hether the entity has existing rights-of-way or the ability to acquire rights-of-way necessary for the proposed project."<sup>265</sup> An entity proposing a regional transmission project for potential selection in the regional transmission plan for purposes of cost allocation must include

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<sup>262</sup> See, e.g., Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 43-47 (noting that the requirements in Order No. 1000 are designed to "increase the likelihood that transmission facilities in the transmission plan will move forward to construction.").

<sup>263</sup> SCE&G, Third Revised Vol. No. 5, Attachment K, §§ VII.A.f & VII.C.g, as proposed in SCE&G's October 11, 2012 compliance filing.

<sup>264</sup> SCE&G Transmittal at 7.

<sup>265</sup> SCE&G Attachment K § VII.C.c.

this information in the original submission in order for the transmission providers to evaluate the proposed project.

131. Additionally, SCE&G revised its OATT to define an upgrade as “[a]n improvement to, addition to, or replacement of a part of an existing transmission facility.”<sup>266</sup>

**(b) Commission Determination**

132. In light of our decision to grant rehearing regarding whether SCE&G may require a transmission project not alter a transmission provider’s existing right-of-way to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, we find that SCE&G’s proposal to delete the provisions it originally proposed in sections VII.A.f and VII.C.g of its Attachment K is moot. However, as SCE&G notes in its request for rehearing,<sup>267</sup> these two provisions are not exactly the same because the first provision requires that a transmission project not alter a transmission provider’s existing right-of-way “unless agreed to by the transmission providers,” while that phrase is omitted in the second provision. Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to restore sections VII.A.f and VII.C.g of Attachment K as they were originally proposed in SCE&G’s October 11, 2012 compliance filing, with the addition of “unless agreed to by the transmission providers” to section VII.C.g. Similarly, in light of our decision to grant rehearing regarding SCE&G’s proposal to require that, for a proposed transmission project to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, the incumbent transmission providers’ use or control of existing rights-of-way may not be altered unless agreed to by the transmission providers, we find that SCE&G’s proposal to require a transmission developer to provide an explanation of “[w]hether the entity has existing rights-of-way or the ability to acquire rights-of-way necessary for the proposed project” as part of the initial screening process<sup>268</sup> is moot. Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to remove this provision from its OATT.

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<sup>266</sup> *Id.* § II.I.

<sup>267</sup> SCE&G Rehearing at 20.

<sup>268</sup> SCE&G Attachment K § VII.C.c.

133. Finally, we find that SCE&G's proposal to define an upgrade as an improvement to, addition to, or replacement of a part of an existing transmission facility is consistent with Order No. 1000.<sup>269</sup>

**b. Qualification Criteria**

134. Order No. 1000 required each public utility transmission provider to revise its OATT to establish appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation.<sup>270</sup> These criteria must not be unduly discriminatory or preferential when applied to either an incumbent transmission provider or a nonincumbent transmission developer.<sup>271</sup> In addition, public utility transmission providers must adopt procedures for timely notifying transmission developers of whether they satisfy the region's qualification criteria and allowing them to remedy any deficiencies.<sup>272</sup>

135. Order No. 1000-A clarified that it would be an impermissible barrier to entry to require a transmission developer to demonstrate, as part of the qualification criteria, that it has, or can obtain, state approvals necessary to operate in a state to be eligible to propose a transmission facility.<sup>273</sup>

**i. Financial Criteria**

**(a) First Compliance Order**

136. In the First Compliance Order, the Commission found that the provisions concerning financial qualification criteria in SCE&G's filing partially complied with the requirements of Order No. 1000.<sup>274</sup> The Commission found that, generally, the financial

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<sup>269</sup> The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

<sup>270</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

<sup>271</sup> *Id.* P 323.

<sup>272</sup> *Id.* P 324.

<sup>273</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

<sup>274</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 145.

qualification criteria that SCE&G established were fair and not unreasonably stringent. The Commission explained that SCE&G provided flexibility for a prospective transmission developer to demonstrate that it has the necessary financial resources through either credit ratings or financial statements, as well as a satisfactory written guarantee from a parent company to be unconditionally responsible for all financial obligations.<sup>275</sup> The Commission found, however, that SCE&G's proposal did not comply with Order No. 1000 in several respects.

137. Specifically, the Commission found that it was unclear what SCE&G's intention was regarding the financial qualification criterion that required a transmission developer to demonstrate its ability to assume liability for major losses resulting from any failure of transmission facilities. The Commission noted that SCE&G did not explain how a prospective transmission developer would demonstrate such ability other than through the creditworthiness financial qualification criteria that a transmission developer is already required to provide. Because the provision was unclear, the Commission did not accept this financial criterion and directed SCE&G in the further compliance filing to either remove the provision or explain why the provision is necessary and not unduly discriminatory when transmission developers are already required to meet creditworthiness requirements.<sup>276</sup>

138. In addition, SCE&G's proposal did not provide an opportunity for a prospective transmission developer to remedy any deficiencies. The Commission noted that SCE&G proposed that within 30 days of receiving a transmission developer's application for eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, SCE&G and Santee Cooper would notify the prospective transmission developer of any deficiencies in its application. However, SCE&G's proposed OATT revisions did not describe whether a prospective transmission developer may remedy any deficiencies, as required by Order No. 1000. The Commission therefore required SCE&G to revise its OATT to provide an opportunity for a prospective transmission developer to remedy any such deficiencies.<sup>277</sup>

139. The Commission further found that SCE&G's proposal that only qualified transmission developers may propose a regional transmission project for consideration in the regional transmission plan for purposes of cost allocation was inconsistent with Order

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<sup>275</sup> *Id.*

<sup>276</sup> *Id.* P 146.

<sup>277</sup> *Id.* P 147. The Commission also noted that this requirement applied not only to SCE&G's proposed financial qualification criteria, but also to its proposed technical qualification criteria. *Id.* n.191.

No. 1000. The Commission stated that whether a transmission project is *proposed* during the regional transmission planning process is different than whether there is an entity qualified to *develop* such a project. Therefore, the Commission directed SCE&G to remove this provision.<sup>278</sup>

140. With respect to SCE&G's proposed definition of a nonincumbent transmission developer, the Commission found that the proposal to limit such entities to those that are not also enrolled transmission providers was inconsistent with Order No. 1000. The Commission explained that Order No. 1000 states that a nonincumbent transmission developer includes "a public utility transmission provider that proposes a transmission project outside of its existing retail distribution service territory or footprint, where it is not the incumbent for purposes of that project."<sup>279</sup> The Commission stated that it was possible that a current or future transmission provider enrolled in the SCRTP region might seek to propose a transmission project outside of its existing retail distribution service territory or footprint, and SCE&G's definition of nonincumbent transmission provider could preclude that enrolled transmission provider from doing so. Accordingly, the Commission directed SCE&G to revise its definition of nonincumbent transmission developer to be consistent with Order No. 1000.<sup>280</sup>

(b) **Requests for Rehearing or Clarification**

(1) **Summary of Requests for Rehearing or Clarification**

141. LS Power states that the Commission erred in accepting as not unreasonably stringent SCE&G's narrow financial qualification criteria, which LS Power contends create a barrier to entry for nonincumbent transmission developers in South Carolina.<sup>281</sup> LS Power contends that SCE&G's financial qualification criteria are more stringent than the qualification criteria that the Commission accepted in other transmission planning

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<sup>278</sup> *Id.* P 148. The Commission also noted that this requirement applied not only to SCE&G's proposed financial qualification criteria, but also to its proposed technical qualification criteria. *Id.* n.193.

<sup>279</sup> *Id.* P 149 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 225).

<sup>280</sup> *Id.*

<sup>281</sup> LS Power Rehearing at 2-3 (citing *Fla. Gas Transmission Co. v. FERC*, 604 F.3d 636 (D.C. Cir. 2010); *Northern States Power Co. v. FERC*, 30 F. 3d 177 (D.C. Cir. 1994); *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto Ins. Co.*, 462 U.S. 29 (1983)).

regions, such as PJM Interconnection, L.L.C. (PJM).<sup>282</sup> LS Power asserts that, while SCE&G's financial qualification criteria focus on credit ratings or financial statements, PJM's financial qualification criteria can be met with a demonstration of "current and expected financial capability," providing an opportunity for a special-purpose independent transmission company to establish its credentials.<sup>283</sup> LS Power asserts that the Commission should require that SCE&G revise its financial qualification criteria to include similar language.<sup>284</sup>

142. Additionally, LS Power states, SCE&G does not justify why the proposed financial qualification criteria are the only criteria that would serve to identify creditworthy transmission developers.<sup>285</sup> LS Power asserts that financially qualified transmission developers should not be precluded from proposing transmission projects because they do not meet such artificial limitations, as such barriers to entry harm ratepayers.<sup>286</sup> LS Power asserts for there to be true flexibility for a transmission developer to demonstrate its creditworthiness, there must be an alternative provision that allows a transmission developer to establish its creditworthiness independent of credit ratings or a parent company's guarantee.<sup>287</sup>

143. LS Power raises specific concerns about each of the criteria proposed by SCE&G. For example, LS Power objects to the criteria that a potential developer have a certain credit rating, or provide financial statements that demonstrate a certain credit rating. LS Power notes that Cross Texas Transmission, through which LS Power and its affiliates are constructing transmission projects in Texas and Nevada, did not have a credit rating or recent financial statements demonstrating such a credit rating. Thus, such an entity would have been precluded from developing projects in South Carolina without a blanket parent guarantee.<sup>288</sup>

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<sup>282</sup> *Id.* at 3 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 263 (2013)).

<sup>283</sup> *Id.* at 3 (citing PJM Tariff at Section. 1.5.8(a)(vi)).

<sup>284</sup> *Id.* at 3.

<sup>285</sup> *Id.* at 4.

<sup>286</sup> *Id.* at 3-4.

<sup>287</sup> *Id.* at 8.

<sup>288</sup> *Id.* at 6.

144. LS Power argues that the criteria that a special purpose entity's parent company provide a guarantee to be unconditionally responsible for all financial obligations commercially and practically means that there is no legal difference between the special purpose entity and the parent company. Thus, the requirement unreasonably prohibits non-recourse financing, which LS Power explains is common in the industry for both independent transmission developers and incumbent transmission owners. LS Power contends that such criteria would have disqualified the company structure used to develop the Trans-Alleghany Interstate Line.<sup>289</sup>

145. Moreover, LS Power states that the guarantee provision is vaguely written and the phrase "all financial obligations" is not defined. Specifically, LS Power contends that it is unclear at what stage of the regional transmission planning process the parent company must make such guarantee, to whom the parent company must make the guarantee, and which costs the guarantee must cover. LS Power asserts that ratepayers will ultimately pay the "financial obligations" related to cost-of-service transmission development when the transmission project is placed into service such that at most the parent company's guarantee should only be for any incremental costs that would be incurred if the transmission project were to be abandoned.<sup>290</sup> LS Power concludes that clarifying details regarding the "guarantee" and "financial obligation" provision are essential to demonstrate that SCE&G's proposed financial qualification criteria are just and reasonable and are not an impermissible barrier to entry, and thus that the Commission erred in accepting them.<sup>291</sup> LS Power further argues that the requirement that a transmission developer must be in business for a year could exclude companies created solely for the development of one project on a stand-alone basis.<sup>292</sup> LS Power states that the requirement that a transmission developer must be in business for a year should instead apply to the transmission developer or its affiliate, partner, or parent company.<sup>293</sup>

## (2) Commission Determination

146. We deny in part and grant in part LS Power's request for rehearing. We affirm the finding in the First Compliance Order that the financial qualification criteria that SCE&G established are fair and not unreasonably stringent. The criteria provide flexibility for a

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<sup>289</sup> *Id.* at 5.

<sup>290</sup> *Id.* at 7.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.* at 5-6.

<sup>293</sup> *Id.* n.12.

prospective transmission developer to demonstrate that it is creditworthy through any one of the following: (a) a credit rating of at least “Baa3” (Moody’s) or “BBB minus” (Standard & Poor’s or Fitch’s); (b) its most recent financial statement, which demonstrates that it meets standards that are at least equivalent to the standards underlying credit ratings of “Baa3” or “BBB minus”, based on the sole judgment of the transmission providers enrolled in the SCRTP region; or (c) the transmission developer’s parent company meets either (a) or (b) and provides a satisfactory written guarantee to be unconditionally responsible for all of the transmission developer’s financial obligations.<sup>294</sup>

147. While LS Power argues that we should direct SCE&G to allow a transmission developer to establish creditworthiness independent of credit ratings or a parent company’s guarantee, we find that the three options SCE&G proposes are sufficient. For example, to provide flexibility to transmission developers that do not want to go through the process of obtaining a credit rating, the Commission has previously required alternative financial criteria in lieu of credit ratings, such as financial statements to provide flexibility to a prospective developer.<sup>295</sup> By including in its OATT a method for a transmission developer to demonstrate creditworthiness beyond credit ratings, SCE&G has met this requirement. Additionally, SCE&G’s proposal, as modified below, accommodates a stand-alone company that has yet to establish credit ratings or produce financial statements by allowing a parent company to provide the financial assurances that the transmission developer is financially capable of constructing the transmission project. To the extent that LS Power requests criteria that would allow an entity that does not have a credit rating, has no recent financial statements, and cannot obtain a parental guarantee to qualify as a transmission developer, we deny rehearing. Order No. 1000 did not require transmission planning regions to have the same developer qualification criteria but provided flexibility to transmission planning regions to accommodate regional differences.<sup>296</sup> Although we support permitting alternative ways to meet Order No.

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<sup>294</sup> SCE&G Attachment K § VII.E.1.

<sup>295</sup> See, e.g., *Black Hills Power, Inc.*, 123 FERC ¶ 61,020, at P 20 (2008) (affirming that “transmission providers should not automatically determine that an applicant is not creditworthy if it does not have a credit rating or that credit rating is below investment grade”); see also *Policy Statement on Electric Creditworthiness* (Policy Statement on Credit-Related Issues for Electric OATT Transmission Providers, Independent System Operators and Regional Transmission Organizations), 109 FERC ¶ 61,186, at PP 13-14 (2004).

<sup>296</sup> See, e.g., Order No. 1000-A, 139 FERC ¶ 61,132 at P 440 (declining to adopt standardized qualification criteria).

1000's requirements, we also recognize that SCE&G requires assurance that a potential transmission developer is creditworthy, and we find that SCE&G's proposal appropriately balances these two objectives.

148. However, we grant rehearing of the acceptance in the First Compliance Order of the parental guarantee provision and the requirement to be in business for at least one year. We agree with LS Power that the parental guarantee provision should be more limited than what SCE&G had proposed. The provision states that a transmission developer can rely on a parent company that meets the creditworthiness criteria if the parent company provides a satisfactory written guarantee to be unconditionally responsible for *all* of the transmission developer's financial obligations.<sup>297</sup> Upon reconsideration, we find it is unreasonably stringent to require that a transmission developer that relies on its parent company to meet the creditworthiness qualification requirement obtain an unconditional guarantee for all of the transmission developer's financial obligations, even those that are not related to a transmission project a transmission developer may propose in the SCRTP process. We also agree with LS Power that it is unreasonably stringent and, therefore, would be an impermissible barrier to entry to prohibit a transmission developer that may otherwise meet the creditworthiness requirements on its own from relying on its affiliate or parent company to meet the requirement to have been in business for at least one year. We therefore grant rehearing and direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing that: (1) revises the parental guarantee requirement to state that a transmission developer relying on its parent company to demonstrate that it is creditworthy must provide a satisfactory written guarantee from its parent company to be unconditionally responsible for all of the transmission developer's financial obligations that are related to any transmission project the transmission developer may propose for potential selection in the regional transmission plan for purposes of cost allocation; and (2) revises the requirement to be in business for at least one year to state that the transmission developer, affiliate, or parent company has been in business at least one year.

(c) **Compliance**

(1) **Summary of Compliance Filing**

149. SCE&G states that, in response to the finding that it had not adequately justified its proposal requiring a transmission developer to demonstrate its ability to assume liability for major losses, its intent was to protect retail customers by ensuring that developers were financially capable of withstanding losses. SCE&G states that the criterion protects retail customers from being held financially responsible for a

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<sup>297</sup> SCE&G Attachment K § VII.E.1.

transmission developer's inability to protect itself against losses. Notwithstanding its view that the Commission should accept the provision, SCE&G has removed it from its OATT and states that it will instead address the concerns the provision was meant to address in its contract with a transmission developer whose transmission project is selected in the regional transmission plan for purposes of cost allocation.<sup>298</sup>

150. To comply with the requirement to provide transmission developers an opportunity to remedy any deficiencies with respect to the qualification criteria, SCE&G has revised its OATT to state that, within 30 days of receiving a developer's qualification application, the transmission providers will notify the developer of any deficiencies in the application and developers "may remedy any deficiency in the application."<sup>299</sup> SCE&G has also revised its OATT to state that, within six weeks of receiving a completed qualification application, the transmission providers will make a determination as to whether the developer's qualification application is approved and "will advise the [d]eveloper accordingly."<sup>300</sup>

151. SCE&G states that it has also revised its OATT to comply with the Commission's directive to remove the requirement that any entity that proposes a transmission project has to meet the qualification criteria, even if the entity does not intend to develop the project. For example, SCE&G proposes to revise its OATT to state that any entity may propose a regional transmission project for consideration.<sup>301</sup> Moreover, SCE&G proposes to revise its OATT to provide that only those transmission developers, including enrolled transmission providers, that are seeking cost allocation for a proposed regional transmission project must submit the developer qualification application<sup>302</sup> and meet the financial and technical qualification criteria.<sup>303</sup> In addition, to comply with the directive to revise its proposed definition of nonincumbent transmission developer to be consistent with Order No. 1000, SCE&G proposes to delete the definition from its OATT and

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<sup>298</sup> SCE&G Transmittal at 13.

<sup>299</sup> SCE&G Attachment K § VII.E.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* §§ VII.A, VII.C.

<sup>302</sup> SCE&G proposes to define a qualification application as an application submitted to the transmission providers by a transmission developer seeking to establish its eligibility to request cost allocation for a proposed regional transmission project. SCE&G Attachment K § II.F.

<sup>303</sup> SCE&G Attachment K § VII.E.

instead define a “Developer” as an entity that seeks to develop a regional transmission project.<sup>304</sup>

152. SCE&G also states that, while not related to the First Compliance Order, it has made non-substantive, clarifying edits to its OATT regarding the provisions governing the extent to which a qualified transmission developer remains qualified.<sup>305</sup> First, SCE&G proposes to revise its OATT to clarify that a prospective transmission developer must submit a completed qualification application to permit the transmission providers to determine whether the developer is technically, financially, and otherwise capable of (1) developing, licensing, and constructing the proposed regional transmission project for which it is seeking cost allocation and (2) owning, operating, and maintaining the proposed transmission facilities consistent with Good Utility Practice and applicable reliability criteria for the life of the proposed project.<sup>306</sup> SCE&G’s revised OATT states that transmission developers must establish their eligibility prior to requesting cost allocation.<sup>307</sup> In addition, SCE&G proposes to revise its OATT to provide that any determination that the transmission developer has met the technical or financial criteria is specific only for the proposed regional transmission project for which the developer is seeking cost allocation and any other transmission project within five years that is of similar, or lesser, size and scope.<sup>308</sup> SCE&G has also revised its OATT to state that the transmission providers reserve the right to reevaluate a transmission developer’s qualification application at any time for any reason.<sup>309</sup> In addition, SCE&G proposes to add language to its OATT stating that “[n]o Developer’s Qualification Application will be approved unless the Developer is determined to be creditworthy by the Transmission Providers. Developers must continue to be creditworthy under the foregoing standards at all time[s]. [If] developer fails to satisfy those standards at any time, it will not be creditworthy.”<sup>310</sup>

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<sup>304</sup> *Id.* § II.A.

<sup>305</sup> SCE&G Transmittal at 13.

<sup>306</sup> SCE&G Attachment K § VII.E.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.* SCE&G FERC Electric Tariff, Third Revised Volume No. 5, Attachment K, § VII.E.2.

<sup>309</sup> *Id.*

<sup>310</sup> *Id.* § VII.E.1.

153. SCE&G made other revisions to its previously approved financial qualification criteria. SCE&G revised the requirement that a transmission developer provide a statement of legal composition to state that the developer must include all ownership.<sup>311</sup> SCE&G clarified that, in order to “be determined to be creditworthy,” the transmission developer must meet “at least” one of the following financial criteria: an appropriate credit rating, financial statements that support an appropriate credit rating, or a parental guarantee.<sup>312</sup> In addition, SCE&G proposes to revise the financial qualification criterion that allowed a transmission developer to provide recent financial statements that demonstrate that it meets standards equivalent to a specific credit rating to add that the determination will be “based on the sole judgment of the Transmission Providers.”<sup>313</sup>

## (2) Commission Determination

154. We find that SCE&G’s proposed revisions comply with the directives of the First Compliance Order related to the financial qualification criteria. To address the Commission’s concerns about the proposed financial criterion that requires a demonstration of a transmission developer’s ability to assume liability for major losses resulting from any failure of transmission facilities, SCE&G proposes to delete the criterion. We accept that proposal.<sup>314</sup>

155. We also find that SCE&G has partially complied with the requirement to revise its OATT to provide an opportunity to a prospective transmission developer to remedy any deficiencies in its qualification application. Specifically, SCE&G proposes that, within 30 days of receiving a developer’s qualification application, the transmission providers will notify the developer of any deficiencies in the application and developer may remedy any deficiency.<sup>315</sup> SCE&G also included additional language to state that the transmission providers will determine within six weeks whether the developer’s

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<sup>311</sup> *Id.* § VII.E.1.f.

<sup>312</sup> *Id.* § VII.E.1.

<sup>313</sup> *Id.* § VII.E.1(b).

<sup>314</sup> SCE&G states that it intends to handle the issues this criterion was meant to address in its Coordination Agreement with a transmission developer whose project is selected in the regional transmission plan for purposes of cost allocation. Transmittal at 13. We address the Coordination Agreement below in the Evaluation Process section of this order.

<sup>315</sup> *Id.* § VII.E.

qualification application is approved and notify the prospective developer accordingly.<sup>316</sup> However, SCE&G does not include a deadline for when a transmission developer must provide the information to remedy any identified deficiencies. We find that, to ensure the transparency of the regional transmission planning process' review of transmission developers' qualifications, SCE&G must specify in its OATT the time period in which a transmission developer may cure any deficiencies. We also find that this time period must provide a reasonable opportunity for transmission developers to cure any identified deficiencies. Therefore, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to revise its OATT to provide a defined, reasonable time period in which a transmission developer may remedy of any deficiencies in its qualification application.<sup>317</sup>

156. In addition, we find that SCE&G has complied with the directive to remove the provision that allowed only qualified transmission developers to propose a regional transmission project for consideration in the regional transmission plan for purposes of cost allocation. We find that SCE&G's proposed OATT revisions will allow stakeholders as well as qualified transmission developers to make such project proposals. We also accept SCE&G's proposed new OATT revision stating that only transmission developers seeking cost allocation for a proposed regional transmission project must meet the technical and financial qualification criteria.<sup>318</sup> Together, these OATT revisions will provide for more robust stakeholder involvement in the regional transmission planning process. We further find that SCE&G's proposal to delete its definition of nonincumbent transmission developer and to define a "Developer" as an entity that seeks to develop a regional transmission project is consistent with Order No. 1000.<sup>319</sup> This change also addresses the Commission's concern that the original proposal did not allow a transmission provider that had enrolled in the transmission planning region to be considered a nonincumbent transmission developer and therefore complies with the directive in the First Compliance Order.

157. We also accept SCE&G's proposal to add language stating that whether a transmission developer's financial statements demonstrate that it meets standards that are at least equivalent to the standards underlying the minimum credit rating are "based on

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<sup>316</sup> *Id.*

<sup>317</sup> Based on SCE&G's proposed regional transmission planning process schedule, it appears that transmission developers could have approximately 18 days to remedy any deficiencies without adjusting other dates in the schedule.

<sup>318</sup> *Id.*

<sup>319</sup> *Id.* § II.A.

the sole judgment” of the transmission providers in the SCRTP region.<sup>320</sup> Our understanding of SCE&G’s revised proposal is that, if a transmission developer chooses to show it is creditworthy by submitting financial statements and the transmission providers judge those statements to be deficient, the transmission developer will have an opportunity to remedy any deficiencies. Furthermore, the proposed language provides that the transmission providers will advise transmission developers if they meet the qualification criteria within six weeks of receiving a qualification application. We expect such notification will explain, if a transmission developer is found not to qualify, why they did not and on what basis the transmission providers made that determination, including any finding relating to whether financial statements meet standards at least equivalent to the minimum credit ratings. In addition, we accept SCE&G’s proposed new language stating that no transmission developer’s qualification will be approved unless the developer is determined to be creditworthy and that a transmission developer will no longer be creditworthy if the developer fails to satisfy those standards at any time.<sup>321</sup> We understand that any finding by the transmission providers that a transmission developer no longer qualifies will be subject to the same provisions that provide a transmission developer an opportunity to remedy any deficiencies, as discussed above, as well as an explanation from the transmission providers if they ultimately decide that a transmission developer no longer meets the creditworthiness requirements.

**ii. Technical Criteria**

**(a) First Compliance Order**

158. In the First Compliance Order, the Commission found that the technical qualification criteria provisions in SCE&G’s filing partially complied with the requirements of Order No. 1000.<sup>322</sup> The Commission concluded that, as modified, SCE&G’s proposed technical qualification criteria were fair and not unreasonably stringent, not unduly discriminatory or preferential, and provide each potential transmission developer the opportunity to demonstrate that it has the necessary technical expertise to develop, construct, own, operate, and maintain transmission facilities.<sup>323</sup>

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<sup>320</sup> *Id.* § VII.E.

<sup>321</sup> *Id.* § VII.E.1.

<sup>322</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 155.

<sup>323</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324. The Commission noted that the compliance directives with respect to the financial qualification criteria also apply to the technical qualification criteria. Specifically, the Commission directed SCE&G to revise its tariff to provide an opportunity for a prospective transmission

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However, the Commission required SCE&G to revise its technical criteria to remove the qualification criterion of demonstrating a past record of compliance with NERC standards. The Commission found that such a minimum criteria would require NERC registration to be in effect prior to qualification in order to demonstrate a historical record of NERC compliance, contrary to Order No. 1000.<sup>324</sup>

159. The Commission also found SCE&G's proposed qualification criterion to consider the historical ability of the entity in question in siting and permitting inconsistent with Order No. 1000-A. The Commission noted that, in Order No. 1000-A, the Commission clarified that "it would be an impermissible barrier to entry, to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain state approvals necessary to operate in a state, including state public utility status or the right of eminent domain, to be eligible to propose a transmission facility."<sup>325</sup> Therefore, the Commission directed SCE&G to remove the qualification criterion requiring a historical ability to site and permit transmission facilities.<sup>326</sup>

160. Additionally, the Commission found that SCE&G did not explain whether the qualification criteria applied to incumbent transmission owners. Therefore, the Commission directed SCE&G to submit a compliance filing that provides not unduly discriminatory qualification criteria for incumbent transmission owners and nonincumbent transmission developers.<sup>327</sup>

**(b) Summary of Compliance Filing**

161. SCE&G proposes to retain the qualification criteria requesting information regarding a transmission developer's past record of compliance with NERC standards and historical ability to site, permit, own, and operate transmission facilities. However, SCE&G proposes to revise its OATT to request that prospective transmission developers

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developer to remedy any deficiencies with respect to the technical qualification criteria, as well as clarify that the technical qualification criteria do not apply to an entity that proposes a transmission project for consideration in the regional transmission planning process but that does not intend to develop the transmission project. *Id.* We address these requirements in the prior section on Financial Criteria.

<sup>324</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 156.

<sup>325</sup> *Id.* P 157 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 441).

<sup>326</sup> *Id.* P 157.

<sup>327</sup> *Id.* P 158.

provide such information “[t]o the extent such information is available.”<sup>328</sup> SCE&G states that this will permit transmission developers to provide the listed information but does not require any developer to be registered with NERC prior to the qualification period nor does it require a developer to demonstrate that it either has, or can obtain state approvals necessary to operate in a state.<sup>329</sup>

162. To comply with the requirement related to whether the qualification criteria apply to incumbent transmission owners, SCE&G proposes to revise its OATT to state that transmission developers, “including the enrolled transmission providers,” must meet the technical and financial qualification criteria.<sup>330</sup>

**(c) Commission Determination**

163. We find that SCE&G’s proposed revisions to its technical criteria comply with the directives in the First Compliance Order. In the First Compliance Order, the Commission directed SCE&G to revise its technical criteria to remove the qualification criterion of demonstrating a past record of compliance with NERC standards and the qualification criterion requiring a historical ability to site and permit transmission facilities. Although on compliance SCE&G has not proposed to remove these criteria, we find that by clarifying that the provision of such information is optional (i.e., that it is requested to the extent such information is available), SCE&G meets the requirements of Order No. 1000. The Commission also found that SCE&G did not explain whether the qualification criteria applied to incumbent transmission owners. On compliance, SCE&G revised its OATT to state that transmission developers, including enrolled transmission providers, must meet the qualification criteria.<sup>331</sup> Accordingly, we accept the proposed revision as consistent with the directive in the First Compliance Order.

**c. Information Requirements**

164. Order No. 1000 required each public utility transmission provider to identify in its OATT the information that a prospective transmission developer must submit in support of a transmission project proposed in the regional transmission planning process.<sup>332</sup> The

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<sup>328</sup> SCE&G Attachment K § VII.E.2.

<sup>329</sup> SCE&G Transmittal at 14.

<sup>330</sup> SCE&G Attachment K § VII.E.

<sup>331</sup> *Id.*

<sup>332</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

information requirements must be sufficiently detailed to allow a proposed transmission project to be evaluated comparably to other transmission facilities proposed in the regional transmission planning process. The information requirements must be fair and not be so cumbersome as to effectively prohibit transmission developers from proposing transmission facilities, yet not be so relaxed that they allow for relatively unsupported proposals.<sup>333</sup> Order No. 1000 also required each public utility transmission provider to identify in its OATT the date by which a transmission developer must submit information on a proposed transmission project to be considered in a given transmission planning cycle.<sup>334</sup>

**i. First Compliance Order**

165. In the First Compliance Order, the Commission found that many of the provisions in SCE&G's filing addressing information requirements for submitting proposals complied with the requirements of Order No. 1000.<sup>335</sup> However, regarding SCE&G's proposal to require a \$25,000 deposit for each transmission project submitted, the Commission directed SCE&G to revise its OATT to provide each developer a description of which costs the deposit would be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied.<sup>336</sup> The Commission also found that disputes regarding these issues should be addressed under the dispute resolution provisions in SCE&G's OATT,<sup>337</sup> but also directed SCE&G to describe what remedies transmission developers will have if they dispute the costs or calculations.<sup>338</sup>

166. In addition, the Commission found that the following information that SCE&G proposed to require a prospective transmission developer to provide did not comply with Order No. 1000: (1) a reliability impact assessment including how the transmission project will abide by any transmission standards of the transmission providers with which the transmission project will interconnect; (2) a system impact study demonstrating that no applicable standard is violated at any point on the wide-area grid; and (3) supporting documentation demonstrating that the proposed transmission project is more efficient or

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<sup>333</sup> *Id.* P 326.

<sup>334</sup> *Id.* P 325.

<sup>335</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 172.

<sup>336</sup> *Id.* P 173.

<sup>337</sup> *Id.*

<sup>338</sup> *Id.* P 176.

cost-effective. The Commission found that requiring the prospective transmission developer to perform such studies in order to have its proposed transmission project considered in the regional transmission planning process is overly burdensome. The Commission concluded that such detailed studies are more appropriately performed in the regional transmission planning process to determine whether or not to select a proposed transmission project in the regional transmission plan for purposes of cost allocation. The Commission explained that the information requirements 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. The Commission also noted that the SCRTP transmission planning region must conduct the studies and analysis that it will use to evaluate proposed transmission projects as part of the regional transmission planning process.<sup>339</sup>

## ii. Summary of Compliance Filing

167. Regarding the \$25,000 deposit, SCE&G has revised its OATT to state:

A deposit of \$25,000 will be required for each project submittal, which will be applied towards and trued up based on the documented cost of the Transmission Providers' analysis. The actual costs incurred by the Transmission Providers to analyze projects submitted will be borne by the entity proposing the project. The charge shall not exceed the actual cost of the study. The costs of performing each study will vary by proposal because each proposal raises unique issues. The Transmission Providers will provide to the proposing entity a detailed and itemized accounting of the costs.<sup>340</sup>

168. In addition, SCE&G's proposed OATT revisions clarify that, as recognized by the Commission in the First Compliance Order, any disputes over the deposit and study costs will be addressed under the dispute resolution provisions in its OATT.<sup>341</sup>

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<sup>339</sup> *Id.* P 174.

<sup>340</sup> SCE&G Attachment K § VII.C.

<sup>341</sup> SCE&G Transmittal at 15 (citing First Compliance Order, 143 FERC ¶ 61,058 at P 173).

169. As noted previously, SCE&G has revised its OATT to perform the evaluation of proposed transmission projects in two phases. The first phase is an initial screening process where an entity will propose a regional transmission project and the transmission providers would determine whether it is eligible to request cost allocation. The second phase of the process allows a qualified transmission developer to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation and is where the transmission providers evaluate whether the project would be more efficient or cost-effective than projects in the transmission providers' existing local or regional transmission plans or alternative projects that would be required in lieu of the proposed regional transmission project. The information required from the entity proposing the transmission project will be used by the transmission providers to determine whether a project meets the criteria in each phase.

170. SCE&G states that, as directed in the First Compliance Order, it has removed the following information requirements: (1) a reliability impact assessment including how the transmission project will abide by any transmission standards of the transmission providers with which the transmission project will interconnect; (2) a system impact study demonstrating that no applicable standard is violated at any point on the wide-area grid; and (3) supporting documentation demonstrating that the proposed transmission project is more efficient or cost-effective.<sup>342</sup>

171. A review of SCE&G's proposed OATT revisions indicates that SCE&G retains many of the information requirements that were accepted in the First Compliance Order and proposes to delete or modify other provisions. The new or revised provisions are discussed below. First, SCE&G states that an entity that proposes a transmission project must provide identification of any NERC standards that will be implicated by developing the project.<sup>343</sup> SCE&G proposes to require that an entity provide reports, such as system impact studies or load flow cases, that demonstrate the expected performance of the project.<sup>344</sup> Lastly, SCE&G requires as an information requirement the identification of transmission projects in the latest expansion plans that may be avoided, canceled or postponed as a result of the proposed project, as well as any additional projects, or changes to other planned projects that may be required due to the proposed project.<sup>345</sup>

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<sup>342</sup> SCE&G Transmittal at 15.

<sup>343</sup> SCE&G Attachment K § VII.C(a)(i-vii).

<sup>344</sup> *Id.* § VII.C(b).

<sup>345</sup> *Id.* § VII.C(b-d).

172. SCE&G also proposes to require that any proposed regional transmission project meet all applicable local or regional reliability and transmission provider requirements. SCE&G states that transmission provider requirements include, but are not limited to: (1) system interconnection studies; (2) transmission system performance; (3) transmission facility equipment standards; (4) transmission facility control, instrumentation and communication requirements; (5) reactive power and voltage support; (6) grounding; (7) protection requirements; (8) inspection, maintenance and testing requirements; and (9) emergency operations.<sup>346</sup>

173. SCE&G states that if a proposed regional transmission project satisfies the transmission provider's initial screening criteria and is thus a project that is eligible to be considered for cost allocation, the entity responsible for building the project for which qualification is requested must timely request cost allocation for that project in order for that project to be selected in the regional transmission plan. A transmission developer has no more than 60 days after the transmission provider's determination that the proposed transmission project is eligible for cost allocation to request cost allocation for such a project. The transmission developer must submit a description of the proposed project that details the complete scope of the transmission project including, as relevant: (1) a description of the project's owners; (2) various stages of the project, such as siting, licensing, permitting, rights-of-way acquisition, engineering, construction, proposed in-service date, etc.; (3) a total capital cost estimate of the proposed transmission project, fully loaded, including contingencies and overhead, expressed in current year dollars; and (4) a description of the project financing approach. Cost estimates should be sufficiently detailed to demonstrate a good faith effort at estimating the cost and to allow the transmission providers to understand how the estimate was calculated. SCE&G states that if the cost estimate differs greatly from generally accepted estimates of projects of comparable scope, the developer requesting cost allocation will be required to justify such discrepancies.<sup>347</sup> In the First Compliance Order, the Commission found that each of these provisions complied with Order No. 1000 as part of the information required to submit a regional transmission solution for purposes of cost allocation. Additionally, on compliance, as part of the transmission developer's request for cost allocation, SCE&G states that any request submitted after the applicable foregoing deadline is not timely and will not result in consideration of the proposed regional transmission project for selection in the regional transmission plan.<sup>348</sup>

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<sup>346</sup> *Id.* § VII.C.

<sup>347</sup> *Id.* § VII.D.

<sup>348</sup> *Id.*

174. SCE&G also revised the meeting schedule for local and regional transmission planning to permit non-developers to submit regional transmission projects for purposes of cost allocation.<sup>349</sup>

### iii. Commission Determination

175. In the First Compliance Order, the Commission directed SCE&G to provide greater detail regarding the accounting of the \$25,000 deposit and to remove information requirements that were overly burdensome. On compliance, SCE&G proposed changes to its OATT to partially remove or modify these provisions. We accept SCE&G's proposed OATT revisions that provide greater detail regarding the \$25,000 deposit required as part of the project submission. The revisions ensure that each transmission developer will understand which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied. However, consistent with the Commission's policy for refunds of deposits associated with requests for generator interconnections that are withdrawn,<sup>350</sup> SCE&G must refund to a transmission developer the difference between the deposit and the actual study costs, including interest calculated in accordance with section 35.19a(a)(2) of the Commission's Rules and Regulations.<sup>351</sup> Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to amend its OATT to specify that it will also refund interest on excess study deposits calculated in accordance with section 35.19a(a)(2) of the Commission's Rules and Regulations.

176. We also find that some of the revised provisions addressing information requirements for submitting proposals continue to place an undue burden on the entity proposing a regional transmission project and, therefore, such provisions only partially comply with the directives of the First Compliance Order. SCE&G proposes the following information requirements for submitting proposals in response to the First Compliance Order. First, SCE&G requires an entity proposing a regional transmission project to identify any NERC standards that will be implicated by developing the

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<sup>349</sup> *Id.* §§ III.E.1, III.E.2, Appendix K-3, Appendix K-4; SCE&G Transmittal at 20.

<sup>350</sup> *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *pro forma Large Generator Interconnection Agreement* at section 3.6, *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

<sup>351</sup> 18 C.F.R. § 35.19a(a)(2) (2013).

project<sup>352</sup> and that any proposed regional transmission project meet all applicable local or regional reliability and transmission provider requirements.<sup>353</sup> Second, SCE&G requires the identification of transmission projects in the latest expansion plans that may be avoided, canceled or postponed as a result of the proposed project.<sup>354</sup> Lastly, SCE&G requires that an entity provide reports, such as system impact studies or load flow cases, that demonstrate the expected performance of the project.<sup>355</sup> We find that these proposed revisions do not sufficiently alleviate the Commission's concerns in the First Compliance Order. In the First Compliance Order, the Commission found that it would be too burdensome to require developers to provide certain information, including reliability impact assessments, system impact studies, and comparisons to other projects in the regional transmission plan, at an early stage of the transmission planning process. The Commission concluded that such analyses are more appropriately performed in the regional transmission planning process to determine whether or not to select a proposed transmission project in the regional transmission plan for purposes of cost allocation.<sup>356</sup> Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing that removes these requirements.

177. Finally, we find that SCE&G must clarify its proposed information requirements to ensure that stakeholders may submit ideas into the regional transmission planning process without being required to provide the full scope of information that SCE&G proposes to require for transmission developers that propose transmission projects for potential selection in the regional transmission plan for purposes of cost allocation. SCE&G's proposed tariff language states that any entity may propose a regional transmission project, but the entity's proposal must meet the information requirements.<sup>357</sup> Under Order No. 1000 and Order No. 890, transmission providers must allow any stakeholder to suggest potential transmission solutions as part of providing input into a transmission provider's local and regional transmission planning processes.<sup>358</sup> Therefore,

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<sup>352</sup> SCE&G Attachment K § VII.C.a.vii.

<sup>353</sup> *Id.* § VII.C.

<sup>354</sup> *Id.* § VII.C.d.

<sup>355</sup> *Id.* § VII.C.b.

<sup>356</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 174.

<sup>357</sup> SCE&G Attachment K §§ VII.A, VII.C.

<sup>358</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 188 (stating that, to meet the coordination principle, "the planning process must provide for the timely and meaningful input and participation of all interested customers and other stakeholders in  
(continued...)

while we find acceptable SCE&G's proposal to require an entity to meet the information requirements for a transmission project that it proposes for potential selection in the regional transmission plan for purposes of cost allocation and that it wishes to develop, requiring stakeholders to satisfy the same information requirements to merely suggest a potential transmission solution that the stakeholder does not itself wish to develop into the SCRTP regional transmission planning process would be inconsistent with Order No. 1000's emphasis on an open and inclusive regional transmission planning process.<sup>359</sup> Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, further compliance filing revising its OATT to make clear that the information requirements do not apply for those potential transmission solutions that stakeholders may suggest as part of providing input into the SCRTP regional transmission planning process.

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

178. Order No. 1000 required each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.<sup>360</sup> The evaluation process must ensure transparency and

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the development of transmission plans. Customers and other stakeholders therefore must have the opportunity to participate at the early stages of the development of the transmission plan, rather than merely given an opportunity to comment on transmission plans that were developed in the first instance without their input.”); Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 151 (requiring the regional transmission planning process to also meet the transmission planning principles of Order No. 890, including the coordination principle).

<sup>359</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 150 (stating that “[b]ecause of the increased importance of regional transmission planning that is designed to produce a regional transmission plan, stakeholders must be provided with an opportunity to participate in that process in a timely and meaningful manner. Therefore, we apply the Order No. 890 transmission planning principles to the regional transmission planning process, as reformed by this Final Rule. This will ensure that stakeholders have an opportunity to express their needs, have access to information and an opportunity to provide information, and thus participate in the identification and evaluation of regional solutions.”)

<sup>360</sup> *Id.* P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

provide the opportunity for stakeholder coordination.<sup>361</sup> In addition, the evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.<sup>362</sup>

**i. First Compliance Order**

179. In the First Compliance Order, the Commission found that SCE&G's proposed method of evaluating proposed transmission projects did not comply with the requirements of Order No. 1000.<sup>363</sup> Specifically, the Commission found that SCE&G's OATT provided only limited detail about how the SCRTP regional transmission planning process will evaluate a transmission facility proposed by a potential transmission developer. The Commission stated that SCE&G's OATT must include detail as to how the SCRTP regional transmission planning process will determine through analysis potentially more efficient or cost-effective transmission solutions to regional transmission needs rather than relying exclusively on transmission proposals from individual transmission owners and stakeholders. In addition, the Commission found that SCE&G's OATT did not make clear that the SCRTP regional transmission planning process will identify and evaluate transmission solutions other than those proposed by qualified transmission developers, and what metrics will be used to conduct such identification and evaluation. The Commission stated that this additional detail will necessarily impact the evaluation process for selection in the regional transmission plan for purposes of cost allocation. Accordingly, the Commission directed SCE&G to describe in its OATT a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the SCRTP regional transmission plan for purposes of cost allocation.<sup>364</sup> The Commission also directed SCE&G to both explain and justify the proposed evaluation criteria, including how they would apply in a not unduly discriminatory manner to sponsored transmission projects, transmission projects proposed by stakeholders, and transmission projects identified in the SCRTP regional transmission planning process.<sup>365</sup>

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<sup>361</sup> *Id.*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

<sup>362</sup> *Id.*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

<sup>363</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 188.

<sup>364</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452).

<sup>365</sup> *Id.*

180. The Commission also stated that Order No. 1000 requires that the evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.<sup>366</sup> Moreover, the Commission stated that while Order No. 1000 recognized that the process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation will likely vary from region to region,<sup>367</sup> such evaluation must consider “the relative efficiency and cost-effectiveness of [any proposed transmission] solution.”<sup>368</sup> Therefore, the Commission directed SCE&G to: (1) propose OATT revisions providing how SCRTP will consider the relative efficiency and cost-effectiveness of proposed transmission solutions, as part of its evaluation of transmission solutions proposed in the regional transmission planning process; and (2) explain how SCRTP will ensure its evaluation of transmission solutions proposed in the regional transmission planning process will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected as a more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation.<sup>369</sup>

181. In addition, the Commission stated that SCE&G’s proposed OATT revisions indicated that SCE&G and Santee Cooper would separately evaluate proposed transmission facilities using their respective guidelines and criteria.<sup>370</sup> However, the Commission noted that Order No. 1000 requires public utility transmission providers to participate in a transmission planning region that conducts a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs and found that it is not sufficient that each transmission provider enrolled in the transmission planning region conducts its own independent analysis.<sup>371</sup>

182. With respect to SCE&G’s proposal that a proposed regional transmission facility would only be selected in the regional transmission plan if it is approved by the

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<sup>366</sup> *Id.* P 189 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267).

<sup>367</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323).

<sup>368</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323 n.307).

<sup>369</sup> *Id.* P 189.

<sup>370</sup> *Id.* (referencing SCE&G Attachment K, § VII.E).

<sup>371</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 190.

transmission provider whose local transmission expansion plan would be altered as a result of the transmission project's selection and the relevant jurisdictional and/or government authorities, the Commission stated that whether a transmission owner is willing to modify its local transmission plan should not determine whether a regional reliability transmission project may be selected in the regional transmission plan for purposes of cost allocation. The Commission found that to grant an incumbent transmission owner that authority would frustrate the transmission providers in the SCRTP transmission planning region's ability to identify and select the more efficient or cost-effective regional transmission solutions in the regional transmission plan. Therefore, the Commission directed SCE&G to remove this provision from its OATT.<sup>372</sup>

183. The Commission found that SCE&G's proposed process for selecting a transmission facility in the regional transmission plan for purposes of cost allocation did not comply with the requirements of Order No. 1000.<sup>373</sup> The Commission found that SCE&G must revise its OATT to include a process for selecting transmission facilities in the regional transmission plan for purposes of cost allocation whereby the public utility transmission providers in the region ultimately decide which transmission projects are selected. The Commission explained that, while it encouraged state entities or regional state committees to consult, collaborate, inform, and even recommend a transmission project for selection in the regional transmission plan for purposes of cost allocation, the public utility transmission providers in a transmission planning region must make the selection decision with respect to the transmission project.<sup>374</sup> The Commission directed SCE&G to file a further compliance filing to include language stating that the public utility transmission providers, not the state entity, in a transmission planning region should ultimately select the transmission facilities in the regional transmission plan for purposes of cost allocation.<sup>375</sup>

184. Finally, the Commission supported SCE&G's clarification in its answer that it will develop cost estimates for local transmission facilities in a manner that provides for an equitable comparison with regional transmission facilities. The Commission therefore directed SCE&G to clarify the methods it will use to determine the transmission project

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<sup>372</sup> *Id.* P 191.

<sup>373</sup> *See id.* PP 192-193.

<sup>374</sup> *See id.* P 193.

<sup>375</sup> *See id.*

costs of the transmission facilities that it will evaluate as part of its evaluation of more efficient or cost-effective transmission solutions.<sup>376</sup>

185. The Commission also required SCE&G in its compliance filing to file for review by the Commission the *pro forma* contractual agreement that it will enter into with transmission developers constructing transmission projects selected in the regional transmission plan for purposes of cost allocation. The Commission explained that the *pro forma* contractual agreement should address SCE&G's contractual provisions with the understanding that certain issues may be negotiated on a case-by-case basis. However, the Commission rejected SCE&G's proposed contractual provision indicating that transmission service over the transmission facilities of a transmission developer will be provided pursuant to the SCE&G and/or Santee Cooper OATT, stating that such a provision was not justified in all circumstances.<sup>377</sup>

**ii. Requests for Rehearing or Clarification**

**(a) Summary of Requests for Rehearing or Clarification**

186. NARUC and SC Regulatory Staff assert that the Commission exceeded its jurisdiction by directing that the only recognized roles of state regulatory authorities in the regional transmission planning processes are limited to those specified and defined in a Commission-approved tariff.<sup>378</sup> NARUC and SC Regulatory Staff contend that the FPA specifically preserves state authority over any area not specifically delegated to the Commission, including transmission siting, generation needs, and protecting retail customers.<sup>379</sup> Moreover, NARUC and SC Regulatory Staff argue, the Commission cannot abrogate through its directives state laws, including those that define the role of state commissions with regard to transmission planning and siting, and does not have jurisdiction to interfere with state law by recognizing only those state roles that are defined in a transmission provider's tariff.<sup>380</sup> NARUC asserts further that recognizing only those state laws defined in a transmission provider's tariff could result in state laws,

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<sup>376</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 194.

<sup>377</sup> *Id.*

<sup>378</sup> NARUC Rehearing at 4; SC Regulatory Staff Rehearing at 3.

<sup>379</sup> NARUC Rehearing at 5 (citing 16 U.S.C. § 824 (2012)); SC Regulatory Staff Rehearing at 6 (citing 16 U.S.C. § 824 (2012)).

<sup>380</sup> NARUC Rehearing at 5; SC Regulatory Staff Rehearing at 6.

including state commission authority to accept or approve integrated resource plans, make decisions about generation, demand-side resources, and resource proposals, site transmission, or modify policy based on cost thresholds, being read out of existence.<sup>381</sup> NARUC and SC Regulatory Staff also state that the Commission's directives addressing the role of the states in the regional transmission planning process exceed the scope, and conflict with the stated goals, of Order Nos. 1000 and 1000-A.<sup>382</sup>

**(b) Commission Determination**

187. We deny the requests for rehearing. In the First Compliance Order, the Commission rejected SCE&G's proposal that a proposed regional transmission facility would only be selected in the regional transmission plan if it is approved by the relevant jurisdictional and/or government authorities. We continue to find our requirement that SCE&G revise its OATT to include a process for selecting the transmission facilities in the regional transmission plan for the purposes of cost allocation whereby the public utility transmission providers in the region ultimately decide which transmission projects are selected. We affirm the First Compliance Order's direction that public utility transmission providers must ultimately be responsible for determining which transmission projects are selected in regional transmission plans for purposes of cost allocation for the reasons discussed therein. That said, we understand the concerns presented by NARUC and SC Regulatory Staff regarding the role of state authorities in the regional transmission planning process. We reiterate that, if it so chooses, a state commission may take an active role in that process, and can have a role in advising the public utility transmission providers on its views of the relative merits of proposed transmission projects or recommend particular proposals.<sup>383</sup> Moreover, we note that selection in the SCRTP regional transmission plan for purposes of cost allocation does not confer a right to construct, and such selection does not preempt state laws regarding the permitting, siting, or construction of transmission facilities. In Order No. 1000-A, the Commission considered the argument that adopting the nonincumbent transmission developer reforms exceeded our FPA jurisdiction; we found such "arguments rest on the faulty premise that the Commission is somehow regulating the construction of

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<sup>381</sup> NARUC Rehearing at 5 (citing *In re Transmission Planning and Cost Allocation by Transmission Owning and Operating Utilities*, Docket No. RM10-23, Comment of the National Association of Regulatory Utility Commissioners, filed Sept. 29, 2010).

<sup>382</sup> *Id.* at 7; SC Regulatory Staff Rehearing at 7.

<sup>383</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 193; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at PP 293-295.

transmission facilities.”<sup>384</sup> The Commission reiterated that “nothing in Order No. 1000 creates any new authority for the Commission nor public utility transmission providers acting through a regional transmission planning process to site or authorize the construction of transmission projects.”<sup>385</sup>

188. Furthermore, the regional transmission planning requirements of Order No. 1000 are intended to complement, and not supplant integrated resource planning at the state level. These are two separate processes, as discussed in more detail above in the Affirmative Obligation to Plan section of this order. Order No. 1000 does not require that public utility transmission providers modify their resource selections or the transmission facilities that they plan as part of the state integrated resource planning process to access those resources identified in the state integrated resource plan. Public utility transmission providers can use the results of the regional transmission planning process to inform their state integrated resource planning process, just as they can use the results of their state integrated resource planning processes to inform the regional transmission planning process.

### iii. Compliance

#### (a) Summary of Compliance Filing

189. SCE&G states that it has revised its evaluation criteria to provide greater detail, and notes that this process applies comparably to all regional transmission projects.<sup>386</sup> As discussed above in the Consideration of Transmission Needs Driven by Public Policy Requirements section of this order, SCE&G proposes to revise its OATT to state that any entity may propose a regional transmission project to meet the SCRTP region’s transmission needs.<sup>387</sup> SCE&G states that in order to provide for entities that are not transmission developers to propose transmission projects, it has divided its evaluation process into two phases.<sup>388</sup> According to SCE&G’s revised OATT, the transmission providers will first evaluate a proposed regional transmission project to determine whether it meets the initial screening criteria and is thus eligible to be considered for

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<sup>384</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 378-382.

<sup>385</sup> *Id.* P 382.

<sup>386</sup> SCE&G Transmittal at 15.

<sup>387</sup> SCE&G Attachment K §§ VII.A, VII.C.

<sup>388</sup> SCE&G Transmittal at 15.

selection in the regional transmission plan for purposes of cost allocation.<sup>389</sup> Second, SCE&G states that it has revised its OATT to clarify that the transmission providers will together evaluate proposed regional transmission projects.<sup>390</sup>

190. Specifically, SCE&G proposes to revise its OATT to provide that, using coordinated models and assumptions, as well as power flow, transient stability, power transfer, and short circuit studies, as necessary, the transmission providers will use their respective planning guidelines and criteria, as well as stakeholder comments, to together evaluate proposed transmission projects and determine the following: (1) whether the proposed regional transmission project meets a transmission need; (2) whether any additional projects, or changes to other planned projects, whether local or regional, are required due to the proposed regional transmission project; (3) the ability of the proposed regional transmission project to fulfill the identified need practically; (4) the technical and operational feasibility of the proposal; (5) operational benefits/constraints or issues; and (6) whether the transmission project can be constructed and integrated into the transmission system(s) by the required in service date.<sup>391</sup> SCE&G proposes to retain the provision stating that the transmission providers will evaluate each proposed regional transmission project against all applicable Commission, NERC, SERC Reliability Corporation, and South Carolina Public Service Commission regulatory and reliability requirements, as well as the requirements of the interconnected transmission provider Facilities Connection Requirements document. The latter requirements include, but are not limited to: (1) system interconnection studies; (2) transmission system performance; (3) transmission facility equipment standards; (4) transmission facility control, instrumentation, and communication requirements; (5) reactive power and voltage support; (6) grounding; (7) protection requirements; (8) inspection, maintenance, and testing requirements; and (9) emergency operations.<sup>392</sup>

191. Also with respect to the initial screening process, SCE&G proposes to revise its OATT to provide that stakeholders will have access to all project information that an entity proposing a regional transmission project submits. SCE&G's revised OATT states that to the extent that such information includes confidential information and/or Critical Energy Infrastructure Information, stakeholders must comply with the requirements set

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<sup>389</sup> SCE&G Attachment K §§ VII.A, VII.F. SCE&G's revised OATT provides that any proposed regional transmission project must meet the initial screening criteria to be considered for cost allocation. *Id.* § VII.C.

<sup>390</sup> SCE&G Transmittal at 15.

<sup>391</sup> SCE&G Attachment K § VII.F.

<sup>392</sup> *Id.*

forth in the OATT governing access to such information. SCE&G's revised OATT further states that stakeholders may conduct an independent evaluation of a proposed regional transmission project and submit written comments on that proposal. In addition, SCE&G proposes to revise its OATT to provide that the evaluation process is comparable for regional transmission projects proposed by any entity, as well as those regional transmission projects that the transmission providers' planning processes identify, to address transmission needs driven by reliability, economics, and public policy requirements and comparable to the evaluation it performs to evaluate solutions for local transmission needs. Finally, SCE&G proposes to revise its OATT to state that the transmission providers' determination will be sufficiently detailed for stakeholders to understand why a particular proposed transmission project meets the initial screening criteria.<sup>393</sup>

192. SCE&G also proposes to revise its OATT to state that if a proposed regional transmission project satisfies the initial screening criteria, it is eligible to be considered for selection in the regional transmission plan for purposes of cost allocation and a qualified transmission developer that has not already done so may seek cost allocation for the project no later than 90 days after the issuance of the transmission provider's determination.<sup>394</sup> SCE&G's proposal states that a qualified transmission developer must timely request cost allocation for a regional transmission project that satisfies the initial screening criteria to be selected in the regional transmission plan for purposes of cost allocation and that the qualified transmission developer seeking cost allocation is the entity responsible for building the regional transmission project for which cost allocation is requested.<sup>395</sup> SCE&G proposes to revise its OATT to provide that the transmission providers, in consultation with stakeholders, will evaluate each proposed regional transmission project for which cost allocation is requested to determine whether it should be included in the regional transmission plan for purposes of cost allocation based on whether the project is determined to be more efficient or cost-effective than transmission projects in the transmission providers' existing local or regional transmission plans or alternative projects that would be required in lieu of the proposed regional transmission project.<sup>396</sup> SCE&G's revised OATT also states that the evaluation process will be

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<sup>393</sup> *Id.*

<sup>394</sup> *Id.* §§ VII.A, VII.D. A qualified transmission developer may request cost allocation contemporaneously with submitting a project for potential selection in the regional transmission plan for purposes of cost allocation. *Id.* § VII.C.

<sup>395</sup> *Id.* § VII.D.

<sup>396</sup> *Id.* §§ VII.A, VII.G.1.

comparable for solutions proposed to meet transmission needs driven by reliability, economics, and public policy requirements.<sup>397</sup>

193. SCE&G proposes to revise its OATT to state that the inclusion of a proposed regional transmission project must yield a regional benefit to cost ratio of greater than 1.25 and must not adversely impact reliability. SCE&G's revised OATT further states that when more than one regional transmission project has a benefit to cost ratio greater than 1.25, those projects may be considered for selection, regardless of costs or benefit to cost ratios, and that no individual transmission provider shall incur increased, unmitigated transmission costs as a result of the proposed project.<sup>398</sup> SCE&G proposes to revise its OATT to provide that the benefits used in the calculation of the benefit to cost ratio will be quantified based on the total benefit in the SCRTP region associated with:

All cancelled or postponed projects in the Transmission Providers' current Local or Regional Transmission Plans;

Any reduction in cost of other existing projects in the Transmission Providers' current Local or Regional Transmission Plans;

All alternative local or regional project(s) that would be required in lieu of the proposed Regional Project, if the proposed Regional Project addresses a Transmission Need for which no transmission project is included in the Transmission Providers' current Local or Regional Transmission Plans; and

The estimated value of the reduction of real power losses on the Transmission Providers' transmission systems.<sup>399</sup>

194. Moreover, SCE&G proposes to revise its OATT to provide that the costs used in the calculation of the benefit to cost ratio will be quantified based on the total cost in the SCRTP region associated with: (1) the cost of the proposed regional transmission project; (2) the cost of any additional projects or increase in cost to other planned projects required due to the proposed regional transmission project; and (3) the estimated value of the increase of real power losses on the transmission providers' transmission systems.<sup>400</sup>

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<sup>397</sup> *Id.* § VII.G.1.

<sup>398</sup> *Id.*

<sup>399</sup> *Id.* § VII.G.2.

<sup>400</sup> *Id.*

195. SCE&G proposes to revise its OATT to state that real power losses capture the change in energy generated to serve a given amount of load and that SCE&G will use power flow analysis or other detailed engineering analysis, as appropriate, to measure the quantity of energy losses. SCE&G's revised OATT further states that the value of real power losses over the 10 year transmission planning horizon will be expressed in the in-service year dollars of the proposed regional transmission project and will be determined using the energy cost that each transmission provider provides. In addition, SCE&G proposes to revise its OATT to provide that the transmission providers will develop planning-level cost estimates for use in determining the regional benefit to cost ratio and that detailed engineering estimates may be used if available.<sup>401</sup>

196. With respect to stakeholder participation, SCE&G's revised OATT provides that stakeholders may conduct an independent evaluation of a proposed regional transmission project and submit written comments on that proposal.<sup>402</sup> Moreover, SCE&G proposes to revise its OATT to state that the transmission providers' determination will be sufficiently detailed for stakeholders to understand why a particular proposed transmission project is selected or not selected in the regional transmission plan. SCE&G also proposes to revise its OATT to state that this determination will also provide information regarding how cost estimates were developed for local facilities in a manner that provides for an equitable comparison with regional transmission proposals.<sup>403</sup>

197. SCE&G states that it has revised its OATT to remove the provisions that would have allowed a proposed regional transmission project to be selected in the regional transmission plan for purposes of cost allocation only if it is approved by the transmission provider whose local transmission plans would be altered as a result of the project's selection and the relevant jurisdictional and/or government authorities.<sup>404</sup>

198. SCE&G also states that it has proposed the Coordination Agreement that is to be executed prior to a proposed regional transmission project being selected in the regional transmission plan.<sup>405</sup> According to SCE&G, the Coordination Agreement, among other things, provides that the transmission developer guarantee the accuracy of the information submitted with the proposed regional transmission project, provides for

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<sup>401</sup> *Id.*

<sup>402</sup> *Id.* § VII.G.1.

<sup>403</sup> *Id.* § VII.G.2.

<sup>404</sup> SCE&G Transmittal at 17.

<sup>405</sup> SCE&G Transmittal at 19; SCE&G Attachment K § VII.H.

reevaluation under SCE&G's OATT, and includes default and termination procedures, liability limitations and indemnification provisions.<sup>406</sup> SCE&G states that the Coordination Agreement is intended to confirm and consolidate in one place the information that a transmission developer provided to the transmission provider in support of the regional transmission project.<sup>407</sup> SCE&G states that through the Coordination Agreement, the transmission developer must confirm with some specificity the proposed regional transmission project and its commitment to that project. SCE&G also states that in compliance with the First Compliance Order, the Coordination Agreement does not require that transmission service over that project be provided pursuant to SCE&G or Santee Cooper's OATT.<sup>408</sup>

199. Specifically, sections one through three of the Coordination Agreement provide for developer warranties as to the information the transmission developer submitted in support of the transmission project and its qualification and experience. As to the project descriptions and specifications in section 1, the Coordination Agreement provides that the transmission developer agree to not make material changes to the description of the transmission project as long as it remains in the regional transmission plan.<sup>409</sup>

200. Section 4 of the Coordination Agreement provides that:

[d]eveloper represents and warrants that (a) it has the ability, personnel and financial, technical and other resources necessary to complete the Project, including each Project milestone in accordance with this Agreement and the milestone schedule attached to this Agreement... (b) the Schedule accurately describes Developer's plan for developing and constructing the Project, and (c) the Schedule is consistent with and contains all of the information that has been submitted to the Utilities pursuant to Section VII of Attachment K. Nothing in this Agreement shall be construed as a notice from the Utilities authoring Developer to proceed with the Project or obligating the Utilities to pay, or to

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<sup>406</sup> SCE&G Attachment K Appendix K-8.

<sup>407</sup> SCE&G Transmittal at 19.

<sup>408</sup> *Id.*

<sup>409</sup> SCE&G Attachment K Appendix K-8, Attachment K § 1.

reimburse Developer for, any amount with respect to the Project.<sup>410</sup>

201. The Coordination Agreement also requires the transmission developer to comply with good utility practice, and all applicable federal, state and local laws including “other requirements of the Utilities, the Public Service Commission of South Carolina and the North American Electric Reliability Corporation.”<sup>411</sup> SCE&G and Santee Cooper also specifically reserve all of their reevaluation and other rights under Order No. 1000 and the OATT.<sup>412</sup> Section 7 of the Coordination Agreement requires the transmission developer to: (1) maintain all of the requirements contained in the Coordination Agreement and the OATT; (2) annually certify that all of its representations and warranties contained in the Coordination Agreement remain true; and (3) provide supporting documentation and information as the Utilities reasonably request.<sup>413</sup>

202. The termination provision grants SCE&G and Santee Cooper the ability to terminate the Coordination Agreement and remove the transmission project from the regional transmission plan upon written notice if the transmission developer: (1) breaches any covenant of the Coordination Agreement which the developer does not cure within 30 days; (2) was inaccurate, or incomplete in any of its warranties or representations in the Coordination Agreement; (3) files for bankruptcy or to liquidate its assets; (4) makes an assignment for the benefit of its creditors; (5) applies for the appointment of a receiver or trustee that lasts longer than 30 days; (6) attempts to make any adjustment, settlement or extension of its debts to creditors; (7) is insolvent; or (8) has a lien filed against a material portion of its assets.<sup>414</sup> The Coordination Agreement also provides that upon termination, for any reason, the “Utilities may use in any manner and provide to any other person or entity some or all the plans, specifications, documents and information relating to the Project Developer has provided or provides to the Utilities.”<sup>415</sup>

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<sup>410</sup> SCE&G Attachment K Appendix K-8, section 4.

<sup>411</sup> *Id.* § 5.

<sup>412</sup> *Id.* § 6.

<sup>413</sup> *Id.* § 7.

<sup>414</sup> *Id.* § 8(a).

<sup>415</sup> *Id.* § 8(b).

203. The Coordination Agreement prohibits the transmission developer from assigning the contract without prior written consent from the utilities,<sup>416</sup> provides that the dispute resolution procedures contained in the OATT apply,<sup>417</sup> and limits liability for SCE&G and Santee Cooper, their parent companies, and their subsidiaries.<sup>418</sup> Specifically, section 11 provides that:

Neither the Utilities nor any of their respective parent companies, subsidiaries or affiliates nor any of their directors, officers, employees, representatives or agents of any of the foregoing shall be liable to Developer or any other person or entity for any consequential, incidental, indirect, special, punitive, or exemplary damages arising out of or relating to this Agreement or the Project, regardless of the theory of recovery, even if any of them have been advised of the possibility of such damages.<sup>419</sup>

204. The Indemnification provision in section 12 provides that:

Developer shall indemnify and hold harmless, and at the Utilities election shall defend, the Utilities and all of their respective parent companies, subsidiaries and affiliates and all of the directors, officers, employees, representatives or agents of all of the foregoing from and against any and all claims, demands, suits, actions, losses, damages, liabilities, obligations, fines, penalties, costs and expenses arising out of or relating to (a) Developer's breach of this Agreement, (b) the violation of Applicable Law, gross negligence or willful misconduct by Developer or any of its directors, officers, employees, representatives, agents, contractors, subcontractors or suppliers, and (c) the inaccuracy of any representation or warranty of Developer in this Agreement.<sup>420</sup>

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<sup>416</sup> *Id.* § 9.

<sup>417</sup> *Id.* § 10.

<sup>418</sup> *Id.* § 11.

<sup>419</sup> *Id.* § 12.

<sup>420</sup> *Id.*

205. Section 14 provides that:

This Agreement and any controversy relating to it will be governed by the laws of the State of South Carolina, excluding its conflict of laws provisions. Any claim or controversy arising out of or relating to this Agreement or the breach of this Agreement will be commenced and heard exclusively in the South Carolina state courts or the United States District Court for the District of South Carolina. The parties consent and submit to the jurisdiction and venue of those courts....<sup>421</sup>

**(b) Commission Determination**

206. SCE&G has revised its evaluation process to include a two-phase, open and transparent process, which, among other things, allows stakeholder participation, provides greater detail regarding SCE&G's evaluation criteria to determine potentially more efficient or cost-effective transmission solutions to regional transmission needs, and clarifies that the enrolled transmission providers will together evaluate proposed regional transmission projects. We find that these provisions partially comply with the directives in the First Compliance Order.

207. In the First Compliance Order, the Commission directed SCE&G to describe in its OATT a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the SCRTP regional transmission plan for purposes of cost allocation that applies in a not unduly discriminatory manner to sponsored transmission projects, transmission projects proposed by stakeholders, and transmission projects identified in the SCRTP regional transmission planning process. In response, SCE&G has revised its OATT to provide a transparent, two-phase evaluation process that includes the criteria it will use to determine whether: (1) a proposed regional transmission project meets a transmission need (i.e., the initial screening process); and (2) the proposed project is a more efficient or cost-effective solution to meet transmission needs (i.e., the process for evaluating whether to select a proposed regional transmission project in the regional transmission plan for purposes of cost allocation). Consistent with the Commission's directive in the First Compliance Order, SCE&G has revised its OATT to state that the evaluation process is comparable for regional transmission projects proposed by any entity, as well as those regional transmission projects that the transmission providers' planning processes identify.

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<sup>421</sup> *Id.* § 14.

208. Regarding the initial screening process, we find that SCE&G's proposed evaluation criteria for determining whether a proposed regional transmission project is eligible to be considered for selection in the regional transmission plan for purposes of cost allocation are transparent and not unduly discriminatory. SCE&G's revised OATT provides transparency by describing how the transmission providers will analyze whether a proposed regional transmission project satisfies these criteria, stating that the transmission providers will use coordinated models and assumptions, as well as power flow, transient stability, power transfer, and short circuit studies, as necessary; their respective planning guidelines and criteria; and stakeholder comments to do so. We also find that SCE&G's proposal to use a benefit to cost analysis to determine whether to select a proposed regional transmission project in the regional transmission plan for purposes of cost allocation complies with the directives of the First Compliance Order.<sup>422</sup> We find that, with the exception of the lack of clarity regarding metrics that calculate the benefits of a proposed regional transmission project based on the costs of all alternative local or regional transmission projects, as discussed in the next paragraph, that would be required in lieu of the proposed project, the metrics that SCE&G proposes to use to measure the benefits and costs of a proposed regional transmission facility are transparent and not unduly discriminatory and comply with Order No. 1000's requirement to consider the "relative efficiency and cost-effectiveness of [a proposed transmission] solution."<sup>423</sup>

209. Regarding the second step of the evaluation process, we find that, with one exception, the factors the transmission providers will consider when evaluating a transmission project for potential selection in the regional transmission plan for purposes of cost allocation comply with the requirements of Order No. 1000. In particular, we find that SCE&G has not justified and does not explain the need to consider as separate factors: (1) whether the proposed regional transmission project meets a transmission need<sup>424</sup> and (2) the ability of the proposed regional transmission project to fulfill the identified need practically.<sup>425</sup> We find the second factor is redundant and unnecessary. Therefore, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing deleting the provision stating that the transmission

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<sup>422</sup> As discussed further in the Cost Allocation section of this order, we direct SCE&G to submit a further compliance filing that revises its OATT to clarify that a regional transmission project must have a benefit to cost ratio *equal to or greater than* 1.25 to be selected in the regional transmission plan for purposes of cost allocation.

<sup>423</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307.

<sup>424</sup> SCE&G Attachment K § VII.F.a.

<sup>425</sup> *Id.* § VII.F.c.

providers will consider the ability of the proposed regional transmission project to fulfill the identified need practically.

210. In addition, we find that it is not clear how the transmission providers will identify alternative local or regional transmission projects that would be required in lieu of the proposed regional transmission project for purposes of calculating the benefits of the proposed project. Such information is necessary to ensure that the process for evaluating whether to select a proposed regional transmission project in the regional transmission plan for purposes of cost allocation is transparent and not unduly discriminatory. In the absence of a clear process for identifying such alternative projects, we are concerned that transmission developers and other stakeholders will be unable to determine how the benefits of a proposed transmission project would be calculated, given that those benefits are tied to the costs of such an alternative project. Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to revise its OATT to clearly describe how the transmission providers will identify alternative local or regional transmission projects that would be required in lieu of the proposed regional transmission project for purposes of calculating the benefits of the proposed project, and which addresses our concern noted above.

211. In addition, SCE&G proposes that, to be selected in the regional transmission plan for purposes of cost allocation, a proposed regional transmission project must not adversely impact reliability. While we agree with SCE&G that a regional transmission project selected in a regional transmission plan for purposes of cost allocation must not adversely impact reliability, we note that the transmission providers could identify mitigation measures necessary to address any resulting adverse impacts. Moreover, if the regional transmission project's benefit to cost ratio still exceeds 1.25 when accounting for the costs of the necessary mitigation measures, then it could still be selected in the regional transmission plan for purposes of cost allocation. SCE&G's proposal seems to contemplate such a possibility; it proposes that no individual transmission provider shall incur increased, unmitigated transmission costs as a result of a proposed regional transmission project. SCE&G also proposes a metric for calculating the costs of a proposed regional transmission project that measures the cost of any additional projects or increase in cost to other planned projects required due to the proposed project. SCE&G's proposed OATT revisions seem to indicate that SCE&G will consider the cost of mitigation measures necessary to address any adverse reliability impact when evaluating a regional transmission project selected in a regional transmission plan for purposes of cost allocation; however, the OATT does not clearly indicate that this is in fact SCE&G's intent. Thus, we require SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing revising its OATT to clarify that: (1) to be selected in the regional transmission plan for purposes of cost allocation, a proposed regional transmission project must not have unmitigated adverse impacts on reliability; and (2) the costs of any necessary mitigation measures will be accounted for as part of the metric for calculating the costs of a proposed regional transmission project

that measures the cost of any additional projects or increase in cost to other planned projects required due to the proposed project.

212. We also find that SCE&G's proposed revision stating that when more than one regional transmission project has a benefit to cost ratio greater than 1.25, those projects may be considered for selection, regardless of costs or benefit to cost ratios, it is unclear because it suggests that the costs and the benefit to cost ratio of each project may not be considered. SCE&G has not justified its proposal and the proposed provision is not necessary to comply with the Commission's directives in the First Compliance Order. It appears that, in proposing this revision, SCE&G's intent was to relocate a provision included in its First Compliance Filing, which provided a clearer description of how multiple transmission projects that meet the cost ratio would be considered. Specifically, the provision included in SCE&G's First Compliance Filing, which was subsequently deleted in the instant filing, stated that if more than one regional transmission project meets the benefit to cost ratio, both projects may be considered for selection, regardless of whether one has a lower cost than the other.<sup>426</sup> We require SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing revising its OATT either to revise the proposed provision to be consistent with the provision proposed in its First Compliance Filing that is no longer included in its OATT or to remove the proposed provision from its OATT.

213. We find that SCE&G has complied with the Commission's directive in the First Compliance Order that its evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected as a more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation. With respect to its initial screening process, SCE&G's revised OATT states that the transmission providers' determination will be sufficiently detailed for stakeholders to understand why a particular proposed transmission project meets the initial screening criteria. Similarly, regarding SCE&G's proposed process for evaluating whether to select a proposed regional transmission project in the regional transmission plan for purposes of cost allocation, SCE&G's revised OATT states that the transmission providers' determination will be sufficiently detailed for stakeholders to understand why a particular proposed transmission project is selected or not selected in the regional transmission plan.

214. Additionally, in the First Compliance Order, the Commission stated that SCE&G's proposed OATT revisions indicating that SCE&G and Santee Cooper would separately evaluate proposed transmission facilities using their respective guidelines and criteria was not sufficient. On compliance, SCE&G clarified that both enrolled transmission providers, in consultation with stakeholders, will evaluate each proposed regional

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<sup>426</sup> SCE&G Attachment K § VII.E. (3.0.0).

transmission project using criteria detailed in the OATT. The Commission also directed SCE&G to remove from its OATT the provision stating that a regional transmission facility would only be selected in the regional transmission plan if it is approved by the transmission provider whose local transmission expansion plan would be altered as a result of the transmission project's selection and the relevant jurisdictional and/or government authorities. SCE&G proposes to delete the provision, as directed. Thus, we find that these proposed revisions comply with the Commission's directives in the First Compliance Order.

215. The Commission issued two other directives with respect to the evaluation of proposed transmission facilities: (1) the public utility transmission providers, not the state entity, in a transmission planning region should ultimately select the transmission facilities in the regional transmission plan for purposes of cost allocation; and (2) SCE&G must clarify the methods it will use to determine the transmission project costs of the transmission facilities that it will evaluate as part of its evaluation of more efficient or cost-effective transmission solutions. On compliance, SCE&G clarified that SCE&G and Santee Cooper will ultimately determine whether the proposed transmission project is more efficient or cost-effective for the region. With respect to the second directive, SCE&G revised its OATT to provide that the transmission providers will develop planning-level cost estimates for use in determining the regional benefit to cost ratio and that detailed engineering estimates may be used if available. In addition, SCE&G also proposes that SCE&G and Santee Cooper's determination as to whether a proposed regional transmission project will be selected in the regional transmission plan for purposes of cost allocation will provide information regarding how cost estimates were developed for local facilities in a manner that provides for an equitable comparison with regional transmission proposals. Thus, we find that SCE&G has complied with these two directives in the First Compliance Order.

216. The Commission further required SCE&G in its compliance filing to file its *pro forma* contractual agreement that it will enter into with transmission developers constructing transmission projects selected in the regional transmission plan for purposes of cost allocation. On compliance, SCE&G included the Coordination Agreement between the incumbent transmission providers and a nonincumbent transmission developer that must be executed prior to a proposed regional transmission project being selected in the regional transmission plan.<sup>427</sup> As discussed further below, we accept in part and reject in part the terms and conditions of the proposed Coordination Agreement, and direct SCE&G to make a further compliance filing.

217. Regarding the specific terms and conditions of the Coordination Agreement, we first find that the developer warranty sections in sections 1 through 4(c) are generally

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<sup>427</sup> *Id.* at Appendix K-8 (4.0.0).

consistent with the requirements of Order No. 1000 and the First Compliance Order. The Coordination Agreement does not require any information or guarantees beyond those that are contained in the OATT, and provides a contractual vehicle to ensure the representations the transmission developer made in its project and qualification submissions are accurate.

218. However, we are concerned with the last sentence in section 4, which states that “[n]othing in this Agreement shall be construed as a notice from the Utilities authorizing Developer to proceed with the Project or obligating the Utilities to pay, or to reimburse Developer for, any amount with respect to the Project.”<sup>428</sup> We read this provision to mean that the Coordination Agreement by itself does not authorize a transmission developer to begin construction or obligate the utilities to pay any costs related to a transmission project. Rather the laws of the applicable regulatory authorities should provide the mechanisms authorizing the transmission developer to begin construction and the cost allocation provisions of the OATT obligate the beneficiaries to pay for the transmission project. This provision is unclear and could be read to, for example, release SCE&G from any obligation to pay the costs of a transmission project that has been selected in the regional transmission plan for purposes of cost allocation and for which it has been identified as a beneficiary. Therefore, we direct SCE&G on compliance to revise this provision to make it consistent with our understanding or remove this provision from the Coordination Agreement.

219. Regarding the default and termination provisions, which allow the transmission providers in the SCRTP region to terminate the Coordination Agreement and remove the regional transmission project from the regional transmission plan for “the inaccuracy or incompleteness of *any* representation or warranty of Developer in this Agreement,”<sup>429</sup> we find this provision, as written, is inconsistent with Order No. 1000. Order No. 1000 states that appropriate qualification criteria must be fair and not unreasonably stringent.<sup>430</sup> Allowing transmission providers to terminate a regional transmission project for “any” inaccuracy or incompleteness is unreasonably stringent. Under this provision, for example, SCE&G would be able to remove a selected nonincumbent transmission developer project from the regional transmission plan for a minor mistake that was not material to the region’s decision to select the transmission project in the regional transmission plan for purposes of cost allocation. Thus, we direct SCE&G to submit,

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<sup>428</sup> *Id.* § 4.

<sup>429</sup> *Id.* § 8(a)(ii) (emphasis added). By contrast, we note that section 8(a)(i), which addresses a transmission developer’s breach of any covenant of the Coordination Agreement, provides for a 30-day cure period. *Id.* § 8(a)(i.)

<sup>430</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 225.

within 60 days of the date of the issuance of this order, a further compliance filing to revise this provision to provide that a transmission project that has been selected in the regional transmission plan for purposes of cost allocation can be removed from the regional transmission plan only if the transmission developer made an inaccurate or incomplete representation or warranty that was material to the decision to select the transmission project in the regional transmission plan. Also, consistent with Order No. 1000's requirement that nonincumbent transmission developers have an opportunity to cure deficiencies in providing qualification or other information,<sup>431</sup> we direct SCE&G to submit, within 60 days of the date of the issuance of this order, a further compliance filing with revisions to its OATT that provide transmission developers with a specified number of days to remedy any inaccurate or incomplete representation or warranty prior to a transmission project being removed from the regional transmission plan. The transmission providers in the SCRTP region must consider any additional information the transmission developer provides by the specified deadline when deciding whether the transmission project should remain in the regional transmission plan for purposes of cost allocation notwithstanding the initial inaccurate or incomplete information.

220. Furthermore, the termination provision in the Coordination Agreement allows SCE&G and Santee Cooper to retain the transmission developer's plans and use those plans themselves or give them to another entity without remedy to a transmission developer whose transmission project was selected in the regional transmission plan for purposes of cost allocation. Allowing SCE&G and Santee Cooper to remove from the regional transmission plan a transmission project proposed by a nonincumbent transmission developer and then retain all of the nonincumbent transmission developer's "plans, specifications, documents and information relating to the Project" without providing any recourse to the nonincumbent transmission developer is unjust and unreasonable. This forfeiture of a nonincumbent transmission developer's work product at the incumbent utilities' demand could act as an impermissible barrier to entry for nonincumbent transmission developers and may allow incumbent transmission providers to appropriate the work product of nonincumbent transmission developers for no legitimate end. Specifically, we find that a nonincumbent transmission developer should not be required to forfeit information related to its proposed transmission project without any recourse, especially when SCE&G has not demonstrated why the incumbent transmission providers in the SCRTP region would need this information.<sup>432</sup>

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<sup>431</sup> See *id.* P 324.

<sup>432</sup> This finding is also consistent with the Commission's decision to not require under Order No. 1000 that an incumbent transmission developer purchase the facilities, materials, or any other assets related to an abandoned transmission project that the incumbent transmission provider determines it must complete. The Commission noted that Order No. 1000 does not preclude an incumbent transmission developer from

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Accordingly, we direct SCE&G to submit, within 60 days of the date of the issuance of this order, a further compliance filing to remove this aspect of the proposed termination provision from the Coordination Agreement.

221. Next, we are concerned about the unilateral nature of the Coordination Agreement's assignment provisions. SCE&G has not explained why the assignment provision is unilateral, which suggests that the incumbent transmission providers may assign the Coordination Agreement or transfer rights under it to another entity without the consent of the nonincumbent transmission developer, while the nonincumbent developer must have the incumbent transmission provider's consent to do the same. In Order No. 2003, the Commission's *pro forma* Large Generator Interconnection Agreement provided for a bilateral assignment provision.<sup>433</sup> We find that should be the case here as well, because it is conceivable that SCE&G or Santee Cooper may at some point assign the Coordination Agreement to another entity, and it would be unreasonable for them to do so without the consent of the other party to the Coordination Agreement, i.e., the nonincumbent transmission developer. Additionally, as under the *pro forma* Large Generator Interconnection Agreement, the Coordination Agreement should make clear that consent from any party shall not be unreasonably withheld, conditioned, or delayed. Therefore, consistent with the approach the Commission took with respect to the *pro forma* Large Generator Interconnection Agreement, we direct SCE&G to submit, within 60 days of the date of the issuance of this order, a further compliance filing to revise the Coordination Agreement to provide for a bilateral assignment provision and to clarify that consent to an assignment shall not be unreasonably withheld, conditioned, or delayed.

222. Further, we are concerned that the assignment provision provides too much discretion to incumbent transmission providers to reject proposed assignments for any reason. Specifically, we are concerned that a nonincumbent transmission developer must obtain the incumbent transmission providers' consent, which is to be provided at their sole discretion, to assign the Coordination Agreement or any rights under it to another entity. This may result in arbitrary and unreasonable decisions by the incumbent transmission providers to block assignments from a nonincumbent transmission developer to, for example, an affiliated company that is qualified as the original developer in all material respects. In the *pro forma* Large Generator Interconnection Agreement, the Commission adopted an assignment provision indicating that consent was not required when a party wished to assign the agreement to an affiliate "with an equal or greater credit rating and with the legal authority and operational ability to satisfy the

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purchasing such facilities, materials or other assets if it believes it is prudent to do so. Order No. 1000-A, 139 FERC ¶ 61,132 at P 492.

<sup>433</sup> See *pro forma* Large Generator Interconnection Agreement at section 19.1.

obligations of the assigning Party” under the agreement.<sup>434</sup> Consistent with this approach, we direct SCE&G to submit, within 60 days of the date of the issuance of this order, a further compliance filing to revise the assignment provision to provide that a party to the Coordination Agreement may assign the Coordination Agreement or the rights under it to an affiliated company that satisfies the Qualified Developer qualification criteria. If an affiliated company satisfies those criteria, consistent with the *pro forma* Large Generator Interconnection Agreement, there does not appear to be a reasonable rationale to require the incumbent transmission providers’ consent.

223. Also with respect to the assignment provision, we direct SCE&G to revise this provision to permit a transmission developer to assign the Coordination Agreement or rights thereunder as security to assist with the financing of the construction or operation of the developer’s transmission facilities without the prior consent of the transmission providers, subject to the developer informing the transmission providers of such an assignment as soon as practicable. This approach is consistent with both the *pro forma* Large Generator Interconnection Agreement and ISO-NE’s Non-Incumbent Transmission Developer Agreement, both of which permit similar assignments without the consent of the transmission provider.<sup>435</sup> SCE&G is directed to submit, within 60 days of the date of issuance of this order, a further compliance filing to modify the *pro forma* Coordination Agreement’s assignment provision accordingly, as well as any necessary conforming revisions to section 8(a)(v) of the Coordination Agreement, which provides that an assignment by the transmission developer for the benefit of its creditors is a termination event.

224. In addition, section 11 of the Coordination Agreement limits SCE&G and Santee Cooper’s liability for all damages relating to the Coordination Agreement or the transmission facility project “regardless of the theory of recovery.” This provision is overly broad and appears to protect SCE&G and Santee Cooper from, for example, their own intentional acts as well as ordinary or gross negligence. Similar to a hold harmless or indemnification provision, SCE&G must strike a balance between protecting the public utility and ensuring the public utility has an incentive to avoid negligent acts.<sup>436</sup> In

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

<sup>435</sup> *See id.*; ISO-NE Non-Incumbent Transmission Developer Agreement at section 11.06.

<sup>436</sup> Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at PP 636, 639. In Order No. 2003, the Commission included an indemnity clause in the Large Generator Interconnection Agreement. The Commission explained that the indemnity clause should “provide protection for acts of ordinary negligence, but not for acts of gross negligence or intentional wrongdoing.” *Id.* P 636.

*Northeast Utilities Service Company*, the Commission explained that “[a] broader customer indemnification obligation that would include ordinary negligence would not give any incentive to the transmission provider to avoid negligent actions.”<sup>437</sup>

Accordingly, we reject section 11 as vague and overly broad and require SCE&G to submit, within 60 days of the date of the issuance of this order, a further compliance filing to remove or revise this section accordingly.<sup>438</sup>

225. The indemnification provision must likewise be revised. SCE&G does not explain why the nonincumbent transmission developer must indemnify the incumbent transmission providers, but the incumbent transmission providers are not at the same time required to hold the nonincumbent transmission developer harmless. As the Commission explained in the context of the *pro forma* Large Generator Interconnection Agreement, “[b]ecause construction of Interconnection Facilities may expose both a Transmission Provider and an Interconnection Customer to liability for acts taken on the other Party’s behalf, we are retaining the bilateral nature of the [indemnification] provision.”<sup>439</sup> We conclude that the same logic applies here, because the transmission providers have obligations under the Coordination Agreement. For example, both the region’s reevaluation procedures and the dispute resolution processes are incorporated by reference into the Coordination Agreement. The transmission providers have obligations with respect to both issues. Accordingly, we direct SCE&G to submit, within 60 days of the date of the issuance of this order, a further compliance filing to revise this provision to provide for bilateral indemnification.

226. As to the provision in section 14 which provides that any claim or controversy arising out of the Coordination Agreement “will be commenced and heard exclusively in” South Carolina state or district courts, we find that this provision could significantly limit a party’s rights to file a FPA section 206 complaint with respect to transmission planning disputes.<sup>440</sup> Accordingly, we direct SCE&G to submit, within 60 days of the date of the

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<sup>437</sup> *Northeast Utilities Service Company*, 111 FERC ¶ 61,333, at P 27 (2005).

<sup>438</sup> We find that this directive is consistent with the Commission’s order on ISO-New England, Inc.’s Order No. 1000 compliance filing. There, we directed the filing parties to remove or revise an analogous provision in a similar agreement between ISO-New England and nonincumbent transmission developers. *See ISO-New England, Inc.*, 143 FERC ¶ 61,150, at P 278 (2013) (ISO-NE First Compliance Order).

<sup>439</sup> Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 637.

<sup>440</sup> *See, e.g.*, ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 280 (requiring the filing parties to revise the proposed Non-Incumbent Transmission Developer Operating Agreement to provide that nothing in that agreement restricted a party’s right to file a section 206 complaint).

issuance of this order, a further compliance filing to revise this provision to clarify that nothing in this Coordination Agreement limits a party's rights to file a section 206 complaint. We also note that in section 10 of the Coordination Agreement, SCE&G has proposed to incorporate its transmission planning dispute resolution procedures from the OATT into the Coordination Agreement by reference, a proposal that we accept. Our understanding of the Coordination Agreement is that – notwithstanding section 14's language stating that any controversy arising under this agreement shall be governed by the laws of South Carolina and that any claims or controversies arising out of the agreement will be commenced in South Carolina state or federal district court – the parties may first attempt to resolve any disputes through the transmission planning dispute resolution process in the OATT; otherwise, the inclusion of section 10 in the Coordination Agreement would be meaningless.

227. Next, we find unjust and unreasonable the absence of a provision addressing any modifications or amendments to the Coordination Agreement. The absence of such a provision may make it difficult for either a nonincumbent transmission developer or an incumbent transmission provider to make necessary, case-specific amendments to its particular agreement. We therefore direct SCE&G to submit, within 60 days of the date of the issuance of this order, a further compliance filing to include such a provision in the Coordination Agreement. We suggest SCE&G to again consider the *pro forma* Large Generator Interconnection Agreement, which provides that “[t]he Parties may by mutual agreement amend this LGIA by a written instrument duly executed by the Parties” and that “[t]he Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by the Parties.”<sup>441</sup> Consistent with the Commission's approach in the context of generator interconnection agreements, for the Commission to ensure that the modifications to the *pro forma* language are just and reasonable, the parties must file such modified Coordination Agreement with the Commission.

228. Finally, we require SCE&G to include a provision in the *pro forma* Coordination Agreement that allows a party to request that its specific Coordination Agreement be filed with the Commission on an unexecuted basis, should circumstances arise where there is disagreement over the terms and conditions of that Coordination Agreement. For example, the Commission's *pro forma* OATT requires that the transmission provider file an unexecuted agreement with the Commission, at the request of the customer, if the provider and customer cannot come to terms on all aspects of transmission service.<sup>442</sup>

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<sup>441</sup> See *pro forma* Large Generator Interconnection Agreement at sections 30.9 and 30.10.

<sup>442</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996)

(continued...)

The filing of an unexecuted agreement will initiate a section 205 proceeding before the Commission, which provides a forum to resolve disputed issues. We require SCE&G to include in its compliance filing an explicit statement as to the procedure for filing an unexecuted Coordination Agreement. Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to include such a provision in the *pro forma* Coordination Agreement and to revise its OATT to address the application of withdrawal procedures when the Coordination Agreement is filed unexecuted.<sup>443</sup>

e. **Reevaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation**

229. To ensure the incumbent transmission provider can meet its reliability needs or service obligations, Order No. 1000 required each public utility transmission provider to amend its OATT to describe the circumstances and procedures for reevaluating the regional transmission plan to determine if alternative transmission solutions must be evaluated as a result of delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation.<sup>444</sup> If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission

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(Appendix D- Pro Forma Open Access Transmission Tariff, Section 15.3- Initiating Service in the Absence of an Executed Service Agreement), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>443</sup> We also note that SCE&G's proposed OATT revisions reference the potential for other contracts that may be entered into with the transmission developer. SCE&G Attachment K § VII.H. To the extent that any such contracts in any manner affects or relates to Commission-jurisdictional service, those contracts must be filed with the Commission. *See, e.g., Duke Energy Corp.*, 91 FERC ¶ 61,128 (2000) (citing 16 U.S.C. § 824d(c) (1994)).

<sup>444</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 263, 329; Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.<sup>445</sup>

**i. First Compliance Order**

230. In the First Compliance Order, the Commission found that the provisions in SCE&G's filing dealing with the reevaluation of proposed transmission projects partially complied with the requirements of Order No. 1000. The Commission found that SCE&G's proposal clearly identified the circumstances and procedures for when it will reevaluate transmission projects that are selected in the regional transmission plan for purposes of cost allocation. However, the Commission was concerned that the lack of description regarding how SCE&G and the other transmission providers will decide whether to remove a regional transmission project may allow SCE&G and the other transmission providers too much discretion in making this determination.<sup>446</sup> Accordingly, the Commission directed SCE&G to more fully explain the basis upon which SCE&G will remove a selected regional transmission project.<sup>447</sup>

**ii. Summary of Compliance Filings**

231. SCE&G states that it has revised its revaluation section to provide more detail and clarity as directed.<sup>448</sup> First, SCE&G's revised OATT clarifies that the transmission providers will reevaluate regional transmission projects. SCE&G also proposes to revise its OATT to provide that a regional transmission project selected in the regional transmission plan may be removed if the project is no longer needed, reliable, or more efficient or cost-effective. Additionally, a project may also be removed as a result of a subsequently proposed transmission project, which is determined to be more efficient or cost-effective.<sup>449</sup>

232. In addition, SCE&G proposes to revise its OATT to state that if a transmission developer fails to meet its project development schedule such that the impacted transmission provider(s) determine that a transmission need(s) will not be met or not met in a timely manner, the developer shall bear and indemnify the impacted transmission

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<sup>445</sup> *Id.* P 329.

<sup>446</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 199.

<sup>447</sup> *Id.* P 200.

<sup>448</sup> SCE&G Transmittal at 19.

<sup>449</sup> SCE&G Attachment K § VII.K.

provider(s) for the impacted transmission provider(s)'s increased costs. SCE&G also proposes to revise its OATT to state that the transmission providers' determination in this regard will be sufficiently detailed for stakeholders and transmission developer(s) to understand why a particular transmission project fails to meet its project development schedule such that the needs of the region will not be met.<sup>450</sup>

233. Finally, with respect to the abandonment of regional transmission projects, SCE&G proposes to revise its OATT to add the following language:

The Developer shall bear the additional costs that the Transmission Providers may incur (including, without limitation, costs associated with addressing or mitigating increased reliability risks) due to the Developer abandoning its Regional Project.<sup>451</sup>

### iii. Commission Determination

234. We find that Filing Parties' proposal concerning the reevaluation of the regional transmission plan partially complies with the directives in the First Compliance Order. SCE&G revised its reevaluation provisions to clarify on what basis regional transmission projects will be removed from the regional transmission plan, as well as to explicitly state that SCE&G's and Santee Cooper's determination that a transmission project will be removed will include sufficient detail for stakeholders and transmission developers to understand why a particular transmission project fails to meet the project development schedule such that the needs of the region will not be met. As such, we find that SCE&G has adequately explained the basis upon which the transmission providers in the SCRTP region will remove a selected regional transmission project as a result of the reevaluation process.

235. However, we find that SCE&G's proposal to assign to a transmission developer SCE&G's and Santee Cooper's costs associated with an abandoned or delayed transmission project is overly broad and unsupported. SCE&G proposes to revise its OATT to provide that a transmission developer shall: (1) bear the additional costs that the transmission providers may incur (including without limitation, costs associated with addressing or mitigating increased reliability risks) due to the developer abandoning its regional transmission project;<sup>452</sup> and (2) bear and indemnify the impacted transmission

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<sup>450</sup> *Id.*

<sup>451</sup> *Id.* § VII.J.

<sup>452</sup> *Id.* § VII.H.

provider(s) for the impacted transmission provider(s)'s increased costs due to the transmission developer not meeting its project development schedule such that the needs of the region will not be met in a timely manner.<sup>453</sup> These provisions would allow SCE&G and Santee Cooper to recover from a transmission developer SCE&G's and Santee Cooper's "additional" and "increased" costs associated with the transmission developer's abandoned or delayed transmission project, but provide no basis for how those costs will be determined or any limitation to the scope of costs that are included. SCE&G also does not explain or provide any support for its proposal to add these new provisions to its OATT.<sup>454</sup> We also note that neither of these proposed changes are related to a compliance directive in the First Compliance Order and are not needed to comply with the reevaluation requirements of Order No. 1000. Accordingly, we direct SCE&G to submit, within 60 days of the date of the issuance of this order, a further compliance filing to either remove from its OATT the provisions related to the assignment of increased costs associated with abandoned or delayed transmission projects, or justify and provide additional detail to explain what costs may be included in the impacted utilities' increased costs, how such costs would be calculated, and how SCE&G would implement the proposal.

f. **Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation**

236. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that provides nonincumbent transmission developers and incumbent transmission developers the same eligibility to use a regional cost allocation method or methods for any transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>455</sup> Order No. 1000 also required that the regional transmission planning process have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>456</sup>

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<sup>453</sup> *Id.* § VII.K.

<sup>454</sup> SCE&G does not address in its transmittal letter the proposal regarding costs associated with a delayed transmission project and states only that it has added the proposal regarding costs of an abandoned transmission project without providing any further explanation or support. *See* SCE&G Transmittal at 21.

<sup>455</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

<sup>456</sup> *Id.* P 336.

**i. First Compliance Order**

237. In the First Compliance Order, the Commission found that the provisions in SCE&G's filing dealing with cost allocation for nonincumbent transmission projects partially complied with the requirements of Order No. 1000.<sup>457</sup> The Commission found that SCE&G does not have a mechanism to grant a transmission developer the right to use the regional cost allocation method for unsponsored transmission projects and directed SCE&G to revise its OATT to include such a mechanism.<sup>458</sup>

**ii. Summary of Compliance Filings**

238. As described above, SCE&G proposes to revise its OATT to provide that a qualified transmission developer may seek cost allocation for a proposed regional transmission project from the day the project is proposed for potential selection in the regional transmission plan for purposes of cost allocation<sup>459</sup> until no later than 90 days after the issuance of the transmission provider's determination that the transmission project satisfies the initial screening criteria.<sup>460</sup> SCE&G's revised OATT also states that a qualified transmission developer must timely request cost allocation for a regional transmission project that satisfies the initial screening criteria to be selected in the regional transmission plan for purposes of cost allocation and that the qualified transmission developer seeking cost allocation is the entity responsible for building the regional transmission project for which cost allocation is requested.<sup>461</sup> If an entity proposing a regional transmission project is a qualified developer that intends to develop the project and request cost allocation, SCE&G's revised OATT states that the entity may request cost allocation contemporaneously with submitting its project proposal for initial screening.<sup>462</sup>

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<sup>457</sup> First Compliance Order, 143 FERC ¶ 61,058 at P 206.

<sup>458</sup> *Id.* P 207.

<sup>459</sup> SCE&G Attachment K § VII.C

<sup>460</sup> *Id.* § VII.D.

<sup>461</sup> *Id.*

<sup>462</sup> *Id.* § VII.C.

### iii. Commission Determination

239. We find that the provisions in SCE&G's filing addressing eligibility for cost allocation partially comply with the directives in the First Compliance Order. By revising its OATT to clearly state that a qualified transmission developer may seek cost allocation for a proposed regional transmission project, SCE&G has in part addressed Order No. 1000's requirement that both nonincumbent transmission developers and incumbent transmission developers have the same eligibility to use a regional cost allocation method. We note that, although a transmission developer does not need to meet the qualification criteria to propose a project for potential selection in the regional transmission plan for purposes of cost allocation,<sup>463</sup> a transmission developer must become qualified to request regional cost allocation for a transmission project it wishes to develop.<sup>464</sup> Because a qualified transmission developer must request cost allocation no later than 90 days after a transmission project is found to satisfy the initial screening criteria, a transmission developer will likely start the process to become qualified before the transmission providers complete the initial screening analysis to ensure it can meet the deadline to request cost allocation.<sup>465</sup>

240. However, we find SCE&G's proposal that "[t]o the extent that regional cost allocation is sought for any needed regional solutions, the Transmission Providers will submit such regional solutions for consideration,"<sup>466</sup> is unclear and may have the effect of prohibiting nonincumbent transmission developers from proposing transmission projects that are identified through the transmission providers' regional analysis. Specifically, it is unclear whether any transmission developer – incumbent or nonincumbent – can request cost allocation for unsponsored transmission projects identified in the regional analysis (described above in the Affirmative Obligation to Plan section of this order) as a more efficient or cost-effective transmission solution. We remind SCE&G that Order No. 1000 requires the regional transmission planning process to have a fair and not

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<sup>463</sup> *Id.* §§ VII.A, VII.C.

<sup>464</sup> *Id.* § VII.D.

<sup>465</sup> As discussed above in the Qualification Criteria section of this order, within 30 days of receiving a qualification application, the transmission providers will notify the transmission developer of any deficiencies and the transmission developer then has additional time to remedy any identified deficiencies in its qualification application. Once the transmission providers receive a complete qualification application with any deficiencies cured, they have six weeks to determine whether a transmission developer meets the qualification criteria. *Id.* § VII.E.

<sup>466</sup> *Id.* § VII.A.

unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>467</sup> Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing with OATT revisions to clarify this proposal.

#### **4. Cost Allocation**

241. Order No. 1000 required each public utility transmission provider to have in its OATT a method, or set of methods, for allocating the costs of any new transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>468</sup> Each public utility transmission provider must demonstrate that its cost allocation method satisfies six regional cost allocation principles.<sup>469</sup> In addition, while Order No. 1000 permitted participant funding, participant funding cannot be the regional cost allocation method.<sup>470</sup>

242. Regional Cost Allocation Principle 1 requires that the cost of transmission facilities be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. The cost allocation methods must clearly and definitively specify identifiable benefits and the class of beneficiaries, and the transmission facility costs allocated must be roughly commensurate with that benefit.<sup>471</sup>

243. Regional Cost Allocation Principle 2 requires that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, not be involuntarily allocated any of the costs of those transmission facilities.<sup>472</sup>

244. Regional Cost Allocation Principle 3 specifies that, if a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, the threshold must not

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<sup>467</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

<sup>468</sup> *Id.* PP 558, 690.

<sup>469</sup> *Id.* P 603.

<sup>470</sup> *Id.* P 723.

<sup>471</sup> *Id.* PP 625, 678.

<sup>472</sup> *Id.* P 637.

be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. Such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.<sup>473</sup>

245. Regional Cost Allocation Principle 4 specifies that the regional cost allocation methods must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. In addition, each regional transmission planning process must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.<sup>474</sup>

246. Regional Cost Allocation Principle 5 specifies that the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.<sup>475</sup>

247. Regional Cost Allocation Principle 6 specifies that a transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, but there can be only one cost allocation method for each type of transmission facility.<sup>476</sup> If a transmission planning region chooses to use a different cost allocation method for different types of transmission facilities, each cost allocation method must be determined in advance for each type of facility.<sup>477</sup> A regional cost allocation method may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.<sup>478</sup>

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<sup>473</sup> *Id.* P 646.

<sup>474</sup> *Id.* P 657.

<sup>475</sup> *Id.* P 668.

<sup>476</sup> *Id.* PP 685-686.

<sup>477</sup> *Id.* P 560.

<sup>478</sup> *Id.* P 689.

**i. First Compliance Order**

248. In the First Compliance Order, the Commission found that SCE&G's proposal to use a single avoided cost method to account for benefits associated with addressing reliability, economic, and public policy-related transmission needs did not comply with the regional cost allocation requirements of Order No. 1000. In particular, the Commission found that relying on an avoided cost method alone to allocate the costs of a transmission facility selected in a regional transmission plan for purposes of cost allocation does not allocate costs in a manner that is at least roughly commensurate with estimated benefits because it does not adequately assess the potential benefits provided by that transmission facility. Therefore, the Commission found that SCE&G's cost allocation proposal as a whole did not comply with Regional Cost Allocation Principle 1 and directed SCE&G to submit a further compliance filing with a proposed cost allocation method or methods for transmission facilities selected in the regional transmission plan for purposes of cost allocation that adequately assesses the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs in a manner that satisfies the six Regional Cost Allocation Principles described in Order No. 1000.

249. The Commission explained in the First Compliance Order that the proposed avoided cost method considered as benefits only cost savings that result when a local transmission project is avoided due to the selection of a transmission facility in the regional transmission plan for purposes of cost allocation. The Commission found that the proposed method fails to account for benefits that were not identified in the local transmission planning processes but that could be recognized at the regional level and fails to account for benefits associated with addressing economic and public policy-related transmission needs that the regional transmission facility provides. In addition, the Commission found that the proposed avoided cost method limits the consideration by stakeholders on a more aggregated basis of whether a particular transmission facility may represent the more efficient or cost-effective means of fulfilling a given transmission need. The Commission also stated that, under the proposed avoided cost method, a regional transmission facility that is a more efficient or cost-effective transmission solution than what is in the roll-up of local transmission plans would not be eligible for regional cost allocation if there is not a transmission facility in the local transmission plans that the regional transmission facility would displace. Thus, the proposal to use a single avoided cost method to account for benefits associated with addressing reliability, economic, and public policy-related transmission needs does not allow for the possibility of resolving transmission needs or realizing benefits at the regional level where, in an individual local transmission planning process, the value of resolving the identified

transmission need or the value of the additional benefits does not outweigh the costs, even though the value could outweigh the costs when considered on a regional basis.<sup>479</sup>

250. However, the Commission also noted that a regional cost allocation method that includes, but does not rely solely upon, avoided costs could be a reasonable approach for allocating costs in a manner that is at least roughly commensurate with benefits.<sup>480</sup> Given that the Commission found that SCE&G's proposed avoided cost method did not comply with Regional Cost Allocation Principle 1, the Commission did not make a finding on whether SCE&G's proposed regional cost allocation method complied with Regional Cost Allocation Principles 2 through 6.

**ii. Requests for Rehearing or Clarification**

**(a) Summary of Requests for Rehearing or Clarification**

251. SCE&G states that the Commission erred in concluding that it has authority under the FPA to require SCE&G to file a cost allocation method under which it would bear the cost of transmission development incurred by transmission developers from which SCE&G or other members of the transmission planning region choose not to take service. SCE&G argues that FPA section 202(a)<sup>481</sup> makes it clear that the Commission is authorized to promote transmission planning on a voluntary basis only and, thus, the Commission lacks the authority to compel the allocation of costs to entities that have no contract or commercial relationship with the transmission developer whose costs are subject to allocation.<sup>482</sup>

252. SCE&G contends that the Commission erred in finding that the avoided cost method fails to account for economic and public policy benefits, arguing that transmission expansion is planned (and performed) in the SCRTP to satisfy long-term firm transmission commitments, including long-term firm needs driven by economics, public policy, and resource additions made by long-term transmission customers. SCE&G states that because these customers are the beneficiaries of economically-driven transmission enhancements, which are subject to public policy requirements and

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<sup>479</sup> First Compliance Order, 143 FERC ¶ 61,058, at P 227 (*see* Order No. 1000-A, 139 FERC ¶ 61,132 at P 678).

<sup>480</sup> *Id.* P 232.

<sup>481</sup> 16 U.S.C. § 824a(a) (2012).

<sup>482</sup> SCE&G Rehearing at 21.

reliability obligations, transmission and resource decisions determined by SCE&G on a bottom-up basis reflect the totality of all regional benefits associated with transmission expansion. SCE&G also asserts that its integrated resource planning process accounts for reliability, economic, and public policy needs and benefits in that it reflects resource determinations that are based on information that includes resource additions, market conditions, operating costs, operating characteristics, reliability standards, public policy requirements, congestion relief, and economic resource additions through purchased power.<sup>483</sup> According to SCE&G, its integrated resource planning process and the resulting integrated resource plans, along with long-term firm requests under the OATT, inform and are used for transmission planning such that the SCRTP transmission planning process necessarily incorporates those needs and benefits.<sup>484</sup>

253. Therefore, SCE&G argues, regional transmission projects that would be selected in the regional transmission plan for purposes of cost allocation under SCE&G's avoided cost method must include the same array of constituent benefits and needs as the local transmission projects, including those needed to satisfy economic, public policy, and/or reliability considerations, that they displace. SCE&G further states that the avoided cost method thus: (1) retains the benefits and beneficiaries, and addresses the needs, inherent in the predicate plans; (2) is the most accurate measure of benefits; and (3) ensures that costs are allocated roughly commensurate with benefits.<sup>485</sup> In addition, SCE&G asserts that since all firm transmission needs, whether driven in whole or part by reliability, economic, or public policy needs, are already accounted for in the SCRTP transmission planning process, there are no other unaccounted for economic or public policy benefits to be identified through some sort of other analysis, and thus there is no basis for the Commission's conclusion in the First Compliance Order that such other benefits are *per se* excluded from consideration.<sup>486</sup>

254. SCE&G also argues that the Commission's rejection of its proposed cost allocation method is inconsistent with the Commission's statement in Order No. 1000 that flexibility will be afforded different transmission planning regions to account for

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<sup>483</sup> *Id.* at 6.

<sup>484</sup> *Id.* at 7.

<sup>485</sup> *Id.*

<sup>486</sup> *Id.* at 8.

differences in resource planning and transmission expansion processes.<sup>487</sup> According to SCE&G, while an avoided cost method may not consider benefits other than the displaced costs of construction in transmission planning regions where the predicate transmission projects are not a product of integrated resource planning that rationalizes economic, reliability, and public policy transmission drivers, this is not the case in the SCRTP region.<sup>488</sup> SCE&G asserts that the Commission should therefore grant rehearing to restore the regional flexibility indicated by Order No. 1000. SCE&G further asserts that the First Compliance Order's rejection of SCE&G's avoided transmission cost method is not supported by substantial evidence in the record.<sup>489</sup>

255. According to SCE&G, the First Compliance Order's economic planning requirements appear to constitute an unlawful mandate to displace state-regulated integrated resource planning. SCE&G contends that if there are missing benefits that would accrue to SCRTP stakeholders that are not capable of identification on a bottom-up, resource planning basis, such benefits are unknown and speculative. While SCE&G contends that the First Compliance Order is unclear, SCE&G believes it implies that the Commission has concluded on a "legislative" or theoretical basis that state-based integrated resource planning processes, which (when combined with firm transmission service requests) drive local transmission expansion plans, are incapable of considering, and do not consider, "regional" issues such as reliability, economics, or public-policy.<sup>490</sup> SCE&G contends that such a basis for acting would be arbitrary and capricious, otherwise unlawful, and not reasoned decision-making.<sup>491</sup>

256. SCE&G further contends that to the extent that the First Compliance Order assumes that the existing integrated resource planning processes that are key inputs to the SCRTP transmission planning processes do not identify certain "opportunities" that the

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<sup>487</sup> *Id.* at 7 (citing First Compliance Order, 143 FERC ¶ 61,058 at P 210 ("[t]he Commission took a principles-based approach because it recognized that regional differences may warrant distinctions in cost allocation methods among transmission planning regions."); *id.* (citing Order No. 1000 FERC Stats. and Regs. ¶ 31,323 at P 604).

<sup>488</sup> *Id.* n.19.

<sup>489</sup> *Id.* at 8.

<sup>490</sup> *Id.* at 9.

<sup>491</sup> *Id.* (citing *Florida Gas Transmission Corp. v. FERC*, 606 F.3d 636, 641 (D.C. Cir. 2010); *Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305, 1314 (D.C. Cir. 1991)).

regional transmission planning process may identify and could select, the Commission will have entered into heavy-handed, top-down mandatory regional resource planning and involuntary cost allocation, which SCE&G states is beyond the Commission's jurisdiction, and will otherwise disrupt existing bottom-up planning processes.<sup>492</sup> Specifically, SCE&G asserts, the examples in the First Compliance Order with regard to economic studies, such as references to production costs and congestion relief, almost all point to evaluations of generation/resource costs. SCE&G explains that for SCE&G and Santee Cooper, such generation/resource analyses are not performed in transmission planning processes, but instead from the bottom up in their respective integrated resource planning processes, through which transmission and generation alternatives and combinations are considered. SCE&G states that the results of such integrated resource planning processes are then incorporated into the transmission planning process, all as a part of the larger, bottom-up transmission planning processes that are utilized throughout the Southeast.<sup>493</sup> Moreover, SCE&G contends, integrated resource planning, which it explains it is required to utilize under state law, is one of the major benefits of the vertically integrated service model and must be respected under FPA section 217(b)(4).<sup>494</sup> According to SCE&G, the First Compliance Order treats the SCRTP region (and, in turn, SCE&G) as if it exists in an RTO region that employs top-down transmission planning, despite the fact that the SCRTP's processes are different from RTO transmission planning processes.<sup>495</sup>

257. In addition, SCE&G argues that in the First Compliance Order, the Commission is impermissibly vague<sup>496</sup> in its reference to purely regional economic and production cost benefits, terms which SCE&G states generally connote a measurement of generation costs/savings and thereby resource decisions. SCE&G asserts that in the SCRTP transmission planning region, resource and load decisions informed by transmission expansion efforts drive transmission planning; resource planning is not performed on a top down basis at the SCRTP level in the transmission planning process.<sup>497</sup> According to SCE&G, if a market participant identifies economic benefits, such as the availability of

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<sup>492</sup> *Id.* at 10, 11 (citing First Compliance Order, 143 FERC ¶ 61,058 at P 227, 228).

<sup>493</sup> *Id.* at 10-11.

<sup>494</sup> 16 U.S.C. § 825q(b)(4) (2012). We address this argument above in the Affirmative Obligation to Plan section of this order.

<sup>495</sup> SCE&G Rehearing at 11.

<sup>496</sup> *Id.*

<sup>497</sup> *Id.*

lower priced generation, then that market participant should make appropriate resource commitments along with long-term firm transmission commitments to transfer the associated power, which could result in transmission solutions being included in the transmission expansion plan. SCE&G argues that if a transmission developer believes it has a more efficient and cost-effective transmission solution to transmit that power than what is in the current iteration of the transmission expansion plan, it can propose a transmission project to be selected in the regional transmission plan for purposes of cost allocation to displace those initially identified transmission solutions.<sup>498</sup>

258. Finally, SCE&G asserts that the existing integrated resource planning processes look for and produce the least cost, reliable option to meet incremental needs, and are not limited to looking at only local options but canvass regional markets for opportunities as well.<sup>499</sup> Thus, SCE&G contends, if the First Compliance Order requires resource planning at the regional transmission planning level, then the Commission would disrupt the resource planning decision-making and processes already performed in the integrated resource planning processes, as required under South Carolina law, and the First Compliance Order would be inconsistent with Order No. 1000's commitment to not interfere with such integrated resource planning.<sup>500</sup> SCE&G also contends that requiring the consideration of resource planning matters in the Commission-regulated transmission planning processes would otherwise inappropriately intrude into the state's jurisdiction over such resource matters.<sup>501</sup>

**(b) Commission Determination**

259. We deny SCE&G's request for rehearing. First, we find that SCE&G's argument that the Commission does not have authority under the FPA to require SCE&G to file a cost allocation method under which it would bear the cost of transmission development

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<sup>498</sup> *Id.* at 11-12.

<sup>499</sup> *Id.* at 12.

<sup>500</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. 31,323 at P 154 ("the regional transmission planning process is not the vehicle by which integrated resource planning is conducted") and P 156 ("this Final Rule in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning").

<sup>501</sup> *Id.* at 13 (citing *See New York v. FERC*, 533 U.S. 1, 24 (2002) (recognizing FERC's holding that, among other things, "state authority in such traditional areas as the authority over local service issues, including ... *integrated resource planning*" (emphasis added))).

incurred by transmission developers from which SCE&G or other members of the transmission planning region choose not to take service is a collateral attack on Order Nos. 1000 and 1000-A. The Commission fully addressed this argument in those orders, finding that the Commission's jurisdiction is clearly broad enough to allow it to ensure that all beneficiaries of services provided by specific transmission facilities bear the costs of providing those benefits regardless of their contractual relationship with the owner of those transmission facilities.<sup>502</sup> Thus, we reject SCE&G's collateral attack on Order Nos. 1000 and 1000-A.

260. SCE&G also argues that: (1) its proposed avoided cost method accounts for all economic and public policy-related benefits; (2) the Commission's rejection of its proposed cost allocation method is inconsistent with the Commission's statement in Order No. 1000 that flexibility will be afforded to different transmission planning regions; and (3) the First Compliance Order required top-down mandatory regional resource planning, which is beyond the Commission's jurisdiction, will disrupt existing bottom-up planning processes, and inappropriately intrudes into the state's jurisdiction over resource matters.

261. As a threshold matter, SCE&G has not persuaded us that its originally proposed regional cost allocation method would allocate the costs of a transmission facility selected in a regional transmission plan for purposes of cost allocation in a manner that is at least roughly commensurate with estimated benefits. Specifically, SCE&G has not demonstrated that the concerns that the Commission expressed in the First Compliance Order<sup>503</sup> are not warranted. In the First Compliance Order, the Commission provided

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<sup>502</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 531. *See also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 530-535; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 559-568.

<sup>503</sup> The Commission stated that the single avoided cost regional cost allocation method that SCE&G proposed in its first compliance filing fails to account for benefits that were not identified in the local transmission planning processes but that could be recognized at the regional level, fails to account for benefits associated with addressing economic and public policy-related transmission needs that a regional transmission facility provides, limits the consideration by stakeholders on a more aggregated basis of whether a particular transmission facility may represent the more efficient or cost-effective means of fulfilling a given transmission need, and does not allow for the possibility of resolving transmission needs or realizing benefits at the regional level where, in an individual local transmission planning process, the value of resolving the identified transmission need or the value of the additional benefits does not outweigh the costs, even though the value could outweigh the costs when considered on a regional basis. First Compliance Order, 143 FERC ¶ 61,058, at PP 226-231.

examples describing situations in which a regional cost allocation method that relies solely on avoided costs to capture the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs would not adequately assess these benefits and therefore would not allocate the costs of a transmission facility that is selected in the regional transmission plan for purposes of cost allocation in a manner that is at least roughly commensurate with estimated benefits.<sup>504</sup> SCE&G has not persuaded us here that its proposed regional cost allocation method would adequately capture these benefits. Accordingly, we reiterate the Commission's finding in the First Compliance Order that SCE&G's proposed regional cost allocation method does not adequately assess the potential benefits provided by a transmission facility and thus deny rehearing.

262. We disagree with SCE&G's contention that because the SCRTP process incorporates those needs and benefits identified in its integrated resource planning process and through long-term firm requests under the OATT, its proposed avoided cost method necessarily accounts for all economic and public policy-related benefits. As the Commission found in Order No. 1000-A, regional transmission planning "will expand opportunities for more efficient and cost-effective transmission solutions for public utility transmission providers and stakeholders,"<sup>505</sup> and "the designation of a transmission project as a 'transmission facility in a regional transmission plan' or a 'transmission facility selected in a regional transmission plan for the purposes of cost allocation' only establishes how the developer may allocate the costs of such a facility in the Commission-approved rates if it is built."<sup>506</sup> Further, the Commission stated that unless a transmission solution is "the more efficient or cost-effective solution than what is identified in the local transmission plans of individual public utility transmission providers, it would not be selected in the regional transmission plan for the purposes of cost allocation."<sup>507</sup>

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

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<sup>504</sup> First Compliance Order, 143 FERC ¶ 61,058, at PP 227, 229.

<sup>505</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 263.

<sup>506</sup> *Id.* P 190.

<sup>507</sup> *Id.* P 192.

policy requirements and provide a means for allocating the costs of each type of transmission facility to beneficiaries.<sup>508</sup> The needs and benefits of multiple transmission providers are considered in the regional transmission planning process and, therefore, SCE&G may be able to identify needs and benefits not otherwise considered in its integrated resource planning process or associated with long-term firm transmission requests under the OATT, or identify transmission solutions to regional needs and benefits that are more efficient and cost-effective than those identified in an individual local transmission planning process.<sup>509</sup>

264. We also disagree with SCE&G's contention that the Commission's rejection of its proposed cost allocation method is inconsistent with the Commission's statement in Order No. 1000 that flexibility will be afforded different transmission planning regions to account for differences in resource planning and transmission expansion processes. The Commission stated that "we retain regional flexibility and allow the public utility transmission providers in each transmission planning region, as well as pairs of transmission planning regions, to develop transmission cost allocation methods that best suit the needs of each transmission planning region or pair of transmission planning regions, so long as those approaches comply with the regional and interregional cost allocation principles of this Final Rule."<sup>510</sup> In other words, public utility transmission providers were afforded flexibility in meeting the requirements of Order No. 1000, but such flexibility does not mean that public utility transmission providers can avoid compliance with those Order No. 1000 requirements. In the First Compliance Order, the Commission found that SCE&G's proposed regional cost allocation method did not comply with Regional Cost Allocation Principle 1. Accordingly, the Commission properly rejected SCE&G's proposal.

265. Finally, we disagree with SCE&G's argument that the First Compliance Order required top-down mandatory regional resource planning. Like Order No. 1000, the First

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<sup>508</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 689.

<sup>509</sup> Additionally, as discussed above in the Affirmative Obligation to Plan section of this order, we reject SCE&G's proposed definition of "Transmission Needs," which would limit the needs for which solutions could be considered to the transmission capacity necessary to satisfy firm transmission service commitments, explaining that a commitment for long-term firm transmission service may not be a prerequisite for consideration of a transmission need and may unnecessarily limit the universe of regional transmission needs.

<sup>510</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 604.

Compliance Order does not mandate planning of resources beyond transmission.<sup>511</sup> Moreover, as we explain above in the Affirmative Obligation to Plan section of this order, Order No. 1000 does not require that public utility transmission providers modify the resources selected through the state integrated resource planning process.<sup>512</sup> The Commission's rejection of SCE&G's proposed avoided cost allocation method and the requirement that SCE&G develop a regional cost allocation method that complies with Order No. 1000 will not result in SCE&G having to modify any such resource decisions. We therefore deny SCE&G's rehearing request.

### iii. Compliance

#### (a) Summary of Compliance Filings

266. On compliance, SCE&G states that it has revised its cost allocation method to expand the ways by which it quantifies benefits of a proposed regional transmission project. SCE&G argues that its proposal captures benefits beyond cost savings due to avoided transmission and is the same method it is proposing for quantifying benefits in the cost-benefit analysis used in the evaluation process.<sup>513</sup>

267. SCE&G proposes to retain language in its OATT stating that the transmission providers will be allocated the costs of a regional transmission project selected in the regional transmission plan for purposes of cost allocation in proportion to their respective benefits. Additionally, SCE&G's revised OATT states that the beneficiaries of a regional transmission project will be the transmission providers that are benefitting themselves or on behalf of their customers. SCE&G proposes to revise its OATT to provide that the costs of a regional transmission project selected in the regional transmission plan for

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<sup>511</sup> *Id.* P 107 (“The transmission planning and cost allocation requirements of this Final Rule, like those of Order No. 890, are associated with the processes used to identify and evaluate transmission system needs and potential solutions to those needs. In establishing these reforms, the Commission is simply requiring that certain processes be instituted. This in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning, or authority over such transmission facilities.”) *See also id.* P 154 (“the regional transmission planning process is not the vehicle by which integrated resource planning is conducted; that may be a separate obligation imposed on public utility transmission providers under the purview of the states.”).

<sup>512</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 168-179.

<sup>513</sup> SCE&G Transmittal at 18.

purposes of cost allocation allocated to each company shall be equal to the proportion of the total benefits of the project that each company receives multiplied by the total cost of the project.<sup>514</sup>

268. As discussed above in the Evaluation Process for Transmission Proposals Selection in the Regional Transmission Plan for Purposes of Cost Allocation section of this order, SCE&G proposes to revise its OATT to state that the inclusion of a proposed regional transmission project must yield a regional benefit to cost ratio of greater than 1.25.<sup>515</sup> SCE&G proposes to revise its OATT to provide that the benefits used to allocate costs pursuant to the regional cost allocation method are the total benefits in the SCRTP region associated with:

All cancelled or postponed projects in the Transmission Providers' current Local or Regional Transmission Plans;

Any reduction in cost of other existing projects in the Transmission Providers' current Local or Regional Transmission Plans;

All alternative local or regional project(s) that would be required in lieu of the proposed Regional Project, if the proposed Regional Project addresses a Transmission Need for which no transmission project is included in the Transmission Providers' current Local or regional transmission plans; and

The estimated value of the reduction of real power losses on the Transmission Providers' transmission systems.<sup>516</sup>

269. Moreover, SCE&G proposes to revise its OATT to provide that the total cost of a regional transmission project will be quantified based on the total cost in the SCRTP region associated with: (1) the cost of the proposed regional transmission project; (2) the cost of any additional projects or increase in cost to other planned projects required due to the proposed regional transmission project; and (3) the estimated value of the increase of real power losses on the transmission providers' transmission systems.<sup>517</sup>

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<sup>514</sup> SCE&G Attachment K § VII.L.

<sup>515</sup> *Id.* § VII.G.1.

<sup>516</sup> *Id.* § VII.G.2.

<sup>517</sup> *Id.*

270. Also as discussed above, SCE&G proposes to revise its OATT to state that real power losses capture the change in energy generated to serve a given amount of load and that SCE&G will use power flow analysis or other detailed engineering analysis, as appropriate, to measure the quantity of energy losses. SCE&G's revised OATT further states that the value of real power losses over the 10-year transmission planning horizon will be expressed in the in-service year dollars of the proposed regional transmission project and will be determined using the energy cost that each transmission provider provides. In addition, SCE&G proposes to revise its OATT to provide that the transmission providers will develop planning-level cost estimates for use in determining the regional benefit to cost ratio and that detailed engineering estimates may be used if available.<sup>518</sup>

**(b) Commission Determination**

271. We find that SCE&G's proposed cost allocation method partially complies with the Commission's directives in the First Compliance Order addressing the regional cost allocation principles and the six regional cost allocation principles of Order No. 1000. Specifically, we find that SCE&G's proposed regional cost allocation method: (1) allocates costs in a manner that is at least roughly commensurate with estimated benefits; (2) does not involuntarily allocate costs to those who receive no benefits; (3) allocates costs solely within the affected transmission planning region; (4) provides for methods for determining benefits and identifying beneficiaries that are transparent; and (5) represents a single cost allocation method for all types of transmission facilities that is set out clearly and explained in detail. However, SCE&G's proposed regional cost allocation method: (1) includes a benefit to cost ratio that exceeds 1.25; (2) does not provide for identification of the consequences for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required, associated with a transmission facility selected in the regional transmission plan for purposes of cost allocation; and (3) does not provide for adequate documentation to allow a stakeholder to determine how the methods for determining benefits and beneficiaries were applied to a proposed transmission facility. Accordingly, SCE&G must make a further compliance filing to revise its OATT, as discussed below.

272. With respect to Regional Cost Allocation Principle 1, we find that SCE&G's proposed regional cost allocation method allocates the costs of transmission facilities selected in the regional transmission plan for purposes of cost allocation to those within the transmission planning region that benefit from those transmission facilities in a manner that is at least roughly commensurate with estimated benefits. Under SCE&G's proposed regional cost allocation method, the costs of a regional transmission project selected in the regional transmission plan for purposes of cost allocation will be allocated

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<sup>518</sup> *Id.*

to each company based on the proportion of the total benefits of the project that each company receives multiplied by the total cost of the project. SCE&G's proposed cost allocation method identifies beneficiaries and measures benefits based on the following: (1) all canceled or postponed transmission projects in the Transmission Providers' local and regional transmission plans; (2) any reduction in costs of existing transmission projects in those plans; (3) if the proposed regional transmission project addresses a transmission need for which no transmission project is included in those plans, all alternative local and regional transmission projects that would be required in lieu of the proposed regional transmission project; and (4) the estimated value of the reduction of real power losses on the Transmission Providers' transmission systems. We find that these metrics represent a reasonable approximation of the benefits that a transmission facility selected in the regional transmission plan for purposes of cost allocation may provide as they recognize additional benefits of transmission facilities while also accounting for the value of avoiding the costs of certain transmission projects.

273. We further find that SCE&G's proposed regional cost allocation method addresses the concerns that the Commission expressed in the First Compliance Order with respect to the use of a single avoided cost method to account for benefits associated with addressing reliability, economic, and public policy-related transmission needs. In the First Compliance Order, the Commission stated that the single avoided cost regional cost allocation method that SCE&G proposed in its First Compliance Filing: a.) failed to account for benefits that were not identified in the local transmission planning processes but that could be recognized at the regional level; b.) failed to account for benefits associated with addressing economic and public policy-related transmission needs that the regional transmission facility provides; c.) limited the consideration by stakeholders on a more aggregated basis of whether a particular transmission facility may represent the more efficient or cost-effective means of fulfilling a given transmission need, and d.) did not allow for the possibility of resolving transmission needs or realizing benefits at the regional level where, in an individual local transmission planning process, the value of resolving the identified transmission need or the value of the additional benefits does not outweigh the costs, even though the value could outweigh the costs when considered on a regional basis.<sup>519</sup> SCE&G's revised regional cost allocation method addresses these concerns because it accounts for the benefits associated with both the cost of all alternative local and regional transmission projects that would be required in lieu of the proposed regional transmission project if the proposed regional transmission project addresses a transmission need for which no transmission project is included in the local or regional transmission plans and the estimated value of the reduction of real power losses on SCE&G and Santee Cooper's transmission systems. As a result of SCE&G's proposal to add these additional metrics for measuring benefits, SCE&G's revised

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<sup>519</sup> First Compliance Order, 143 FERC ¶ 61,058, at PP 226-231.

regional cost allocation method accounts for the benefits of a regional transmission project even where it does not result in the cancellation, postponement, or reduction in costs of existing transmission projects in SCE&G and Santee Cooper's local or regional transmission plans. We therefore find that SCE&G's regional cost allocation method, as revised, adequately assesses the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs and complies with Regional Cost Allocation Principle 1.

274. Similarly, SCE&G's proposed regional cost allocation method complies with Regional Cost Allocation Principle 2. Cost Allocation Principle 2 requires that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, not be involuntarily allocated any of the costs of those transmission facilities. In its compliance filing, SCE&G proposes to allocate the costs of a regional transmission project selected in the regional transmission plan for purposes of cost allocation to each company based on the proportion of the total benefits of the project that each company receives. We find that SCE&G's proposal therefore allocates the costs of transmission facilities selected in the regional transmission plan for purposes of cost allocation to those entities that are found to benefit from those transmission facilities and not to those that receive no benefit. We also note that, as discussed above in connection with our conclusion that the proposed cost allocation method complies with Cost Allocation Principle 1, SCE&G's proposal allocates costs in a manner that is at least roughly commensurate with estimated benefits. Thus, SCE&G's proposed regional cost allocation method does not involuntarily allocate the costs of transmission facilities to those that receive no benefit from those transmission facilities.

275. We find that SCE&G's proposed benefit to cost ratio does not comply with Regional Cost Allocation Principle 3. SCE&G proposes that to be selected in the regional transmission plan for purposes of cost allocation, a regional transmission project must have a benefit to cost ratio *greater* than 1.25. Thus, SCE&G's proposal would exclude projects that just met the 1.25 threshold, which is inconsistent with the requirements of Order No. 1000. Specifically, Regional Cost Allocation Principle 3 requires that to the extent that a benefit to cost ratio is used, it may not exceed 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.<sup>520</sup> We direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing that revises its OATT to clarify that a regional transmission project must have a benefit to cost ratio *equal to or* greater than 1.25 or provides a justification for a higher ratio.

276. With respect to Regional Cost Allocation Principle 4, SCE&G proposes that the beneficiaries of a proposed regional transmission project will be SCE&G and

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<sup>520</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

Santee Cooper<sup>521</sup> that are benefitting themselves or on behalf of their customers. Thus, we find that SCE&G's proposal complies with the Regional Cost Allocation Principle 4 requirement that the regional cost allocation method must allocate the costs of a transmission facility selected in the regional transmission plan for purposes of cost allocation solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, SCE&G's proposal does not comply with the Regional Cost Allocation Principle 4 requirement that the regional transmission planning process identify the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region. SCE&G also does not address whether the SCRTP transmission planning 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 SCRTP region. Accordingly, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing addressing these concerns.

277. We find that SCE&G's proposed regional cost allocation method partially complies with Regional Cost Allocation Principle 5 (i.e., the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility). SCE&G's proposed regional cost allocation method and data requirements for determining benefits and identifying beneficiaries are transparent and described in SCE&G's OATT. Specifically, SCE&G's revised OATT describes which entities can be identified as beneficiaries and how both benefits and costs will be quantified. SCE&G's revised OATT further provides that the transmission providers will develop planning-level cost estimates for use in determining the regional benefit to cost ratio and that detailed engineering estimates may be used if available. With respect to real power losses, SCE&G's revised OATT states that SCE&G will use power flow analysis or other detailed engineering analysis, as appropriate, to measure the quantity of energy losses, and that the value of such losses over the 10 year transmission planning horizon will be expressed in the in-service year dollars of the proposed regional transmission project and will be determined using the energy cost that each transmission provider provides.

278. SCE&G's revised OATT provides that the SCE&G and Santee Cooper's determination of whether to select a transmission facility in the regional transmission

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<sup>521</sup> SCE&G's OATT states that SCE&G and Santee Cooper will serve as the Transmission Providers of the SCRTP region. SCE&G Attachment K § I.

plan for purposes of cost allocation will be sufficiently detailed for stakeholders to understand why a particular proposed transmission project was or was not selected and will include information regarding how cost estimates were developed for local transmission facilities. However, SCE&G's revised OATT does not require that SCE&G and Santee Cooper provide documentation regarding the application of the regional cost allocation method to determine benefits, identify beneficiaries, and allocate costs of specific proposed transmission facilities.<sup>522</sup> Thus, we direct SCE&G to submit, within 60 days of the date of issuance of this order, a further compliance filing to revise its OATT to provide that SCE&G will provide adequate documentation to allow a stakeholder to determine how the regional cost allocation method and data requirements for determining benefits and identifying beneficiaries were applied to a proposed transmission facility.

279. Finally, we find that SCE&G's proposed regional cost allocation method complies with Regional Cost Allocation Principle 6. Consistent with Regional Cost Allocation Principle 6, SCE&G proposes to use the same cost allocation method for different types of transmission facilities selected in the regional transmission plan for purposes of cost allocation. In addition, SCE&G has not proposed to designate a type of transmission facility that has no regional cost allocation method applied to it.

## 5. Other Changes

### a. Summary of Compliance Filing

280. SCE&G has proposed several minor changes to its Attachment K related to transmission planning. First, SCE&G has removed the statement that it participates in the Southeast Inter-Regional Participation Process (SIRPP).<sup>523</sup> All information on the SIRPP was removed from Attachment K in SCE&G's interregional compliance filing made in Docket No. ER13-1935 on July 10, 2013. SCE&G explains that the removed sentence was left in Attachment K in error and was deleted, as reflected in its filing.<sup>524</sup> Second, SCE&G has revised all references to transmission planner to use the term transmission owners. SCE&G explains that this clarification seemed important to account for the changes that may be effected by Order No. 1000.<sup>525</sup> Finally, SCE&G also proposes to revise its OATT to state that administrative costs attributable to the enrolled

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<sup>522</sup> See, e.g., *Pub. Serv. Co. of Colorado*, 142 FERC ¶ 61,206 at P 325.

<sup>523</sup> SCE&G Attachment K § VII.G.2.

<sup>524</sup> SCE&G Transmittal at 20.

<sup>525</sup> *Id.* at 21.

transmission providers will be allocated among the enrolled transmission providers on an equal basis.<sup>526</sup>

**b. Commission Determination**

281. We find SCE&G's proposed minor OATT revisions regarding the deletion of the reference to the SIRPP; appropriate use of the term "transmission owner" as opposed to the term "transmission planner"; and administrative costs attributable to the enrolled transmission providers are acceptable.

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) SCE&G's compliance filing is hereby accepted in part and rejected in part, effective April 19, 2013, subject to further compliance filings, as discussed in the body of this order.

(C) SCE&G is hereby directed to submit further compliance filings, within 60 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Norris is dissenting in part with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>526</sup> SCE&G Attachment K § III.B. In contrast, SCE&G proposes to revise its Attachment K to provide that participants in the SCRTP process will be responsible for their own costs of participation. *Id.*

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

South Carolina Electric &amp; Gas Company

Docket Nos. ER13-107-003  
ER13-107-005

(Issued May 15, 2014)

NORRIS, Commissioner, *dissenting in part*:

I dissent from today's order because it represents a step backward from the Commission's efforts under Order No. 1000 to increase competition for transmission development. In my view, establishing reforms for the regional transmission planning process to ensure that non-incumbent transmission developers can participate on a level playing field with incumbent transmission owners was essential in order to promote increased competition. Today's order approves practices within the South Carolina Electric & Gas Company (South Carolina) transmission planning process that unreasonably tilt the playing field in favor of incumbents, thereby undermining the ability to identify the more efficient or cost-effective transmission solutions. In short, the non-incumbent measures adopted by this order fail to promote the development of more efficient or cost-effective transmission facilities in a manner that ensures just and reasonable rates.

I believe that the non-incumbent reforms adopted in Order No. 1000 held the promise of providing real benefits to consumers by increasing competition for transmission development. In the first round of Order No. 1000 compliance filings, the Commission made significant progress with respect to these objectives. Unfortunately today's order, together with the MISO and PJM Order No. 1000 compliance orders that the Commission is issuing concurrently, reverse course, undo a good deal of the progress that has been made thus far, and serve to unreasonably protect incumbent transmission owners.

While there are many examples of innovative incumbent transmission developers, others may lack innovation and may be more interested in preserving the status quo to insulate themselves from competition. Today's order protects incumbents rather than promotes competition. This concerns me because no single entity, whether incumbent or non-incumbent, has a lock on ideas for better transmission and non-transmission alternatives. Clearly, incumbents already are well-positioned through their knowledge of the system, including issues related to reliability and congestion. Today's order gives incumbents a further advantage over non-incumbents by limiting non-incumbents' participation in the planning process. Moreover, if

incumbents are unable to come up with a better solution for transmission needs, I am concerned that the reason could be a lack of innovation or a conflict of interest. Through today's order, we are allowing consumers to bear the burden of these potential shortcomings.

Specifically, today's order grants rehearing to allow South Carolina's regional transmission planning process to effectively exclude non-incumbents from participating due to a consideration of state law. This order has taken a significant step backward with respect to the policy goals of Order No. 1000 by essentially serving only to protect the interests of the traditional incumbent transmission developers, by limiting opportunities for non-incumbents to compete in the regional planning process for projects that meet regional transmission needs.

I cannot support the unjustified departure from Order No. 1000 that allows the South Carolina regional transmission planning process to automatically exclude non-incumbents from being designated to develop a transmission project due to consideration of state law. In short, this change in policy will effectively exclude non-incumbents from participating more broadly in the planning process. Such a change in policy is not justified by the record in this case, is entirely inconsistent with the express language of Order No. 1000, and undermines the policy goals of Order No. 1000.

I believe the Commission correctly determined in the first South Carolina compliance order that state law cannot be used to effectively exclude non-incumbents from participating in the planning process.<sup>1</sup> From a policy perspective, providing an open and fair opportunity for all stakeholders, including non-incumbents, to participate fully in the regional transmission planning processes will ensure that the planning process provides complete transparency regarding all reasonable alternatives that would be available to meet identified transmission needs.

Ensuring wider participation in the regional transmission planning process increases competition, which in turn would result in a regional transmission plan that identifies more efficient or cost-effective transmission solutions. Indeed, Order No. 1000-A states that a goal of its reforms is to provide more information and options for stakeholders and state regulators to consider, in order to ensure that they are able to make the best decision regarding how to meet their transmission needs.<sup>2</sup> A key objective of the regional transmission planning process under Order No. 1000 is to produce a transmission plan that includes more efficient or cost-effective transmission projects so that the region's transmission providers, in consultation with stakeholders and the relevant regulatory authorities, can decide whether to move forward and realize the benefits from such transmission projects. Yet, this order proposes to restrict the set of transmission proposals that could be submitted by non-incumbents and considered in the planning process at the outset, based on the potential for conflicts with state or local laws.

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<sup>1</sup> *So. Carolina Elec. & Gas*, 143 FERC ¶ 61,058, at P 131 (2013).

<sup>2</sup> Order No. 1000-A, 139 FERC ¶ 61,132, at P 190 (2012).

Today's order justifies exclusion of non-incumbents as a threshold matter because of the assertion that inefficiencies in process could result. We should not use claims of inefficiency of process as justification for introducing measures in the regional transmission planning process that will reduce competition by limiting the subset of transmission proposals that can be considered. I am more concerned that we promote a transmission planning process that results in transmission solutions that increase competition, and provide real consumer benefits by lowering costs. Limiting the set of projects and developers that can even be considered in the planning process is inconsistent with that goal and results in unjust and unreasonable rates. Concerns about an inefficient planning process can, and should be, mitigated by the fact that transmission developers who submit bids will fully fund the competitive bidding process and will not submit bids for projects that are unlikely to succeed.

South Carolina's effective exclusion of non-incumbents based on a consideration of state law is also wholly inconsistent with the express language of the final rule. In Order No. 1000-A, the Commission stated

[I]t would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain, state approvals necessary ... to be eligible to propose a transmission facility.<sup>3</sup>

Yet, that in effect is what South Carolina has proposed to do. I simply cannot reconcile this language with the approach South Carolina has taken here. Moreover, Order No. 1000-A also contemplates a process in which a transmission project that is selected for cost allocation must set forth a timeline under which it will achieve the necessary state approvals for constructing a project, and allows for a re-evaluation process if a developer is unable to meet its proposed timeline. The order justified this approach by finding that it increases the number of projects evaluated and selected to meet regional needs, and provide non-incumbents the opportunity to propose a transmission facility while it seeks to comply with state laws or regulations. This discussion would be meaningless if the Commission had intended to effectively exclude non-incumbents from participating in the regional transmission planning process based on a consideration of state law.<sup>4</sup>

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<sup>3</sup> Order No. 1000-A, 139 FERC ¶ 61,132, at P 441 (2012).

<sup>4</sup> Numerous parties point to language from the final rule that nothing in Order No. 1000 "is intended to preempt or otherwise conflict with state authority over siting, permitting, and construction of transmission facilities ... ." Order No. 1000-A, 139 FERC ¶ 61,132 at P 186. In my view, allowing non-incumbents to participate in the regional transmission planning process without consideration of potential state law restrictions does not infringe upon the state's authority over siting, permitting and construction of transmission facilities. Rather, this language simply acknowledges state jurisdiction over siting, permitting, and construction of transmission

(continued...)

The non-incumbent reforms within Order No. 1000 were part of an overall package of reforms within the final rule that set our country on a path for increased and robust transmission development, based on an open and competitive process that would result in more efficient or cost-effective transmission solutions. Unfortunately, today's order strays far from Order No. 1000's original path that would have allowed non-incumbents to actively participate and compete in the transmission planning process, and instead has followed a divergent path that I cannot support.

For these reasons, I respectfully dissent in part.

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John R. Norris, Commissioner

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facilities. Using this language to exclude non-incumbents denies states and other stakeholders the opportunity to have all essential information regarding the more efficient or cost-effective transmission facilities.

Document Content(s)

ER13-107-003.DOCX.....1-137