

147 FERC ¶ 61,241  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Carolinas, LLC and Duke Energy Progress, Inc.	Docket Nos. ER13-83-003 ER13-83-004 ER13-83-005
Louisville Gas and Electric Company and Kentucky Utilities Company	ER13-897-001 ER13-897-002
Alabama Power Company	ER13-908-001 ER13-908-002
Ohio Valley Electric Corporation	ER13-913-001 ER13-913-002

ORDER ON REHEARING AND COMPLIANCE

(Issued June 19, 2014)

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1. On July 18, 2013, the Commission issued an order accepting, subject to modifications,<sup>1</sup> compliance filings that Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E/KU); Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies); and Ohio Valley Electric Corporation (OVEC)<sup>2</sup> made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.<sup>3</sup>

2. On August 15, 2013, the Florida Public Service Commission (Florida Commission) filed a request for rehearing of the First Compliance Order, and on August 18, 2013, SERTP Sponsors,<sup>4</sup> the National Association of Regulatory Utility Commissioners (NARUC), Alabama Public Service Commission (Alabama Commission), Georgia Public Service Commission (Georgia Commission), North Carolina Utilities Commission (North Carolina Commission), and LSP Power

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<sup>1</sup> *Louisville Gas & Elec. Co.*, 144 FERC ¶ 61,054 (2013) (First Compliance Order).

<sup>2</sup> For purposes of this order, we refer to the public utility transmission providers in the Southeastern Regional Transmission Planning (SERTP) region – i.e., LG&E/KU, Southern Companies, OVEC, and Duke Energy Carolinas, LLC and Duke Energy Progress, Inc. (Duke-Progress) – as Filing Parties. SERTP Sponsors, identified below in footnote 4, will refer to both the enrolled public utility transmission providers (i.e., Filing Parties) and the non-public utility transmission providers that are either enrolled in the region or file in support of the compliance filing.

<sup>3</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>4</sup> SERTP Sponsors consist of Southern Companies, OVEC, LG&E/KU, Duke-Progress and the following non-public utility transmission providers: Associated Electric Cooperative Inc., Dalton Utilities, Georgia Transmission Corporation, the Municipal Electric Authority of Georgia, PowerSouth Energy Cooperative, the South Mississippi Electric Power Association, and Tennessee Valley Authority (TVA).

Transmission, LLC and LSP Transmission Holdings, LLC (collectively, LS Power)<sup>5</sup> filed requests for rehearing of the First Compliance Order.

3. On December 19, 2013, the Commission issued an order accepting, subject to modifications, compliance filings that Duke-Progress made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000 and in which Duke-Progress proposed to adopt the same regional transmission planning procedures filed by LG&E/KU, Southern Companies, and OVEC that the Commission addressed in the First Compliance Order.<sup>6</sup> On January 15, 2014, Duke-Progress filed a request for rehearing of the Duke-Progress Compliance Order that incorporated the joint request for rehearing that it had submitted together with the other SERTP Sponsors in response to the First Compliance Order.

4. On January 14, 2014, Filing Parties separately submitted, pursuant to section 206 of the Federal Power Act (FPA),<sup>7</sup> revisions to the transmission planning procedures of their respective Open Access Transmission Tariffs (OATT) to comply with the First

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<sup>5</sup> On August 22, 2013, LS Power moved to amend its rehearing request to substitute a corrected, final version of its rehearing request for an inadvertently-submitted earlier draft of that pleading.

<sup>6</sup> *Duke Energy Carolinas LLC*, 145 FERC ¶ 61,252, at P 26 (2013) (Duke-Progress Compliance Order). On February 21, 2013, the Commission found that the region proposed by Duke-Progress and Alcoa Power Generating, Inc. failed to form an Order No. 1000-compliant transmission planning region. *Duke Energy Carolinas LLC*, 142 FERC ¶ 61,130, at P 26 (2013). In response, Duke-Progress proposed to enroll in the SERTP region, and on May 22, 2013 submitted a second round compliance filing that largely adopted the then-pending proposal by LG&E/KU, Southern Companies, and OVEC. Therefore, the Commission, in ruling on Duke-Progress's second compliance filing, largely incorporated its determinations in the First Compliance Order. Duke-Progress Compliance Order, 145 FERC ¶ 61,252 at P 26. Because the holdings in the Duke-Progress Compliance Order largely duplicate those in the First Compliance Order, we will not separately refer or cite to the Duke-Progress Compliance Order, except where the holdings in that order deviate from those in the First Compliance Order (e.g., with respect to Duke-Progress's local transmission planning procedures).

<sup>7</sup> 16 U.S.C. § 824e (2012).

Compliance Order.<sup>8</sup> On February 10, 2014, Duke-Progress submitted revisions to its OATT to comply with the Duke-Progress Compliance Order.

5. For the reasons discussed below, we grant in part and deny in part the requests for rehearing. We also accept in part and reject in part Filing Parties' proposed OATT revisions, subject to conditions, and direct Filing Parties to submit further revisions to their respective OATTs in further compliance filings due within 60 days of the date of issuance of this order.<sup>9</sup>

## **I. Background**

6. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890<sup>10</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.

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<sup>8</sup> On January 14, 2014, Duke-Progress submitted the joint transmittal letter filed by each Filing Party in its respective docket, but did not file its OATT revisions until February 10, 2014.

<sup>9</sup> We note that the same or similar issues are addressed in the following orders that have been issued: *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,198 (2014); *PacifiCorp*, 147 FERC ¶ 61,057 (2014); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 (2014); *S.C. Elec. & Gas Co.*, 147 FERC ¶ 61,126 (2014); and *Maine Pub. Serv. Co.*, 147 FERC ¶ 61,129 (2014).

<sup>10</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).



7. 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.

8. On February 7, 2013 and February 8, 2013, Filing Parties filed submitted revisions to Attachment K of their respective OATTs to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000. In the First Compliance Order, the Commission accepted Filing Parties' respective compliance filings, subject to further modifications.

## **II. Requests for Rehearing or Clarification – Docket Nos. ER13-897-001, ER13-908-001, ER13-913-001, and ER13-83-003**

9. Timely requests for rehearing and/or clarification were filed by SERTP Sponsors,<sup>11</sup> LS Power, NARUC,<sup>12</sup> and the Alabama, Florida, Georgia, and North Carolina Commissions.<sup>13</sup> SERTP Sponsors seek rehearing and clarification of Commission determinations in the First Compliance Order addressing the transmission planning region; the affirmative obligation to plan; minimum threshold requirements for transmission projects that are eligible for selection in a regional transmission plan for purposes of cost allocation; transmissions needs driven by public policy requirements; consideration of rights-of-way governed by state law; qualification criteria and information requirements; the region's evaluation process, including the requirement to obtain necessary state approvals; reevaluation criteria; and the regional cost allocation method. LS Power sought rehearing and clarification of certain Commission determinations in the First Compliance Order addressing minimum threshold requirements for transmission projects that are eligible for selection in a regional transmission plan for purposes of cost allocation and qualification criteria. NARUC and the Alabama, Florida, Georgia, and North Carolina Commissions seek rehearing of certain Commission determinations in the First Compliance Order addressing the

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<sup>11</sup> The South Carolina Office of Regulatory Staff submitted a motion to intervene out of time and comments in support of the SERTP Sponsors' rehearing and clarification request.

<sup>12</sup> NARUC filed an out-of-time motion to intervene with its request for rehearing.

<sup>13</sup> NARUC and the Georgia Commissions also submitted motions to intervene out of time.

affirmative obligation to plan and the region's evaluation process, including the requirement to obtain necessary state approvals, and NARUC and the Alabama and Florida Commissions also seek rehearing of certain Commission determinations regarding consideration of rights-of-way governed by state law.

### **III. Compliance Filings – Docket Nos. ER13-13-897-002, ER13-908-002, ER13-913-002, and ER13-83-005**

10. In response to the First Compliance Order, Filing Parties have submitted further revisions to their local and regional transmission planning processes to comply with the Commission's requirements in the First Compliance Order, including modifications to their OATTs relating to the regional transmission planning requirements, consideration of transmission needs driven by public policy requirements, nonincumbent transmission developer reforms, and cost allocation.<sup>14</sup> Filing Parties state that they are including changes in their regional compliance filing relating to the interregional transmission coordination process proposed in their interregional compliance filings in order to facilitate Order No. 1000 implementation.<sup>15</sup> Filing Parties state that their revised proposal was developed through extensive collaborative efforts and reflects the consensus of the SERTP Sponsors, including the non-public utility transmission provider SERTP Sponsors. Filing Parties state that the extension of time granted by the Commission for Filing Parties to submit their revised proposal allowed an opportunity for SERTP Sponsors to vet an initial draft of their proposal with stakeholders. Filing Parties state that representatives of state public service commissions, transmission developers, market

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<sup>14</sup> Southern Companies, Open Access Transmission Tariff, Attachment K (The Southeastern Regional Transmission Planning Process) (3.0.0) (Southern Companies OATT, Attachment K); OVEC, Open Access Transmission Tariff, Attachment M (The Southeastern Regional Transmission Planning Process) (4.0.0) (OVEC OATT, Attachment M); LG&E/KU, Joint Pro Forma Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (6.0.0) (LG&E/KU OATT, Attachment K); Duke Energy Carolinas, LLC Tariff Volume No. 4, Open Access Transmission Tariff, Attachment N-1, Transmission Planning Process (CP&L Zone and DEC Zone) (7.0.0) (Duke-Progress OATT, Attachment N-1). Citations to a Filing Party's existing OATT, instead of its proposed OATT revisions submitted as part of its compliance filing, will provide the full cite, including the current version numbers.

<sup>15</sup> *E.g.*, Southern Companies Transmittal Letter at 7 and Southern Companies OATT, Attachment K § 17.2.1.2 (describing the calculation of costs for interregional transmission projects for the purposes of determining the benefit to cost analysis).

participants, transmission dependent utilities, and nongovernmental organizations participated in discussions regarding the draft, and stakeholders were provided an opportunity to submit comments on the proposal.<sup>16</sup> Filing Parties propose revisions to their respective transmission planning attachments in their OATTs and submit a joint transmittal letter to explain the proposed changes to those attachments. Filing Parties note that the Commission has already granted their request to establish an effective date for their respective compliance filings of June 1, 2014.

11. Notice of LG&E/KU, Southern Companies, and OVEC's compliance filings was published in the *Federal Register*, 79 Fed. Reg. 4461 (2014), with interventions and protests due on or before February 13, 2014. Notice of Duke-Progress's compliance filing was published in the *Federal Register*, 79 Fed. Reg. 9462 (2014), with interventions and protests due on or before March 3, 2014. Appendix A contains the list of intervenors, commenters, protesters, and entities filing answers in these proceedings.<sup>17</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. As an initial matter, we address NARUC's motion to intervene out-of-time and request for rehearing. NARUC states that the Commission should grant its out-of-time request for intervention, arguing that "[c]ompelling and unique circumstances" surround its request.<sup>18</sup> NARUC states that it has good cause for not timely filing its intervention given that it could not have foreseen the First Compliance Order's "potential profound and far reaching impacts to transmission siting policy."<sup>19</sup> NARUC avers that this late

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<sup>16</sup> *E.g.*, Southern Companies Transmittal Letter at 3.

<sup>17</sup> Given that Filing Parties filed a joint regional transmission planning proposal, we address comments and protests filed in dockets for individual Filing Parties as comments and protests filed regarding the joint proposal, except in instances where the comments or protests address specific provisions of an individual Filing Party's OATT.

<sup>18</sup> NARUC, Motion to Intervene and Petition for Rehearing, Docket Nos. ER13-107-000, 001 (filed May, 20, 2013).

<sup>19</sup> *Id.* at 3-4.

request could not have been avoided unless it filed interventions in every Order No. 1000 compliance filing docket. In addition, NARUC states that it agrees to accept the record as it stands at the time of its intervention so that permitting its intervention will not disrupt the proceeding or prejudice any party. NARUC also states that the filing deadlines in the proceeding besides those for rehearing requests have passed. Finally, NARUC argues that, absent its intervention, its interests would not be adequately represented.<sup>20</sup>

14. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial.<sup>21</sup> We find no such prejudice here, and we grant NARUC's motion to intervene out of time.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

16. We note that the tariff records Filing Parties submitted here in response to the First Compliance Order and the Duke-Progress Compliance Order also include language pending in tariff records that Filing Parties separately filed on July 10, 2013, to comply with the interregional transmission coordination and cost allocation requirements of Order No. 1000. The tariff records Filing Parties submitted in their interregional compliance filings 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

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<sup>20</sup> *Id.* at 4.

<sup>21</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 Resources, Inc.*, 83 FERC ¶ 61,077, at 61,379 (1998); *PJM Interconnection, L.L.C.*, 88 FERC ¶ 61,039 at 61,091 (1999); *ISO New England, Inc.*, 90 FERC ¶ 61,053, at 61,224 (2000); *Am. Elec. Power Serv. Corp.*, 90 FERC ¶ 61,244, at 61,809 (2000); *Cal. Power Exchange*, 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).

outcome of the Commission orders addressing Filing Parties' interregional compliance filings in Docket Nos. ER13-1927, ER13-1928, ER13-90, ER13-1936, ER13-1940, and ER13-1941.

**B. Substantive Matters**

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

18. We find that Filing Parties' compliance filings partially comply with the directives in the First Compliance Order. Accordingly, we accept Filing Parties' compliance filings, subject to further compliance filings, as discussed below. We direct Filing Parties to submit the further compliance filings within 60 days of the date of issuance of this order.

**1. Overview of the SERTP Process**

19. Filing Parties describe transmission planning in the SERTP region as a bottom-up process that begins with state integrated resource planning processes. The state integrated resource planning processes identify the transmission needs based on meeting native load and requirements customers' needs for electricity. SERTP Sponsors state that transmission planners evaluate transmission solutions to meet the transmission needs identified in the state integrated resource planning processes along with the long-term commitments made by third parties under the transmission providers' OATTs.<sup>22</sup>

20. The SERTP process develops a regional transmission plan that identifies the transmission facilities necessary to meet the needs of transmission providers and transmission customers in the transmission planning region for purposes of Order No. 1000.<sup>23</sup> Each calendar year, the transmission providers in the SERTP region conduct four meetings that are open to all stakeholders. The number of meetings may be adjusted with the approval of the SERTP Sponsors and the Regional Planning Stakeholders' Group. These meetings can be conducted in person, through phone conferences, or through other available telecommunications or technical means.<sup>24</sup>

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<sup>22</sup> *E.g.*, Southern Companies Transmittal Letter at 5.

<sup>23</sup> *E.g.*, Southern Companies OATT, Attachment K, Regional Transmission Planning.

<sup>24</sup> *Id.* § 1.2.

21. In the first quarter of the year, the first transmission planning meeting is held at which point the Regional Planning Stakeholders' Group is formed for that year.<sup>25</sup> The transmission providers will meet with the Regional Planning Stakeholders' Group and any other interested stakeholders for the purposes of Regional Planning Stakeholders' Group selecting up to five stakeholder-requested Economic Planning Studies to be studied by the Transmission Provider and the SERTP Sponsors. The transmission providers will also conduct an interactive training session for all interested stakeholders, explaining the underlying methodology and criteria that will be utilized to develop the transmission expansion plan before that methodology and criteria are finalized for purposes of the development of that year's transmission expansion plan (i.e., the expansion plan that is intended to be implemented the following calendar year). Stakeholders may submit comments to the transmission providers regarding the criteria and methodology during the discussion at the meeting.<sup>26</sup>

22. In the second quarter, transmission providers in the SERTP region hold their preliminary expansion plan meeting during which the transmission providers will meet with all interested stakeholders to explain the preliminary transmission expansion plan, internal model updating, and coordination study activities. Stakeholders may provide feedback and suggest alternatives and enhancements to the transmission expansion plan for the transmission providers to consider.<sup>27</sup>

23. In the third quarter, the second Regional Planning Stakeholders' Group meeting is held during which the transmission providers will meet with the Regional Planning Stakeholders' Group and any other interested stakeholders to report the preliminary results for the economic planning studies requested by the Regional Planning Stakeholders' Group earlier in the year. The transmission providers will also provide feedback to the stakeholders regarding any transmission expansion plan alternatives that

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<sup>25</sup> *Id.* § 1.2.1. The Regional Planning Stakeholders' Group serves as the representative of eight industry sectors in interactions with the Transmission Provider and SERTP Sponsors. The industry sectors are: transmission owners/operators, transmission service customers, cooperative utilities, municipal utilities, power marketers, generation owners/developers, ISO/RTOs, and demand side management/demand response. Each industry sector may have up to two members of the Regional Planning Stakeholders' Group. *Id.* §§ 1.3, 1.3.1.

<sup>26</sup> *Id.* § 1.2.1.

<sup>27</sup> *Id.* § 1.2.2.

the stakeholders may have suggested at the preliminary expansion plan meeting. The transmission providers will also discuss with the stakeholders the results of any regional reliability model development and address transmission planning issues that the stakeholders may raise.<sup>28</sup>

24. During the fourth quarter, transmission providers hold the annual transmission planning summit and assumptions input meeting. During the annual transmission planning summit portion of the meeting, the transmission providers will present the final results for the economic planning studies and an overview of the 10-year transmission expansion plan, which reflects the results of planning analyses performed in the then-current planning cycle. The transmission providers will also provide an overview of the regional transmission plan for Order No. 1000 purposes and address any transmission planning issues that the stakeholders may raise.<sup>29</sup> The assumptions input session follows the annual transmission planning summit and provides an open forum for discussion with the stakeholders regarding, among other things, the data gathering and transmission model assumptions that will be used for the development of the transmission providers' following year's 10-year transmission expansion plans. This assumptions input session may also serve to address miscellaneous transmission planning issues, such as reviewing the previous year's regional planning process, and any specific transmission planning issues that stakeholders may raise.<sup>30</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>31</sup> 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

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<sup>28</sup> *Id.* § 1.2.3.

<sup>29</sup> *Id.* § 1.2.4.1.

<sup>30</sup> *Id.* § 1.2.4.2.

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

needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.<sup>32</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>33</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>34</sup> However, an individual public utility transmission provider cannot, by itself, satisfy Order No. 1000.<sup>35</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>36</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>37</sup> and, thus, become eligible to be allocated costs under the regional cost allocation method.<sup>38</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>39</sup>

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<sup>32</sup> *Id.* PP 11, 148.

<sup>33</sup> *Id.* P 160.

<sup>34</sup> *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

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

<sup>36</sup> *Id.* PP 65, 162.

<sup>37</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>38</sup> *Id.* PP 276-277.

<sup>39</sup> *Id.* P 275.



**i. First Compliance Order**

28. In the First Compliance Order, the Commission found that the scope of the transmission planning region, the description of the transmission facilities that will be subject to the requirements of Order No. 1000, and the enrollment process specified in Filing Parties' proposal partially complied with the requirements of Order No. 1000. The Commission conditionally found that Filing Parties' proposed expansion of the SERTP region satisfied the requirements of Order No. 1000. The Commission noted, however, that Filing Parties' proposed OATT language describing the enrollment process appeared to prohibit an entity from voluntarily enrolling in the SERTP region unless it has a statutory or OATT obligation to ensure that adequate transmission facilities exist within a portion of the SERTP region. The Commission found that Filing Parties did not explain why it is necessary to prohibit certain entities from enrolling and therefore directed Filing Parties to submit a further compliance filing revising the enrollment process to eliminate this requirement.<sup>40</sup>

29. The Commission further found that Filing Parties did not include a list of all public and non-public utility transmission providers enrolled in the transmission planning region in their OATTs.<sup>41</sup> Thus, the Commission directed Filing Parties to submit further compliance filings that (1) revise their respective OATTs to include a list of all the public utility and non-public utility transmission providers that have enrolled as Order No. 1000 transmission providers in the SERTP region, and (2) eliminate the statement that each public utility transmission provider "is deemed to have enrolled for purposes of Order No. 1000 through this Attachment [K, M, or N]" because such statement will no longer be necessary given the Commission's requirement that the list of enrollees be included in Filing Parties' respective OATTs.<sup>42</sup> The Commission also stated that, should the list of enrollees in the OATTs result in the expanded SERTP region no longer being governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions, Filing Parties must make further filings as necessary to comply with Order No. 1000's regional scope requirement.<sup>43</sup>

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<sup>40</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 29.

<sup>41</sup> *Id.* P 30 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 275).

<sup>42</sup> *Id.*

<sup>43</sup> With respect to TVA, the Commission concluded that as a non-public utility transmission provider, it remains TVA's decision to enroll as a transmission provider in the SERTP region. The Commission agreed that TVA's participation in regional

(continued...)

30. Further, the Commission found that Filing Parties failed to explain which transmission facilities, including those transmission projects currently under consideration in Filing Parties' existing Order No. 890-compliant local and regional transmission planning processes, will be subject to the regional transmission planning process that the Commission determines complies with Order No. 1000.<sup>44</sup> The Commission therefore directed Filing Parties to file further compliance filings to: (1) identify which transmission facilities within their existing local and regional transmission planning processes the proposed OATT revisions will apply to as of the effective date of their compliance filings; and (2) explain how they will evaluate or reevaluate under the proposed OATT revisions to those transmission projects currently under consideration in those existing transmission planning processes.<sup>45</sup>

31. Finally, the Commission directed Filing Parties to submit a compliance filing that reflects a January 1, 2014 effective date for their proposed OATT revisions. However, the Commission allowed that, if Filing Parties believe it is necessary, they may propose an effective date other than January 1, 2014 but must demonstrate why such an effective date is more appropriate.<sup>46</sup>

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transmission planning is important, but recognized that Order No. 1000 did not require TVA, or any other non-public utility transmission provider, to enroll or otherwise participate in a regional transmission planning process. *Id.*

<sup>44</sup> *Id.* P 32 (referencing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 65, 162).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* P 31. On September 20, 2013, Filing Parties filed a motion with the Commission to, among other things, adopt June 1, 2014 as the effective date for their Order No. 1000 compliance filings. Joint Motion for Extension of Time, Request for June 1, 2014 Effective Date, and Request for Expedited Treatment, Docket No. ER13-83-000, *et al.* (filed September 20, 2013). The Commission granted that request on October 17, 2013. *Duke Energy Carolinas, LLC*, 145 FERC ¶ 61,059 (2013).

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

32. SERTP Sponsors<sup>47</sup> request rehearing of the requirement in the First Compliance Order that Filing Parties revise their OATTs to include a list of all public and non-public utility transmission providers that have enrolled in the SERTP region.<sup>48</sup> SERTP Sponsors maintain that this requirement violates FPA section 202(a) by requiring the coordination of transmission facilities and the “consummation of transmission coordination agreements.”<sup>49</sup> SERTP Sponsors note that the SERTP region does not have a regional OATT to which the jurisdictional utilities have assented. Instead, each public utility member of SERTP has its own OATT that is not binding on any other organization. Therefore, SERTP Sponsors state, requiring parallel lists within each public utility’s respective OATT “would appear to create binding obligations on third parties within the tariff of a single organization.”<sup>50</sup> SERTP Sponsors object to this requirement, to the extent that it imposes “binding cost allocation requirements upon nonjurisdictional utilities,” stating that such a requirement risks the withdrawal of non-public utilities from the SERTP region.<sup>51</sup>

**(b) Commission Determination**

33. We deny SERTP Sponsors’ request for rehearing as an out-of-time rehearing request of Order No. 1000-A. The Commission in Order No. 1000-A explicitly required that “each public utility transmission provider . . . must include in its OATT a list of all

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<sup>47</sup> Although this request for rehearing is included in SERTP Sponsors’ request for rehearing, SERTP Sponsors state that “[t]his argument is not supported by all of the [public utility transmission providers] but is supported by Southern Companies.” SERTP Sponsors Rehearing Request at n.95. Noting that LG&E/KU, OVEC, and Duke-Progress do not seek rehearing of this issue, we will address the rehearing request as if it was filed by the remaining SERTP Sponsors.

<sup>48</sup> First Compliance Order, 144 FERC ¶ 61,054 at PP 30, 33.

<sup>49</sup> SERTP Sponsors Rehearing Request at 53.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region.”<sup>52</sup> Pursuant to section 313(a) of the FPA, an aggrieved party must file a request for rehearing within thirty days after the issuance of the Commission’s order.<sup>53</sup> Because SERTP Sponsors failed to timely raise this challenge in response to Order No. 1000-A, the FPA bars SERTP Sponsors from raising it here.

34. With respect to SERTP Sponsors’ concern that listing a non-public utility transmission provider in Filing Parties’ OATTs would impose binding cost allocation on that non-public utility transmission provider, we note that any exposure to potential cost allocation for non-public utility transmission providers would reflect the non-public utility transmission provider’s voluntary decision to enroll in the region. Thus, listing that entity in a Commission-jurisdictional OATT acknowledges the entity’s own choice to assume the rights and responsibilities of enrolling in the region, and would not impose additional obligations beyond those required by the entity’s decision to enroll.

### iii. Compliance

#### (a) Summary of Compliance Filings

35. Filing Parties propose to remove the requirement that a transmission provider must have a “statutory or OATT obligation to ensure that adequate transmission facilities exist within a portion of the SERTP region” to enroll in the SERTP region.<sup>54</sup> However, Filing Parties propose to revise their enrollment eligibility criteria to provide that a “public utility or non-public utility transmission service provider and/or transmission owner who is registered with NERC as a Transmission Owner or a Transmission Service Provider and that owns or provides transmission service over transmission facilities within the SERTP region may enroll in the SERTP.”<sup>55</sup>

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<sup>52</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>53</sup> 16 U.S.C. § 825k(a) (2012); *see also* 18 C.F.R. § 713(b) (2013) (requiring that a request for rehearing “be filed not later than 30 days after issuance of any final decision”).

<sup>54</sup> *E.g.*, Southern Companies Transmittal Letter at 8.

<sup>55</sup> *E.g.*, Southern Companies OATT, Attachment K § 13.1.

36. Filing Parties also propose to remove the OATT language stating that the public utility transmission providers were “deemed to have enrolled ... through this Attachment [K or M]” and have instead included a list of enrollees in their OATTs. Filing Parties’ OATTs list the following entities as being enrolled in the SERTP region: AECI, Dalton Utilities, Duke-Progress, LG&E/KU, MEAG Power, OVEC, PowerSouth, Southern Companies, and TVA.<sup>56</sup> Filing Parties state that the electric systems of these enrolled transmission providers are electrically integrated to one another and, therefore, the SERTP region remains integrated.<sup>57</sup>

37. Filing Parties add, however, that they have revised their OATTs to add a condition precedent that a non-public utility transmission provider’s enrollment in SERTP is only effective if the Commission accepts this filing without condition, modification, or suspension, and without setting the matter for hearing; provided, however, if the Commission takes any such action, each non-public utility transmission provider currently listed in their OATTs as having enrolled in the SERTP region will have 60 days following the date of the Commission’s order in this proceeding to notify the public utility transmission providers whether it will still enroll in the SERTP region.<sup>58</sup>

38. Filing Parties also propose to revise their OATTs to provide that a non-public utility transmission provider may withdraw its enrollment in the SERTP region by providing written notice, and that withdrawal shall be effective as of the date such notice is provided to the public utility transmission providers.<sup>59</sup> In addition, Filing Parties propose to revise their OATTs to state that a withdrawing enrollee will not be allocated costs for transmission projects selected in a regional transmission plan for purposes of cost allocation after the date its withdrawal becomes effective. The revisions also state,

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<sup>56</sup> *E.g.*, Southern Companies OATT, Exhibit K-9.

<sup>57</sup> *E.g.*, Southern Companies Transmittal Letter at 8-9.

<sup>58</sup> *E.g.*, Southern Companies OATT, Attachment K § 13.5.1; Southern Companies Transmittal Letter at 9.

<sup>59</sup> *E.g.*, Southern Companies OATT, Attachment K § 13.6. Filing Parties do not propose to revise the withdrawal provision for public utility transmission providers. An enrolled public utility transmission provider may withdraw by providing written notice, but its withdrawal shall be effective at the end of the then-current transmission planning cycle, provided that the notification of withdrawal is provided at least sixty days prior to the Annual Transmission Planning Summit and Assumptions Input Meeting for that transmission planning cycle. *Id.*

however, that the withdrawing enrollee will be subject to cost allocations determined during the period it was enrolled, if any, for which the enrollee was identified as a beneficiary of new transmission projects selected in the regional transmission plan for purposes of cost allocation.<sup>60</sup> According to Filing Parties, this withdrawal process is consistent with Order No. 1000's directives.<sup>61</sup> Filing Parties also assert that this proposal is crafted with the intent to comply with the Commission's directives while at the same time respecting the specific governance requirements and legal limitations that non-public utility transmission owners face so as to allow them to enroll in the SERTP region.<sup>62</sup>

39. To address the requirement to explain which transmission facilities, including those transmission projects currently under consideration in Filing Parties' existing Order No. 890-compliant local and regional transmission planning processes, will be subject to the regional transmission planning process that the Commission determines complies with Order No. 1000, Filing Parties have revised their OATTs to state:

The reevaluation of the regional transmission plan will include the reevaluation of a particular transmission project included in the regional transmission plan until it is no longer reasonably feasible to replace the proposed transmission project as a result of the proposed transmission project being

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<sup>60</sup> *Id.* § 13.7; Southern Companies Transmittal Letter at 10.

<sup>61</sup> *E.g.*, Southern Companies Transmittal Letter at 9-10 (referencing *Avista Corp. et al.*, 143 FERC ¶ 61,255, at P 270 (2013) (stating, "as we have noted previously, to accommodate the participation by non-public utility transmission providers, the relevant OATTs or agreements governing the regional transmission planning process could establish accelerated withdrawal for non-public utility transmission providers that are unable to accept the allocation of costs"); *Id.* P 273 (adding, "the Commission also highlighted the flexibility provided to develop rules allowing for the withdrawal of an enrolled non-public utility transmission provider from the regional transmission planning process should it be unable to accept the allocation of costs") and Order No. 1000-A, 139 FERC ¶ 61,132 at P 622 (providing "for future applications of the method to actual facilities, a non-public transmission provider could exercise any right it has in the regional transmission planning process to withdrawal rather than accept the allocation of costs"))).

<sup>62</sup> *E.g.*, Southern Companies Transmittal Letter at 4.

in a material stage of construction and/or if it is no longer considered reasonably feasible for an alternative transmission project to be placed in service in time to address the underlying Transmission Need(s) the proposed project is intended to address.<sup>63</sup>

Filing Parties also explain that although projects developed through Duke-Progress and LG&E/KU's separate local transmission planning processes would not be separately vetted with stakeholders in the SERTP region, such transmission projects would be potentially subject to displacement by more efficient or cost-effective transmission projects identified through the SERTP region's processes.<sup>64</sup>

40. Finally, with respect to the effective date for their proposed OATT revisions, Filing Parties note that, in an order issued after the First Compliance Order, the Commission established June 1, 2014 as the effective date for the public utility transmission providers to initiate their implementation of Order No. 1000's regional requirements.<sup>65</sup> However, Filing Parties explain that the last planning cycle of the pre-Order No. 1000 planning process, the Southeast Inter-Regional Participation Process (SIRPP), concludes in August 2014. Filing Parties note that this completion date is after the June 1, 2014 effective date for implementation of Order No. 1000's regional requirements which would terminate this pre-Order No. 1000 planning cycle. SERTP Sponsors commit to completing the existing planning cycle notwithstanding the Commission established June 1, 2014 effective date. Filing Parties explain that this will facilitate an orderly implementation of Order No. 1000 in the region.<sup>66</sup>

**(b) Protests/Comments**

41. Although LS Power takes no position in the advisability of the withdrawal provision generally, it believes that two aspects are essential for the Commission's consideration. First, LS Power argues that allowing entities to withdraw with no advance notice requirement is disruptive to all participants and therefore withdrawal should be

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<sup>63</sup> *E.g.*, Southern Companies OATT, Attachment K § 19.4.

<sup>64</sup> *E.g.*, Southern Companies Transmittal Letter at 10.

<sup>65</sup> *Id.* at 10-11 (citing *Duke Energy Carolinas, LLC*, 145 FERC ¶ 61,059).

<sup>66</sup> *Id.* at 8.

subject to Commission approval regarding the time and terms thereof.<sup>67</sup> Second, LS Power argues that the OATTs should restrict a withdrawing non-public utility transmission provider's reenrollment in the SERTP region. Otherwise, LS Power claims, a withdrawing non-public utility transmission provider could simply enroll and withdraw at will to achieve the same exemption from regional cost allocation the Commission rejected. LS Power therefore suggests that a withdrawing member be prohibited from re-enrolling in the SERTP region for at least seven years to prevent entities from using the withdrawal process as a *de facto* cost allocation control mechanism. LS Power contends that because any withdrawal has the potential to affect the entire region, or whether the SERTP even remains an acceptable region, it should be treated as a one-time action.<sup>68</sup>

(c) Answer

42. SERTP Sponsors argue that they have developed compliance proposals that both comply with the Commission's directives and respect the region's unique characteristics. SERTP Sponsors assert this allows for the non-public utility transmission providers to continue participating, as demonstrated by the list of enrollees including the public utility transmission providers' respective OATTs and the significant non-public utility transmission provider participation in the development of the compliance filings.<sup>69</sup>

43. SERTP Sponsors argue that LS Power chooses to attach a portion of the withdrawal process that the Commission has already specifically endorsed – namely the concept that a region may adopt an accelerated withdrawal process for non-public utility transmission providers in order to facilitate their participation.<sup>70</sup> SERTP Sponsors assert LS Power's suggestion that “withdrawal should be subject to Commission approval regarding the timing and terms thereof” ignores the reality of the instant proceeding. They contend deferring the Commission's approval to a later date would add uncertainty and would make it harder for non-public utility transmission providers to enroll, which is contrary to the Commission's objectives for this process.<sup>71</sup>

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<sup>67</sup> LS Power Protest at 10-11.

<sup>68</sup> *Id.* at 11.

<sup>69</sup> SERTP Sponsors Answer at 11.

<sup>70</sup> *Id.* at 13.

<sup>71</sup> *Id.* at 14.



44. In response to LS Power's argument that there should be a seven-year waiting period before a utility that has previously withdrawn can re-enroll, SERTP Sponsors argue that LS Power's proposal would undercut, not improve, the Order No. 1000 goal of having maximum participation by transmission owners in the region.<sup>72</sup> SERTP Sponsors assert that non-public utility transmission provider participation is particularly important in SERTP, where the non-public utility transmission providers own, operate, maintain, and perform the transmission planning for approximately forty percent (40 percent) of the transmission assets in the region. SERTP Sponsors contend that punitively barring non-public utility transmission providers on a forward looking basis from re-enrolling because, for example, they are unable to accept a particular allocation of costs or need additional time to obtain legally mandated governance approvals, runs counter to Order No. 1000's goals.<sup>73</sup> Moreover, SERTP Sponsors contend LS Power's complaint that without a seven-year bar, non-public utility transmission providers will use the withdrawal process "as a de facto cost allocation control mechanism" is a misguided attempt to persuade the Commission to impose requirements that go beyond Order No. 1000. SERTP Sponsors assert that the Commission should approve the enrollment/withdrawal process as proposed in the instant filing.<sup>74</sup>

**(d) Commission Determination**

45. We find that the scope of the transmission planning region and the description of the transmission facilities that will be subject to the requirements of Order No. 1000 comply with the requirements of Order No. 1000. We further find that the enrollment process specified in Filing Parties' proposal partially complies with the requirements of Order No. 1000. Therefore, we require each Filing Party to make a further compliance filing, as described more fully below.

46. Order No. 1000 defines a transmission planning region as one in which the public utility transmission providers have agreed to participate for the purposes of regional transmission planning and the development of a single regional transmission plan.<sup>75</sup> Order No. 1000 requires that the scope of a transmission planning region be governed by the integrated nature of the regional power grid and the particular reliability and resource

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 15.

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

<sup>75</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160.

issues affecting individual regions.<sup>76</sup> As the Commission noted in the First Compliance Order, Filing Parties propose a significant expansion in the scope of the SERTP region to include new public and non-public utility transmission provider enrollees. We find that Filing Parties have complied with the First Compliance Order's directive to revise their OATTs to include a list of all of the public and non-public utility transmission providers enrolled in the SERTP region.<sup>77</sup> Given that Filing Parties have now reflected the full list of enrolled entities in the SERTP region, we also find that the proposed SERTP region, as expanded to include the Duke-Progress service territory, satisfies the scope requirements of Order No. 1000.

47. Filing Parties also propose withdrawal provisions that allow non-public utility transmission providers to withdraw from the transmission planning region, effective immediately upon notice.<sup>78</sup> Filing Parties' proposal makes clear that a withdrawing non-public utility transmission provider will still be responsible to pay any costs allocated to it prior to the effective date of its withdrawal.<sup>79</sup> We find this aspect of Filing Parties' proposal complies with Order No. 1000-A.<sup>80</sup>

48. As mentioned above, Filing Parties also propose that the enrollment of the non-public utility transmission providers currently listed in Filing Parties' respective OATTs will be conditioned on the Commission accepting Filing Parties' compliance filings without modification and without setting the filings for hearing or suspending them.<sup>81</sup>

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<sup>76</sup> *Id.*

<sup>77</sup> *E.g.*, Southern Companies OATT, Exhibit K-9.

<sup>78</sup> *E.g.*, Southern Companies OATT, Attachment K § 13.6.

<sup>79</sup> *Id.* § 13.7.

<sup>80</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 622; *cf Avista Corp.*, 143 FERC ¶ 61,255 at PP 270, 273. The Commission stated in Order No. 1000-A that, to accommodate the participation of non-public utility transmission providers, the relevant OATTs 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. Order No. 1000-A, 139 FERC ¶ 61,132 at n.734.

<sup>81</sup> *E.g.*, Southern Companies OATT, Attachment K § 13.5.1 ("each such non-public utility shall be under no obligation to enroll in the SERTP [region] and shall have

(continued...)

We note this aspect of Filings Parties' proposal and acknowledge that we are ordering changes to Filing Parties' OATTs in this order. Should a non-public utility transmission provider elect not to enroll in light of the changes directed herein, Filing Parties must reflect such withdrawal(s) in the list of enrolled transmission providers contained in their OATTs as part of the further compliance filing ordered herein. In the event of any such withdrawal(s), the Commission will reevaluate whether the SERTP region continues to comply with the scope requirements of Order No. 1000 as it evaluates Filing Parties' further compliance filing.

49. We do not require, as LS Power requests, that Filing Parties revise their withdrawal provisions to preclude an entity that has elected to withdraw from re-enrolling in the region for seven years. We find such concern to be speculative, as there is no evidence that non-public utility transmission providers that elect to enroll in a region will use withdrawal provisions in a manner that undermines regional transmission planning efforts. In response to LS Power's request that any withdrawal from the SERTP region be subject to Commission approval, we note that, while a non-public utility transmission provider need not obtain Commission approval to withdraw from the SERTP region, Order No. 1000 requires that public utility transmission providers include in their OATTs a list of public utility and non-public utility transmission providers that have enrolled as transmission providers in the region.<sup>82</sup> As such, upon the withdrawal of any entity from the SERTP region, the public utility transmission providers in the SERTP region will have to submit changes to their OATTs to the Commission pursuant to section 205 of the FPA, which will be reviewed to ensure continued compliance with the scope requirements of Order No. 1000.

50. We note that Southern Companies' Attachment K both refers to the list of enrolled entities in "Exhibit K-9"<sup>83</sup> and "Attachment K-9,"<sup>84</sup> though the list itself is provided as Exhibit K-9. Therefore, we direct Southern Companies to submit, within 60 days of the date of issuance of this order, a further compliance filing changing all references to "Attachment K-9" to "Exhibit K-9."

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sixty (60) days following such an order or action to provide written notice . . . of whether it will, in fact, enroll in the SERTP [region]"if the Commission modifies, sets for hearing or suspends the compliance filings).

<sup>82</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>83</sup> Southern Companies OATT, Exhibit K-9 at 1.

<sup>84</sup> Southern Companies OATT, Attachment K at 5.

51. We accept, as reasonable and consistent with Order No. 1000, Filing Parties' explanation of which transmission facilities will be subject to the region's Order No. 1000 regional transmission planning process, as well as Filing Parties' explanation of how the regional transmission planning process will evaluate or reevaluate those facilities.<sup>85</sup>

52. In the First Compliance Order, the Commission directed Filing Parties to either submit a compliance filing that reflects a January 1, 2014 effective date for Filing Parties' proposed OATT revisions, or propose a different effective date and demonstrate why that date is more appropriate. Subsequently, Filing Parties submitted a separate filing on October 17, 2013 requesting June 1, 2014 as the effective date for Filing Parties to initiate their implementation of Order No. 1000's regional requirements, and the Commission granted that request.<sup>86</sup> Thus Filing Parties have met the requirement to establish an appropriate effective date and we accept June 1, 2014 as the effective date.

53. Finally, with respect to the First Compliance Order's directives to remove: (1) language requiring that to be eligible to enroll, the applicant had to be a public utility or non-public utility transmission provider having a "statutory or OATT obligation to ensure that adequate transmission facilities exist within a portion of the SERTP region;" and (2) language that provided that the public utility transmission providers were "deemed to have enrolled" through the filing of revisions to their respective transmission planning procedures in their OATTs, we find that Filing Parties' proposed OATT revisions comply with the First Compliance Order.<sup>87</sup> However, Filing Parties propose to further revise their enrollment eligibility criteria to provide that a "public utility or non-public utility transmission service provider and/or transmission owner who is registered with NERC as a Transmission Owner or a Transmission Service Provider and that owns

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<sup>85</sup> Specifically, Filing Parties propose that all transmission facilities under consideration in the regional transmission planning process remain subject to evaluation and reevaluation "until it is no longer reasonably feasible to replace the proposed transmission project as a result of the transmission project being in a material stage of construction and/or if it is no longer considered reasonably feasible for an alternative transmission project to be placed in service in time to address the underlying Transmission Need(s) the proposed transmission project is intended to address." *E.g.*, Southern Companies OATT, Attachment K § 19.4.

<sup>86</sup> *Duke Energy Carolinas, LLC*, 145 FERC ¶ 61,059.

<sup>87</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 33.

or provides transmission service over transmission facilities within the SERTP region may enroll in the SERTP.”<sup>88</sup> While we accept Filing Parties’ proposal to require that a public or non-public utility transmission provider or owner that wishes to enroll in the SERTP region also be registered with NERC prior to enrollment, Filing Parties’ additional proposed requirement – that the transmission provider or owner own or provide transmission service over transmission facilities within the SERTP region – appears circular in nature. For example, it is unclear how a transmission provider that owns transmission facilities adjacent to the SERTP region but that has not yet enrolled in the region would be able to meet the requirement to own or provide transmission service *within* the SERTP region before it actually enrolled (because its transmission facilities are adjacent to but not yet within the SERTP region).<sup>89</sup> Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that clarify or remove this requirement.

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

54. Order No. 1000 required that the regional transmission planning process result in a regional transmission plan<sup>90</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.<sup>91</sup>

**i. First Compliance Order**

55. In the First Compliance Order, the Commission found that the SERTP process complied with the Order No. 890 principles, but identified three areas that required additional clarifications. First, the Commission required LG&E/KU and OVEC to revise their respective OATTs to include the same definition of a SERTP “stakeholder” as the

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<sup>88</sup> *E.g.*, Southern Companies OATT, Attachment K § 13.1.

<sup>89</sup> For example, had Filing Parties’ proposed provision been in effect prior to Duke-Progress’s enrollment, it does not appear that Duke-Progress would have been eligible to enroll in the region.

<sup>90</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

<sup>91</sup> *Id.* PP 146, 151. These transmission planning principles are explained more fully in Order No. 890.

one in the Southern Companies' OATT.<sup>92</sup> Second, the Commission directed Southern Companies and OVEC to explain the interaction between their local transmission planning processes and the SERTP transmission planning process. Finally, the Commission required Southern Companies and OVEC to revise their respective OATTs to provide stakeholders sufficient information to understand which aspects of the SERTP procedures apply to the local transmission planning process and which apply to the regional transmission planning process. The Commission noted, for example, that Southern Companies and OVEC proposed new language in their OATTs stating that "references to a transmission 'plan,' 'planning,' or 'plans' [in the SERTP process] should be construed in the singular or plural as may be appropriate in a particular instance" and that "the reference to a plan or plans [in the SERTP process] may, depending upon the circumstance, be a reference to a regional transmission plan required for purposes of Order No. 1000."<sup>93</sup> Southern Companies and OVEC did not explain, and their OATTs did not provide an indication of, how a stakeholder would know whether, for example, a reference to a "plan" in the SERTP process is referring to a single local transmission plan, multiple local transmission plans, or the SERTP regional transmission plan.

## ii. Summary of Compliance Filings

56. To comply with the directive for LG&E/KU and OVEC to revise their OATTs to include the same definition of a SERTP "stakeholder" as the one in the Southern Companies' OATT, LG&E/KU and OVEC have added the following to the definition sections of their respective OATTs:

Stakeholder: Any party interested in the Southeastern Regional Transmission Planning Process, including but not limited to transmission and interconnection customers, generation owners/development companies, developers of alternative resources, or state commissions.<sup>94</sup>

57. With respect to the requirement for Southern Companies and OVEC to explain the interaction between their local transmission planning processes and the SERTP process, Filing Parties state that Southern Companies and OVEC each use the SERTP process as its open, coordinated, and transparent transmission planning process for both its local

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<sup>92</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 44.

<sup>93</sup> *Id.* P 45.

<sup>94</sup> LG&E/KU OATT, Attachment K § 1.49; OVEC OATT, Attachment M § 1.46.

transmission planning process and regional transmission planning process. Southern Companies and OVEC have also added language to their respective OATTs stating:

The Transmission Provider uses the SERTP as its open, coordinated, and transparent planning process for both its local and regional planning processes for purposes of Order Nos. 890 and 1000, such that the Transmission Provider's ten year transmission expansion plan and the regional transmission plan are vetted with Stakeholders in accordance with the SERTP's open, coordinated, and transparent transmission planning provisions provided herein.<sup>95</sup>

Filing Parties state that combining the local and regional transmission planning processes will facilitate stakeholder participation by reducing the need for them to monitor multiple processes and meetings.<sup>96</sup>

58. To address the confusion about references to different transmission plans in their OATTs, Southern Companies and OVEC propose to revise their OATTs as follows:

[W]hile this Attachment K discusses the transmission expansion plan of the Transmission Provider, the Transmission Provider expects that transmission expansion plans of the other Sponsors shall also be discussed, particularly since, ~~at times, a single~~ the transmission expansion plans of the other may be common to all Sponsors are expected to be included in the regional transmission plan that is to be developed in each planning cycle for purposes of Order No. 1000.<sup>97</sup>

and

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<sup>95</sup> Southern Companies OATT, Attachment K, Local Transmission Planning; OVEC OATT, Attachment M, Local Transmission Planning.

<sup>96</sup> *E.g.*, Southern Companies Transmittal Letter at 12.

<sup>97</sup> Southern Companies OATT, Attachment K n. 1; OVEC OATT, Attachment M, n.1.

[R]eferences in this Attachment K to a transmission “plan,” “planning,” or “plans” should be construed in the singular or plural as may be appropriate in a particular instance. Likewise, the reference to a plan or plans may, depending upon the circumstance, be a reference to a regional transmission plan required for purposes of Order No. 1000. The expectation is that in any given planning cycle, the Transmission Provider’s ten year transmission expansion plan, along with those of the other Sponsors, will be included in the regional transmission plan.<sup>98</sup>

Filing Parties state that the intent is, for each transmission planning cycle, each SERTP sponsor’s 10-year transmission expansion plan will ultimately be included in the regional transmission plan required by Order No. 1000.<sup>99</sup>

### iii. Protests/Comments

59. Public Interest Organizations argue that Filing Parties’ proposal to combine their local and regional transmission planning processes decreases transparency, which was a key transmission planning principle in both Order No. 890 and Order No. 1000. They assert that combining the two processes will eliminate or minimize the opportunity for consideration of the most cost-effective solutions to identify transmission needs.<sup>100</sup> Public Interest Organizations assert that when Filing Parties begin to engage in local and regional transmission planning, if only one solution to transmission needs is identified, that may remove a lever for engaging in cost-effectiveness comparisons and analyses.<sup>101</sup> Public Interest Organizations state that it is therefore critical for Filing Parties to distinguish whether provisions in the OATT refer to local or regional transmission planning.<sup>102</sup>

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<sup>98</sup> Southern Companies OATT, Attachment K n.5; OVEC OATT, Attachment M, n.5.

<sup>99</sup> *E.g.*, Southern Companies Transmittal Letter at 12.

<sup>100</sup> Public Interest Organizations Protest at 8.

<sup>101</sup> *Id.* at 9.

<sup>102</sup> *Id.* at 7-9.



(a) **Answer**

60. In their answer, SERTP Sponsors state that all transmission projects adopted by Southern Companies and OVEC will be vetted by stakeholders through SERTP's open, transparent, and coordinated process. SERTP Sponsors maintain that Order No. 1000 does not require separate local and regional transmission planning processes and that such separation is not necessary to engage in effective transmission planning. SERTP Sponsors assert having separate local and regional transmission planning processes would frustrate the ability of load-serving entities to timely expand their transmission system by giving stakeholders multiple opportunities to litigate the same matter.<sup>103</sup>

iv. **Commission Determination**

61. We find that Filing Parties' proposed revisions regarding the Order No. 890 principles partially comply with the directives in the First Compliance Order. LG&E/KU and OVEC have appropriately revised their OATTs to include the same definition of a SERTP "stakeholder" as the one in the Southern Companies' OATT. However, we also note that Attachment N-1 of Duke-Progress' OATT does not provide the same definition of a SERTP "stakeholder" as the one in Southern Companies' OATT. Therefore, as the Commission found in the First Compliance Order,<sup>104</sup> to comply with the openness principle, we require Duke-Progress to submit, within 60 days of the date of issuance of this order, a further compliance filing to revise its OATT to include the same definition of a SERTP "stakeholder" as the one in the other Filing Parties' respective OATTs.

62. We find that Southern Companies and OVEC have partially complied with the directive in the First Compliance Order to explain the interaction between their respective local transmission planning processes and the SERTP process.<sup>105</sup> Southern Companies and OVEC have added language to their OATTs stating that Southern Companies and OVEC will rely on the SERTP process for both local and regional transmission planning. We disagree with Public Interest Organizations that, as a general matter, combining local and regional transmission planning processes decreases transparency. The SERTP process must comply with the transmission planning principles, including the transparency principle, and combining local and regional transmission planning into a single process does not necessarily reduce transparency.

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<sup>103</sup> SERTP Sponsors Answer at 28-29.

<sup>104</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 44.

<sup>105</sup> *Id.* P 45.

63. However, we find that Southern Companies and OVEC have not met the requirement to revise their respective OATTs to provide stakeholders sufficient information to understand which aspects of the SERTP procedures apply to the local transmission planning process and which apply to the regional transmission planning process.<sup>106</sup> In particular, in the First Compliance Order, the Commission raised concern about the language in Southern Companies' and OVEC's OATTs that stated "references to a transmission 'plan,' 'planning,' or 'plans' [in the SERTP process] should be construed in the singular or plural as may be appropriate in a particular instance" and that "the reference to a plan or plans [in the SERTP process] may, depending upon the circumstance, be a reference to a regional transmission plan required for purposes of Order No. 1000."<sup>107</sup> In response, Southern Companies and OVEC propose to keep the language as originally proposed but add two new statements to their OATTs: (1) "[T]he transmission expansion plans of the other Sponsors are expected to be included in the regional transmission plan that is to be developed in each planning cycle for purposes of Order No. 1000;<sup>108</sup> and (2) "The expectation is that in any given planning cycle, the Transmission Provider's ten year transmission expansion plan, along with those of the other Sponsors, will be included in the regional transmission plan."<sup>109</sup> While Southern Companies and OVEC state that the addition of this language addresses the potential confusion regarding "transmission plans" raised in the First Compliance Order,<sup>110</sup> we find that this new language is insufficient to comply with the Commission's directive.

64. Our understanding of this new language is that each transmission provider enrolled in the SERTP region will follow a bottom-up transmission planning process, where each enrolled transmission provider will create a separate, individual local transmission plan, which is then rolled-up into the regional transmission planning

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.* (citing, *e.g.*, Southern Companies OATT, Attachment K § 1.2.1 n.4 (now n.5); OVEC OATT, Attachment M § 1.2.1 n.4 (now n.5)).

<sup>108</sup> Southern Companies OATT, Attachment K n.1; OVEC OATT, Attachment M, n.1.

<sup>109</sup> Southern Companies OATT, Attachment K § 1.2.1 n.5; OVEC OATT, Attachment M § 1.2.1 n.5.

<sup>110</sup> *E.g.*, Southern Companies Transmittal Letter at 12.

process.<sup>111</sup> In addition, it appears each enrolled transmission provider's local transmission plan that is completed during one calendar year will be rolled-up for use in the following calendar year's regional transmission planning process.<sup>112</sup> However, Southern Companies and OVEC have not explained, and they have not revised their OATTs to indicate, how a stakeholder would know whether, for example, a reference to a "plan" in the SERTP process refers to a single local transmission plan, multiple local transmission plans, or the SERTP regional transmission plan.<sup>113</sup> Because Southern Companies and OVEC rely on the SERTP process to create both their separate individual local transmission plans and the combined regional transmission plan, they must revise their OATTs to distinguish and make clear how and at what points in the SERTP process stakeholders can provide input into the creation of the Southern Companies and OVEC local transmission plans and the SERTP regional transmission plan.<sup>114</sup> Accordingly, we direct Southern Companies and OVEC to submit, within 60 days of the date of issuance of this order, further compliance filings with revisions to their OATTs to clarify aspects of the SERTP procedures apply to the local transmission planning process and which apply to the regional transmission planning process.

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<sup>111</sup> While phrased to state that the roll-up of each enrolled transmission provider's local transmission plan into the regional transmission plan is "expected" and is an "expectation," this and other language in each enrolled public utility transmission provider's OATT obligates each one to follow this bottom-up transmission planning process.

<sup>112</sup> "A transmission expansion plan completed during one calendar year ... is intended to be implemented the following calendar year." Southern Companies OATT, Attachment K § 1.2.1 n.6; OVEC OATT, Attachment M § 1.2.1 n.6.

<sup>113</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 45.

<sup>114</sup> The other transmission providers enrolled in SERTP have separate local planning processes, so it must also be clear how stakeholders can participate in and provide input into the part of the SERTP process that leads to the development of the SERTP regional transmission plan separate from the part of the SERTP process that Southern Companies and OVEC rely on to create their separate local transmission plans.

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

65. Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the transmission 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>115</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 transmission needs more efficiently or cost-effectively.<sup>116</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 combined view of whether the transmission facility is a more efficient or cost-effective solution to their transmission needs.<sup>117</sup>

66. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer<sup>118</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>119</sup>

67. 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

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<sup>115</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

<sup>116</sup> *Id.* P 149.

<sup>117</sup> *Id.* P 331.

<sup>118</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>119</sup> *Id.* P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

more efficiently or cost-effectively meet the region's transmission needs.<sup>120</sup> Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

**i. First Compliance Order**

68. In the First Compliance Order, the Commission found that Filing Parties partially complied 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, the Commission directed Filing Parties to revise their respective OATTs to set forth the affirmative obligation to identify transmission solutions that more efficiently or cost-effectively meet reliability requirements, address economic considerations, and meet transmission needs driven by public policy requirements.<sup>121</sup>

69. 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>122</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 transmission needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution.<sup>123</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.

70. Accordingly, the Commission directed Filing Parties to revise their OATTs to set forth the affirmative obligation to identify transmission solutions that more efficiently or cost-effectively meet reliability requirements, address economic considerations, and meet

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<sup>120</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

<sup>121</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 64.

<sup>122</sup> *Id.* P 34 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148).

<sup>123</sup> *Id.* P 59.

transmission needs driven by public policy requirements.<sup>124</sup> The Commission stated that these OATT revisions must describe the process Filing Parties will use to identify more efficient or cost-effective transmission solutions and explain how the region will conduct that regional analysis through power flow studies, production cost analyses, and/or other methods.

**ii. Affirmative Obligation to Plan**

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

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

71. SERTP Sponsors and the Alabama and Florida Commissions request clarification and/or rehearing of the requirement for Filing Parties to make OATT revisions that describe the process they will use to identify more efficient or cost-effective transmission solutions and to explain how the SERTP region will conduct that regional analysis through power flow studies, production cost analyses, and/or other methods.<sup>125</sup> SERTP Sponsors contend that the First Compliance Order is arbitrary and capricious because it (1) assumes an underlying context that is inconsistent with the SERTP's region's market structure, (2) is contrary to the Commission's commitment in Order No. 1000 to afford regional flexibility, and (3) appears to create an unworkable transmission planning process in which transmission planning would not reflect transmission expansion.<sup>126</sup> For all of these reasons, SERTP Sponsors contend that the First Compliance Order violates FPA sections 201 and 217(b)(4), and it is otherwise arbitrary and capricious for failing to consider the ramification of its actions, for being inconsistent with Commission precedent established by a rulemaking, and for not being supported by substantial evidence.<sup>127</sup>

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<sup>124</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.

<sup>125</sup> Alabama Commission Request for Rehearing at 7; Florida Commission Request for Rehearing at 3-7; SERTP Sponsors Request for Rehearing at 54-58.

<sup>126</sup> SERTP Sponsors Rehearing Request at 26.

<sup>127</sup> SERTP Sponsors state that FPA section 217(b)(4) requires the Commission to facilitate, not hinder, load serving entities' ability to expand their transmission systems to meet load-service needs. *Id.* at 26-27; n.155.

72. Specifically, SERTP Sponsors assert that economic and public policy planning is integral to the SERTP process because it begins with, and is built upon, integrated resource planning.<sup>128</sup> SERTP Sponsors explain that load serving entities use integrated resource planning to identify and plan for meeting native load and customers' needs for electricity. Transmission planners in the SERTP region take that information and develop a set of solutions that can meet those transmission needs by providing firm, physical delivery service without congestion.<sup>129</sup> SERTP Sponsors note that those transmission needs may be driven by reliability (e.g., resource adequacy), economics (e.g., supply and demand-side related resources determined on a least-cost basis) and public policy (e.g., compliance with air and water rules, fuel diversity, Renewable Portfolio Standard requirements).<sup>130</sup>

73. Thus, SERTP Sponsors assert that their regional process is not a mere "roll up" nor a mere stapling together of local transmission plans to confirm simultaneous feasibility.<sup>131</sup> Rather, SERTP Sponsors state that their regional process evaluates more efficient or cost-effective transmission solutions based upon iterative, bottom-up, coordinated planning between adjacent transmission providers in the SERTP region<sup>132</sup> and identifies regional transmission planning solutions.<sup>133</sup>

74. SERTP Sponsors argue that requiring the consideration of economic and public policy needs and benefits at the regional level inherently conflicts with existing integrated resource planning processes used in the SERTP region.<sup>134</sup> They state that regional transmission plans should not be subject to collateral attacks or litigation regarding "need" or prudence, because under the bottom-up processes used in the SERTP region, integrated resource planning processes ensure that potential disagreements on "need" are

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<sup>128</sup> *Id.* at 14.

<sup>129</sup> *Id.* at 11, 54.

<sup>130</sup> *Id.* at 6.

<sup>131</sup> *Id.* at 11, 54, 57.

<sup>132</sup> *Id.* at 54, 57.

<sup>133</sup> *Id.* at 54, 55.

<sup>134</sup> *Id.* at 16, 19.

avoided.<sup>135</sup> Even if there is no conflict between the integrated resource planning and regional processes, however, SERTP Sponsors argue that the creation of a separate, regional forum to consider economic and public policy-driven transmission needs creates the likelihood of significant delay in the implementation of integrated resource planning processing.<sup>136</sup> SERTP Sponsors conclude that, absent appropriate clarification, the First Compliance Order is incorrect and not supported by substantial evidence when it concludes that its requirements “complement” integrated resource planning, and the Commission has violated FPA section 201 by intruding into state authority over resource decisions.<sup>137</sup>

75. If the Commission does not find that the SERTP process already complies with the affirmative obligation to plan requirement, SERTP Sponsors seek rehearing of the requirement because it would mandate top-down transmission planning.<sup>138</sup> SERTP Sponsors argue that Order No. 1000 expressly set forth its affirmative regional transmission planning requirements (i.e., that the regional process produce a regional plan, that transmission providers evaluate alternative transmission solutions that might more efficiently or cost-effectively meet the region’s transmission needs, and that non-transmission alternatives be considered on a comparable basis), and that the SERTP Sponsors meet or exceed those requirements.<sup>139</sup> The Alabama and Florida Commissions similarly argue that, by requiring top-down planning via the performance of “regional analysis,” the Commission exceeded the requirements of Order No. 1000, its own statutory authority, and unlawfully infringed on state public service commissions’ statutory authority.<sup>140</sup>

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<sup>135</sup> *Id.* at 19-20.

<sup>136</sup> *Id.* at 20-21.

<sup>137</sup> *Id.* at 21-22.

<sup>138</sup> *Id.* at 55-56.

<sup>139</sup> *Id.* at 54-58.

<sup>140</sup> Alabama Commission Rehearing Request at 7; Florida Commission Rehearing Request at 3-7. The Florida Commission also summarizes its authority under state law with respect to transmission planning, adequacy, and siting. Florida Commission Rehearing Request at 4-5.



76. SERTP Sponsors, NARUC, and the Alabama and Florida Commissions further argue that the Commission has failed to honor its commitments in Order No. 1000 to afford significant regional flexibility to regional proposals, respect non-RTO physical transmission regimes and bottom-up transmission planning, and not interfere with integrated resource planning.<sup>141</sup> SERTP Sponsors argue that the First Compliance Order is fundamentally inconsistent with the SERTP region's non-RTO market structure because it disrupts the proper and established sequence of planning used in the SERTP region and renders state-regulated resource plans inherently non-final. Instead, according to SERTP Sponsors, the First Compliance Order improperly directs transmission planners to go beyond identifying the most efficient and cost-effective transmission solutions to actually make resource planning determinations of the level of "economic benefits" and "production cost benefits" that shall be deemed included in resource plans. SERTP Sponsors assert that the examples used in the First Compliance Order assume the existence of structures that do not exist in SERTP, including (1) SERTP-wide economic dispatch, (2) SERTP-wide resource planning, and (3) the expansion of the SERTP region's electric grid to capture potential non-firm or speculative benefits.<sup>142</sup>

77. The Florida Commission challenges the Commission's imposition of an affirmative obligation on transmission providers to actively develop transmission projects as inconsistent with Order No. 1000, Order No. 2000 (which adopted a voluntary approach to RTO membership), and the non-RTO nature of the southeastern grid.<sup>143</sup> The Alabama Commission similarly argues that by mandating a top-down approach to transmission planning, the First Compliance Order forces the Alabama Commission and the SERTP region to make transmission decisions like an RTO instead of through an established integrated resource planning and state-regulated process.<sup>144</sup>

78. SERTP Sponsors explain that resource planning activities and decisions are separated from transmission planning activities and decisions, and that the transmission planning process included in the OATT follows and implements the integrated resource

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<sup>141</sup> NARUC Rehearing Request at 6; Alabama Commission Rehearing Request at 6-8; Florida Commission Rehearing Request at 9-10.

<sup>142</sup> SERTP Sponsors Rehearing Request at 12-13.

<sup>143</sup> Florida Commission Rehearing Request at 7-9. The Florida Commission also notes that it previously considered and rejected the formation of an RTO in Florida after concluding that an RTO would not be cost-effective or otherwise in the public interest.

<sup>144</sup> Alabama Commission Rehearing Request at 7.

planning and resource decisions that have already been made by transmission users, as reflected in firm transmission service commitments. SERTP Sponsors assert that resource planning decisions made by load-serving entities, often under state regulatory supervision, include region-wide and interregional analyses of the least-cost means to address their system transmission needs.<sup>145</sup> SERTP Sponsors explain that this regime is quite different from resource and transmission expansion planning in an RTO, which instead relies upon a congestion management scheme. They further explain that, unlike an RTO, the transmission service needs and benefits that drive transmission planning and expansion in the SERTP region are properly driven by long-term firm transmission commitments that address all economic and public policy-driven transmission needs by building upon the results of the integrated resource planning processes. SERTP Sponsors argue that the SERTP region's transmission system is not expanded to address non-firm, short-term, or speculative benefits because expanding the system for those reasons would increase the embedded cost of transmission for all users of the system while not addressing actual delivery needs expressed by any long-term commitment. SERTP Sponsors further assert that many state siting laws require a showing of firm commitments for the requisite capacity.<sup>146</sup> Without long-term transmission commitments, SERTP Sponsors assert that transmission planners would be unable to prove need to state regulators, and state regulators would be extremely wary of approving transmission projects when ratepayers not receiving any benefits would be responsible for the costs and/or the transmission might go unused.<sup>147</sup>

79. SERTP Sponsors therefore argue that the First Compliance Order unreasonably erodes the efficiencies created by the SERTP Sponsors' vertical integration,<sup>148</sup> which, as

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<sup>145</sup> SERTP Sponsors Rehearing Request at 6-8.

<sup>146</sup> *Id.* at 8-10.

<sup>147</sup> *Id.* at 10.

<sup>148</sup> *Id.* at 50-51 (noting that the D.C. Circuit has defined natural monopoly as occurring “when, because of the high ratio of fixed costs to variable costs, a single firm has declining average costs at the level of demand in the industry, such that the single firm can supply the service more cheaply than two firms could.” *United Distrib. Cos. v. FERC*, 88 F.3d 1105, 1122 n.4 (D.C. Cir. 1996)). SERTP Sponsors continue that “[t]he very definition of natural monopoly, of itself, points toward the advantages of vertical integration. SERTP Sponsors Rehearing Request at 51 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order

(continued...)

established economic theory and court precedent hold, benefits consumers.<sup>149</sup> SERTP Sponsors argue that the First Compliance Order, by requiring that economic and public policy-driven transmission needs and benefits be considered *de novo* at the regional level and expanding the scope of what transmission facilities are considered “regional” in nature, improperly limits the scope of the transmission facilities that are protected for vertical integration, thereby exposing new risks and harms to consumers in non-RTO markets.<sup>150</sup> Filing Parties argue that because the First Compliance Order’s mandates violate precedent and established economic principles, because such mandates are not the

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No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,649 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002) (“In 1994 in the KCP&L case . . . , the Commission continued to recognize that transmission remains a natural monopoly”); *id.* at 31,652 (“[T]ransmission service continues to be a natural monopoly”); *id.* at 31,872 n.974 (“Transmission, on the other hand, will remain a regulated monopoly function”); *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, Wash.*, 554 U.S. 527, 536 (2008); *Tenneco Gas v. FERC*, 969 F.2d 1187, 1201 (D.C. Cir. 1992)).

<sup>149</sup> SERTP Sponsors Rehearing Request at 50-51 (*citing Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 840 (D.C. Cir. 2006) (“FERC cannot impede vertical integration . . . without ‘adequate justification.’”)). SERTP Sponsors also state that “[i]n markets characterized by natural monopolies, established economic theory reinforces the promotion of vertical integration and *not the creation of multiple monopolists*, as the ‘[i]ntegration of two successive monopolies can lead to higher output and lower end-product price.’” and that “any time a monopolist integrates into another level . . . and that secondary level previously exhibited some market power, prices will ordinarily come down and output will ordinarily increase.” *Id.* (quoting 3b Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 756b3 at 15 (3d ed. 2008)), Additionally, SERTP Sponsors state that the economic benefits provided by vertical integration have been long recognized, and include “(1) technological interdependencies; (2) transmission of more efficient price signals between vertical levels; (3) reduction in transaction costs; (4) improvement in information flow; and (5) lowered costs of uncertainty and risk.” *Id.* (quoting John H. Landon, *Theories of Vertical Integration and their Application to the Electric Utility Industry*, 28 *Antitrust Bull.* 101 (1983)).

<sup>150</sup> SERTP Sponsors Rehearing Request at 51.

result of a reasoned analysis and are not supported by substantial evidence, and because the Order makes it more difficult for the SERTP Sponsors, as load serving entities, to expand their transmission systems to serve their transmission needs (because they now may have to rely upon nonincumbents to do so rather than simply moving forward with the requisite planning and construction themselves), the First Compliance Order is arbitrary and capricious and otherwise unlawful.<sup>151</sup>

80. Further, SERTP Sponsors request that the Commission grant rehearing and clarify that transmission providers in the SERTP region have no obligation to make a *de novo* identification of transmission needs but only to determine if such needs, identified by load serving entities/customers, can be met more efficiently or cost-effectively by a regional transmission solution and then provide an open and transparent planning process in that regard.<sup>152</sup> SERTP Sponsors argue that the First Compliance Order seems to assume that other transmission needs, i.e., needs other than those that are identified in local/bottom-up integrated resource planning -driven processes, should be identified. However, SERTP Sponsors argue that the First Compliance Order states that the current SERTP process does not require the “affirmative identification of transmission needs driven by economic considerations, regardless of whether stakeholder requests for economic studies are received.”<sup>153</sup> They contend that Order No. 1000 only requires transmission planners to consider more efficient or cost-effective transmission solutions, not identify new or alternative transmission needs.<sup>154</sup>

81. Finally, SERTP Sponsors argue that the First Compliance Order violates Order No. 1000’s holding that public utilities “may need to make only modest changes to their regional transmission planning processes to comply with Order No. 1000.”<sup>155</sup> SERTP Sponsors claim that despite this assurance, the First Compliance Order largely rejects Filing Parties’ compliance filings, even though none of the harms that Order No. 1000 sought to address are issues for the Southeast.<sup>156</sup> SERTP Sponsors allege that the fact

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<sup>151</sup> *Id.* at 52.

<sup>152</sup> *Id.* at 19.

<sup>153</sup> *Id.* at 18 (quoting First Compliance Order, 144 FERC ¶ 61,054 at P 62).

<sup>154</sup> *Id.* at 17.

<sup>155</sup> *Id.* at 49 (quoting Order No. 1000-A, 139 FERC ¶ 61,132, 139 FERC ¶ 61,132 at P 280).

<sup>156</sup> *Id.* at 48-49.

that there are not serious, systemic problems with existing transmission planning in the Southeast is proof that the Southeast enjoys a robust transmission grid that has been planned to meet long-term firm service commitments with minimal congestion or curtailment.<sup>157</sup> SERTP Sponsors argue that the Compliance Order is therefore arbitrary and capricious for failing to effectuate the commitment that certain regions would only have to make modest changes to comply with Order No. 1000 and for not being supported by substantial evidence.<sup>158</sup> They assert, moreover, that should the Commission now deem it unnecessary to connect the requirements of Order No. 1000 to the harms and threats it cited as the basis for Order No. 1000, then the Commission would have failed to make a rational connection between the facts and its requirements.<sup>159</sup>

## (2) Commission Determination

82. We deny SERTP Sponsors' rehearing requests. With respect to SERTP Sponsors' arguments on rehearing that their existing transmission planning efforts meet the requirements of Order No. 1000, we affirm the finding in the First Compliance Order that under Order No. 1000, "Filing Parties 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."<sup>160</sup> Thus, in conducting this regional analysis, Filing Parties may not rely exclusively on proposals from interested parties as the transmission planning region's only means to identify more efficient or cost-effective regional transmission solutions.<sup>161</sup>

83. 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

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<sup>157</sup> *Id.* at 49.

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

<sup>159</sup> *Id.* at 49-50.

<sup>160</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 61.

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

Commission-jurisdictional service are just and reasonable in light of changing conditions in the industry.”<sup>162</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>163</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>164</sup>

84. Under their pre-Order No. 1000 OATTs, Filing Parties had no affirmative obligation to plan for the region’s transmission needs that culminated in a regional transmission plan that reflects the evaluation of whether alternative regional transmission solutions may be more efficient or cost-effective than transmission solutions identified in local transmission planning processes.<sup>165</sup> In their initial compliance filings, Filing Parties did not explain in either their proposed OATT revisions or their transmittal letters how they would comply with the requirement to undertake an affirmative obligation to plan for the region’s transmission needs in the absence of requests by stakeholders. The Commission thus appropriately concluded that Filing Parties had failed to satisfy this requirement of Order No. 1000. Filing Parties address this requirement in their second

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<sup>162</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>163</sup> *Id.* PP 147-48.

<sup>164</sup> *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 55, 147-48.

<sup>165</sup> As defined in Order No. 1000, “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.

round compliance filings and, as addressed more fully below in this section, we find that Filing Parties partially comply with this obligation.

85. In requiring Filing Parties to affirmatively plan for the transmission needs of the transmission planning region, we disagree with SERTP Sponsors that we are ignoring Order No. 1000's statement that a region could continue to use their "bottom up" approach to transmission planning. Nothing in Order No. 1000 or the First Compliance Order requires Filing Parties to abandon their bottom up approach. Indeed, this approach can be used as the basis for Filing Parties' regional transmission planning process, as it is used in other non-RTO regions.<sup>166</sup> Thus, for instance, as Filing Parties' OATTs provide, in developing their local transmission plans, Filing Parties can continue to identify local transmission needs and local transmission facilities.<sup>167</sup> The First Compliance Order does not require Filing Parties to change their process in this regard. However, once the local transmission plans are rolled up and analyzed, Order No. 1000 requires public utility transmission providers in the transmission planning region to take the 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 Filing Parties.

86. Similarly, we reject SERTP Sponsors' argument that Order No. 1000's affirmative obligation to plan runs counter to, or otherwise interferes with, state-regulated integrated resource planning. As an initial matter, we reiterate the Commission's finding in Order No. 1000-A that the regional transmission planning requirements "will provide more information and more options for consideration by public utility transmission providers and state regulators and, therefore, can hardly be seen as detrimental to state-sanctioned integrated resource planning."<sup>168</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 processes, just as they can use the results of their integrated resource planning processes to inform the regional transmission planning process. However, nothing in Order No. 1000 requires that public utility transmission

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<sup>166</sup> *E.g.*, *PacifiCorp*, 143 FERC ¶ 61,151 (2013), *order on compliance*, 147 FERC ¶ 61,057 (2014).

<sup>167</sup> *E.g.*, Southern Companies OATT, Attachment K, Local Transmission Planning.

<sup>168</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).

providers modify their state integrated resource plans.<sup>169</sup> The regional transmission planning requirements of Order No. 1000 process 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>170</sup> Thus, to the extent SERTP Sponsors’ 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 SERTP Sponsors modify their resource selections or the transmission facilities that they plan as part of the state-level integrated resource planning process to access those resources identified in the integrated resource plan. We therefore disagree with SERTP Sponsors that the First Compliance Order is inconsistent with, or disruptive to, integrated resource planning requirements.

87. 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>171</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 for the region’s transmission needs in order to satisfy the FPA’s just and reasonable standard.<sup>172</sup> The Commission reviewed Filing Parties’ compliance filings to determine whether they had complied with these requirements and concluded that Filing Parties failed to specify in their OATTs how they will comply with

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<sup>169</sup> Order No. 1000, FERC Stats. & Regs ¶ 31,323 at PP 168-179.

<sup>170</sup> *Id.* 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>171</sup> *Id.* PP 147-48.

<sup>172</sup> *See, e.g.,* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 55, 147-148.



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 Filing Parties had not complied with this requirement.

88. Regarding SERTP Sponsors' argument that the First Compliance Order erodes economic efficiencies gained by vertical integration and natural monopolies, we have already explained the misconceptions behind these identical arguments in Order No. 1000-A and will not reiterate them here.<sup>173</sup> Thus, we find that SERTP Sponsors' arguments on this issue are an impermissible collateral attack on Order Nos. 1000 and 1000-A.

89. Finally, SERTP Sponsors argue that integrated resource planning must be respected under FPA section 217(b)(4).<sup>174</sup> We agree with SERTP Sponsors that integrated resource planning is important and recognize that Filing Parties must comply with any applicable 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.<sup>175</sup> Nothing in Order No. 1000 is intended to prevent or restrict a load-serving entity from fully implementing resource decisions made under state authority.

**(b) Compliance**

**(1) Summary of Compliance Filings**

90. Filing Parties revise their OATTs 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

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<sup>173</sup> For example, Order No. 1000-A responds to arguments advanced by Southern Companies, one of the SERTP Sponsors, regarding the benefits of vertical integration. Order No. 1000-A, 139 FERC ¶ 61,132 at PP 87-90.

<sup>174</sup> SERTP Sponsors Rehearing Request at 49 (citing 16 U.S.C. § 825q(b)(4) (2012)).

<sup>175</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 108, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 168.

transmission needs on a regional basis.<sup>176</sup> Specifically, Filing Parties have revised their OATTs to state:

During the course of each transmission planning cycle, the Transmission Provider will conduct regional transmission analyses to assess if the then-current regional transmission plan addresses the Transmission Provider's Transmission Needs, including those of its Transmission Customers and those which may be driven, in whole or in part, by economic considerations or Public Policy Requirements. This regional analysis will include assessing whether there may be more efficient or cost effective transmission projects to address Transmission Needs than transmission projects included in the latest regional transmission plan.<sup>177</sup>

91. In addition, Filing Parties state that "Transmission Needs" are defined within Attachment K as:

[T]he Transmission Provider's physical transmission system delivery capacity requirements that it must fulfill on a reliable basis to satisfy long-term (*i.e.*, one year or more) firm transmission commitment(s) whether driven in whole or in part by public policy requirements or economic or reliability considerations. Such commitments consist of Transmission Customers' long-term Service Agreements under the Tariff and the firm transmission capacity required to serve the long-term delivery service requirements of Native Load Customers.<sup>178</sup>

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<sup>176</sup> *E.g.*, Southern Companies Transmittal Letter at 32-35; Southern Companies OATT, Attachment K § 11.1.

<sup>177</sup> *E.g.*, Southern Companies OATT, Attachment K § 11.1.

<sup>178</sup> *E.g.*, Southern Companies OATT, Attachment K Preamble.

Filing Parties assert that, by making these additions to their OATTs, they have explained how they will identify reliability requirements, address economic considerations, and meet transmission needs driven by public policy requirements.<sup>179</sup>

92. Filing Parties further explain that the SERTP region is characterized largely by vertically integrated utilities providing physical transmission service to those customers willing to commit to long-term service.<sup>180</sup> Filing Parties state that the SERTP Sponsors' transmission systems are planned and expanded to address Transmission Needs and that, for native load customers, their Transmission Needs are largely established by often state-regulated integrated resource planning. According to Filing Parties, those integrated resource planning processes identify the load-serving utility's incremental needs, including load growth, and then set forth plans for providing or procuring the needed capacity at the lowest overall cost to consumers given all supply- and demand-side capacity options as well as the transmission costs associated with those options. Integrated resource planning, according to Filing Parties, also considers factors such as reliability, public policy requirements, fuel diversity and stability, and environmental attributes.<sup>181</sup> Filing Parties state that, presumably, the transmission provider's transmission customers' long-term firm transmission commitments likewise incorporate, if applicable, the results of their own integrated resource planning of the least-cost means of addressing (among other things) their economic considerations and public policy requirements. Filing Parties continue that, in any event, the transmission provider does not and cannot second-guess the needs assumptions underlying the transmission service commitments made by its transmission customers, nor may the transmission provider second-guess the integrated resource determinations made in state-regulated processes.<sup>182</sup>

93. In addition, Filing Parties propose OATT revisions stating that the transmission provider will perform power flow, dynamic, and short circuit analyses, as necessary, to assess whether the then-current regional transmission plan would provide for the physical transmission capacity required to address the transmission provider's Transmission

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<sup>179</sup> *E.g.*, Southern Companies Transmittal Letter at 13-14 (referencing First Compliance Order, 144 FERC ¶ 61,054 at P 64).

<sup>180</sup> *Id.* at 13 (stating that a more detailed description of the SERTP Sponsors' market structure can be found in the DOE Market Structure Report at 25-27, 34-35, 42-43, 60-61, 64-65, and 72-75).

<sup>181</sup> *Id.* (citing the DOE Market Structure Report at 26).

<sup>182</sup> *Id.* at 14 & n.23.

Needs, including those Transmission Needs of its transmission customers and those driven by economic considerations and public policy requirements. If the transmission provider determines that the ongoing planning being performed for the then-current cycle would not provide sufficient physical transmission capacity to address a Transmission Need(s), the transmission provider will identify potential transmission projects to address the Transmission Need(s).<sup>183</sup>

94. Filing Parties also propose language in their OATTs stating that the transmission provider will look for potential regional transmission projects that may be more efficient or cost-effective solutions to address Transmission Needs than transmission projects included in the latest regional transmission plan or otherwise under consideration in the then current transmission planning process for the ten year planning horizon. Through power flow, dynamic, and short circuit analyses, as necessary, the transmission provider will evaluate regional transmission projects identified to be potentially more efficient or cost-effective solutions to address Transmission Needs, including those transmission alternatives proposed by stakeholders and transmission projects proposed for potential selection in the regional transmission plan for purposes of cost allocation. Filing Parties further propose to revise their OATTs to state that stakeholders will be able to provide input on potential transmission alternatives for the transmission provider to consider throughout the SERTP process for each planning cycle.<sup>184</sup>

95. Finally, Filing Parties propose to revise their OATTs to state that “[n]othing herein precludes the [t]ransmission [p]rovider from building new transmission facilities located solely in its local footprint and/or that are not submitted for regional cost allocation purposes. . . .”<sup>185</sup>

## (2) Protests/Comments

96. LS Power is concerned that Filing Parties’ proposed OATT revisions do not create a regional process because no regional entity is designated to make decisions, nor is a regional structure established for a single point of contact or decision-making. LS Power argues that each OATT continues to reference the individual “Transmission Provider” or “Transmission Owner” as taking all actions in the Attachment K referenced as the

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<sup>183</sup> *E.g.*, Southern Companies OATT, Attachment K § 11.1.2.

<sup>184</sup> *Id.* § 11.2.2.

<sup>185</sup> *E.g.*, Southern Companies OATT, Attachment K, Regional Transmission Planning.

regional process. Specifically, LS Power explains that section 14.2 of the Southern Companies' OATT Attachment K provides that "the Transmission Provider will notify transmission developers" whether they have pre-qualified, while section 24.2 of the LG&E/KU OATT Attachment K provides that the "Transmission Owner" will provide this same information. LS Power argues that the proposed regional transmission planning process does not require that such a decision be made, or identify what happens if the Transmission Provider or the Transmission Owner disagrees with a decision of the other.<sup>186</sup> LS Power argues that there is nothing in the respective OATTs that mandates a single regional transmission planning decision or the mechanism by which that decision will be made. LS Power therefore argues that the Commission should require Filing Parties to revise their OATT filing to establish a clear mechanism for a single decision point on each of the respective regional transmission planning decisions.<sup>187</sup>

97. LS Power also states that the Commission should reject the definition of "Transmission Needs" because it uses a restrictive definition of "need" to determine what will be studied or addressed on a regional basis. LS Power argues that, in particular, Filing Parties would force transmission consumers to undertake a long-term service agreement under the OATT before determining the alternatives to that commitment as Order No. 1000 and the First Compliance Order mandate.<sup>188</sup> Thus, according to LS Power, while Filing Parties assert that they will engage in regional transmission planning analysis to assess if the then-current regional plan addresses their "Transmission Needs," by defining "Transmission Needs" to include transmission considerations for which a long-term service agreement has been signed, the proposal does not meet the requirements of the First Compliance Order.

### (3) Answer

98. SERTP Sponsors argue that the Commission should dismiss LS Power's argument as a collateral attack on the First Compliance Order. According to SERTP Sponsors, the Commission rejected LS Power's exact argument in the First Compliance Order,<sup>189</sup> stating, "[w]e note that [the affirmative obligation to plan] must be set forth in each of the Filing Parties' OATTs, and ... each of the Filing Parties must follow their own

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<sup>186</sup> LS Power Protest at 3.

<sup>187</sup> *Id.* at 4.

<sup>188</sup> *Id.* at 12-13 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 62).

<sup>189</sup> SERTP Sponsors Answer at 8.

OATTs.”<sup>190</sup> SERTP Sponsors argue that they cannot unilaterally create obligations on third parties and each of the Filing Parties is only bound by the terms of their own OATT. Furthermore, SERTP Sponsors assert that, in accordance with the First Compliance Order, the non-public utility transmission providers listed in Attachment K have enrolled in the SERTP region.<sup>191</sup> SERTP Sponsors also argue that LS Power’s demand that an independent “regional entity” is required to comply with Order No. 1000 is baseless and a collateral attack on the Order No. 1000.<sup>192</sup> They assert that Order No. 1000 provided for flexibility and declined to compel utilities to form or join independent system operators or regional transmission organizations or to use independent third-party observers. SERTP Sponsors further argue that although there is not a single point of contact for the SERTP region, stakeholders can submit correspondence to the SERTP Sponsors through the contact section on the SERTP Regional Planning Website.<sup>193</sup>

99. SERTP Sponsors further argue that their definition of “Transmission Needs” is consistent with Order No. 1000, which did not require transmission providers to plan for or build facilities not associated with any transmission service commitment.<sup>194</sup> SERTP Sponsors explain that because transmission planners expand the transmission system to meet their long-term firm transmission commitments, a load serving entity or other transmission customer that has made such a commitment can be reasonably assured that power from its resources can be delivered to its loads reliably without congestion or curtailment. According to SERTP Sponsors, if transmission planners expanded the system for non-firm or speculative reasons, overall system costs would increase. For example, without long-term firm commitments, SERTP Sponsors assert that intended beneficiaries may not be able to use existing transmission because long-term firm transmission capacity is awarded on a first-come, first-served basis. SERTP Sponsors also note that state commissions in the SERTP region have not been willing to fund or

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<sup>190</sup> *Id.* n.21 (referencing First Compliance Order, 144 FERC ¶ 61,054 at P 63).

<sup>191</sup> *Id.* at 9 (referencing First Compliance Order, 144 FERC ¶ 61,054 at P 30); *see, e.g.*, Southern Companies OATT, Exhibit K-9.

<sup>192</sup> SERTP Sponsors Answer at 9-10.

<sup>193</sup> *Id.* at 9 (referencing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 330); *see, e.g.*, Southern Companies OATT, Attachment K §§ 1.7, 10.2.

<sup>194</sup> *Id.* at 20.

support the expansion of the electric system for non-firm, speculative purposes, and state siting laws typically require a showing of firm commitments for the requisite capacity.<sup>195</sup>

#### (4) **Commission Determination**

100. We find that Filing Parties' proposal partially complies with the First Compliance Order's requirements regarding the affirmative obligation to plan. Filing Parties' proposed OATT revisions provide that transmission providers will conduct regional transmission analyses to assess whether there may be more efficient or cost-effective transmission projects to address Transmission Needs than transmission projects included in the latest regional transmission plan.<sup>196</sup> Transmission providers will also perform power flow, dynamic, and short-circuit analysis, as necessary, to assess whether the then-current regional transmission plan would provide for the physical transmission capacity required to address the transmission provider's Transmission Needs, including those Transmission Needs of its transmission customers and those driven by economic considerations and public policy requirements.<sup>197</sup> We find that, with the exception of the proposed definition of "Transmission Needs," Filing Parties comply with the directive in the First Compliance Order to describe the process they 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>198</sup>

101. We are concerned, however, with Filing Parties' proposed definition of "Transmission Needs" (a new term) because it unreasonably limits the universe of transmission projects that are allowed to be considered to address regional transmission needs to those associated with a long-term commitment for transmission service. In other words, Filing Parties propose that their regional transmission planning will be limited to addressing transmission needs associated with individual requests for transmission service under their OATTs. In Order No. 890, the Commission discussed arguments regarding the adequacy of addressing individual requests for service under the OATT. There, the Commission noted that the process addressing individual requests for service under the OATT is adequate for customers who request specific transmission rights to

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<sup>195</sup> *Id.* at 21-22.

<sup>196</sup> *E.g.*, Southern Companies OATT, Attachment K § 11.1.

<sup>197</sup> *Id.*

<sup>198</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 61.

purchase power from a particular resource in a particular location during a defined time period.<sup>199</sup> 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>200</sup> In Order No. 1000, the Commission found that the existing requirements of Order No. 890 are inadequate because, among other things, public utility transmission providers are currently under no affirmative obligation to develop a regional transmission plan that reflects the evaluation of whether alternative regional solutions may be more efficient or cost-effective than solutions identified in local transmission planning processes.<sup>201</sup> Limiting transmission needs that will be considered in the regional transmission planning process to those associated with a commitment for long-term firm transmission service (i.e., associated with individual requests for transmission service under the OATT) is thus inconsistent with Order No. 890 and Order No. 1000. We therefore reject the proposed definition of “Transmission Needs” and direct Filing Parties to submit, within 60 days of the date of issuance this order, further compliance filings to either remove the new defined term “Transmission Needs” from their OATTs or to define “Transmission Needs” without the limitation that such transmission needs be associated with long-term firm transmission service commitments.

102. We disagree with LS Power that additional OATT revisions are required to clarify the decision-making process for the SERTP region. LS Power correctly notes that each Filing Party’s OATT states that only a single transmission provider will be conducting the regional transmission planning process. For example, each OATT states that “[t]he Transmission Provider will perform” power flow, dynamic, and short circuit analyses,<sup>202</sup> “[t]he Transmission provider will look for” potential regional transmission projects,<sup>203</sup> and “[t]he Transmission Provider will select” a transmission project for selection in the regional transmission plan for purposes of cost allocation “if the Transmission Provider determines” that the project is a more efficient or cost-effective transmission project

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<sup>199</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 543.

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

<sup>201</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 3.

<sup>202</sup> *E.g.*, Southern Companies OATT, Attachment K § 11.1.2.

<sup>203</sup> *Id.* § 11.2.1.



based on factors outlined in the OATT.<sup>204</sup> However, although provisions in each Filing Party's OATT that describe the regional transmission planning process refer only to a single transmission provider, we have evaluated Filing Parties' compliance with Order No. 1000 based on a regional transmission planning process in which all the enrolled transmission providers follow the SERTP process as described in each Filing Party's OATT.<sup>205</sup> Thus, our understanding of Filing Parties' proposal is that all the enrolled transmission providers will collectively perform the regional transmission planning process, conduct the regional analyses, and select transmission projects in the regional transmission plan for purposes of cost allocation based on the SERTP process outlined in each Filing Party's OATT rather than each transmission provider performing these functions separately.<sup>206</sup> In addition, as discussed below in the Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation section of this order, the regional transmission planning 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>207</sup> which, along with the other requirements of Order No. 1000, will provide additional clarity regarding how decisions in the SERTP process are made.

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<sup>204</sup> *Id.* § 17.5. The specific evaluation factors are discussed below in the Evaluation Process for Transmission Proposals Selection in the Regional Transmission Plan for Purposes of Cost Allocation section of this order.

<sup>205</sup> We encourage SERTP to improve the points of contact for the SERTP process. SERTP Sponsors state in their answer that, although there is not a single point of contact for the SERTP region, stakeholders can submit correspondence to the SERTP Sponsors through the contact section on the SERTP website. However, the contact link on the SERTP website is merely a generic comment form. Stakeholders would be better served by more specific points of contact. In addition, if Filing Parties are relying on a contact form on the SERTP website, we expect that all submissions using that form would receive a timely substantive response.

<sup>206</sup> To the extent that there are disputes among transmission developers about whether to select a transmission project in the regional transmission plan for purposes of cost allocation, the dispute resolution procedures in the OATTs would apply. *See id.* § 5.

<sup>207</sup> *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

103. Similarly, we understand Filing Parties' argument that they cannot unilaterally create obligations on third parties and each of the Filing Parties is only bound by the terms of its own OATT. That said, Filing Parties individually and collectively have an obligation to ensure that the regional transmission planning process is implemented as provided in their respective OATTs because they are relying on that process to comply with Order No. 1000. For example, as discussed earlier, Filing Parties propose to add language to their OATTs stating that it is "expected" and is an "expectation" that the local transmission plans of the other enrolled transmission providers will be rolled-up in to the regional transmission planning process.<sup>208</sup> We note that, should an enrolled transmission provider not follow the SERTP process by, for example, declining to roll-up its local transmission expansion plan into the regional transmission planning process, the public utility transmission providers in the SERTP region have to submit further filings to explain how they still comply with the regional transmission planning requirements of Order No. 1000.

### iii. Minimum Threshold Requirements

#### (a) First Compliance Order

104. In the First Compliance Order, the Commission found that Filing Parties' proposed minimum thresholds for transmission facilities potentially eligible for selection in a regional transmission plan for purposes of cost allocation partially complied with the requirement to plan on a regional basis to identify more efficient or cost-effective transmission solutions. The Commission found that Filing Parties had provided adequate support for their proposed minimum threshold requirement that a transmission project operate at a voltage of 300 kV or greater to be eligible for selection in the regional transmission plan for purposes of cost allocation. The Commission agreed with Filing Parties' reasoning that transmission projects that operate at or above 300 kV make up the "backbone" of the transmission facilities that convey bulk transfers throughout the SERTP region, integrating generation to large load centers, as compared to 230 kV facilities increasingly used by SERTP facilities to serve load.<sup>209</sup>

105. However, the Commission found that Filing Parties had failed to justify a requirement that a transmission project be 100 miles or greater to be eligible for selection in the regional transmission plan for purposes of cost allocation, and directed Filing Parties to either justify or remove that proposal. If Filing Parties seek to justify the

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<sup>208</sup> *E.g.*, Southern Companies OATT, Attachment K n.1 & n.5.

<sup>209</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 76.

requirement, the Commission held that they should provide additional justification as to how the 100-mile threshold identifies transmission facilities that are likely to have regional benefits by, for example, providing 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 requirement.<sup>210</sup>

106. The Commission also rejected Filing Parties' proposed requirement that a regional transmission project eligible for potential selection in a regional transmission plan for purposes of cost allocation must be located in two balancing authority areas because this requirement may inappropriately exclude certain transmission projects that might provide regional benefits from being evaluated for selection in the regional transmission plan for purposes of cost allocation. Citing as an example the significant size of the Southern Companies service territories, the Commission noted that a transmission facility of significant size and scope could be located within a single balancing authority area, but would be ineligible for regional cost allocation under Filing Parties' proposal.<sup>211</sup>

107. In response to Filing Parties' proposal that, to be eligible for selection in the regional transmission plan for purposes of cost allocation, a transmission project must be materially different than (1) transmission projects already under consideration in the regional transmission planning process and (2) transmission projects that have been previously considered in the regional transmission planning process, the Commission directed Filing Parties to justify or remove the first requirement, and remove the second requirement. The Commission was concerned that the first requirement could exclude transmission facilities from evaluation that provide benefits to the transmission planning region, and held that, if Filing Parties propose to retain that requirement, they must provide additional explanation of how a proposed transmission facility will be determined to be "materially different."<sup>212</sup> Regarding the second requirement, the Commission concluded that simply because a transmission facility was not selected in a regional transmission plan as a more efficient or cost-effective solution, that is no reason to refuse to consider whether that transmission project, or a similar project, may

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<sup>210</sup> *Id.* P 77.

<sup>211</sup> *Id.* P 78.

<sup>212</sup> *Id.* P 79.

nonetheless be a more efficient or cost-effective solution in future transmission planning cycles.<sup>213</sup>

108. The Commission also rejected Filing Parties' proposed requirement that the proposed transmission project must be able to be constructed and tied in to the transmission system by the required in-service date. While the Commission recognized that transmission needs must be met on a timely basis, the Commission did not think it was appropriate to categorically disqualify a project at the proposal stage due to its estimated in-service date. The Commission clarified, however, that the regional transmission planning process may consider this criterion at the evaluation stage.<sup>214</sup>

109. Finally, with respect to Filing Parties' proposal to permit other transmission facilities capable of providing significant bulk electric transfers and regional benefits to be considered on a case-by-case basis for selection in the regional transmission plan for purposes of cost allocation, the Commission found that Filing Parties had failed to explain the factors that will be considered in determining whether a proposed transmission facility provides such benefits. The Commission therefore directed Filing Parties to provide additional detail regarding how this proposal will be implemented, as well as an explanation of how the analysis as to whether a proposed transmission facility has regional benefits will be performed.<sup>215</sup>

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

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

110. SERTP Sponsors request clarification or, in the alternative, rehearing of the requirement in the First Compliance Order to eliminate the proposed threshold requirement that in order to be considered for purposes of regional cost allocation, a transmission project must be physically located within two balancing authority areas. The SERTP Sponsors request that, "[a]t a minimum, the Commission should clarify that its treatment of whether the two [balancing authority area] criterion is appropriate as a threshold criteria to determine facility eligibility for [regional cost allocation purposes]

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<sup>213</sup> *Id.* P 80.

<sup>214</sup> *Id.* P 81.

<sup>215</sup> *Id.* P 82.

does not prejudice the SERTP Sponsors from later seeking a local federal [right of first refusal] for their ‘footprint.’”<sup>216</sup>

111. SERTP Sponsors state that the balancing authority areas are generally the footprint of at least several of the SERTP Sponsors, which would make this compliance requirement inconsistent with Order No. 1000 and other decisions made by the Commission, which preserved certain rights for “local” projects and stated that an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements of either Order No. 890 or Order No. 1000.<sup>217</sup> SERTP Sponsors state the Commission has no jurisdiction to determine the scope of retail service territories, as service territory determinations are within the exclusive purview of the states.<sup>218</sup> SERTP Sponsors also state that for many of them, including AECl, PowerSouth, SMEPA, Southern Companies, and TVA, their footprint within which their transmission facilities are located is their balancing authority area. In addition, SERTP Sponsors argue the fact that some of the smaller, non-public utility transmission provider SERTP Sponsors are located within a larger balancing authority area (i.e., Southern) does not preclude the balancing authority area from being the larger balancing authority area’s footprint.<sup>219</sup>

112. SERTP Sponsors also request rehearing of the First Compliance Order’s rejection of the proposed requirement that, to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a transmission project must be materially different than transmission projects already considered in the regional transmission planning process. SERTP Sponsors claim that this proposed requirement was taken directly from Order No. 1000, which states:

Through the regional transmission planning process, public utility transmission providers will be required to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than

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<sup>216</sup> SERTP Sponsors Rehearing Request at 62.

<sup>217</sup> *Id.* at 59 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160) and 60 (citing *Duke Energy Carolinas, LLC*, 142 FERC ¶ 61,130 at P 27).

<sup>218</sup> *Id.* at 59-60.

<sup>219</sup> *Id.* at 62 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 424).

solutions identified by individual public utility transmission providers in their local transmission planning process[es].<sup>220</sup>

SERTP Sponsors take this to mean that Order No. 1000 requires that a proposal be different than solutions already considered by the transmission provider. SERTP Sponsors argue this is reasonable as it would be counterproductive to require transmission planners to reevaluate transmission solutions that have already been considered and rejected. SERTP Sponsors assert that Order No. 1000 allows entities proposing alternative solutions to try to identify gaps in the transmission planning process, but raising solutions that have already been rejected would not be identifying gaps; it would be requiring the reconsideration of rejected ideas, a result that is neither efficient nor cost-effective.<sup>221</sup>

113. In its request for rehearing, LS Power argues that the Commission's erred in accepting SERTP Sponsors' proposal to establish a 300 kV minimum voltage threshold for projects to be eligible for regional cost allocation because SERTP Sponsors did not adequately support their proposal with substantial evidence that facilities below 300 kV provide no regional benefit. LS Power asserts that the SERTP proposal is in contrast to neighboring SPP's proposal, where projects 100 kV and above are open for competition.<sup>222</sup>

114. LS Power also claims that the lack of 345 kV facilities in the original SERTP region, TVA, or North Carolina region justifies the conclusion that the SERTP region has relied on lower voltage facilities for regional integration to a greater extent than many other transmission planning regions.<sup>223</sup> LS Power thus concludes that the Commission must have relied on the lower voltage 230 kV and 115 kV facilities when finding the SERTP region was of sufficient scope to comply with Order No. 1000. LS Power maintains that it would be inappropriate to now ignore the regional benefits of those same types of lower voltage facilities by allowing only higher voltage transmission facilities to be eligible for selection in the regional transmission plan for purposes of cost allocation. LS Power argues that the SERTP Sponsors cannot rely on the lower voltage transmission

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<sup>220</sup> *Id.* at 63 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148).

<sup>221</sup> *Id.*.

<sup>222</sup> LS Power Request for Rehearing and Clarification at 5.

<sup>223</sup> *Id.* at 5-6.

facilities for the critical regional connection to establish an integrated region yet treat those same facilities as “local” for purposes of competition under Order No. 1000.<sup>224</sup>

115. Additionally, LS Power states that a review of the recent SERTP expansion plan shows that the bulk of the projects in Georgia in “SERTP East” are cost shared between Georgia Transmission Corporation and various Southern Company affiliates, including Georgia Power. With one exception, there are no 300 kV and above projects in this expansion plan, despite billions of dollars of proposed new transmission. LS Power states that the majority of SERTP regional transmission expansions are 115kV, 161 kV, or 230 kV and that certain lower voltage expansions are simply cost shared today between Southern Company affiliates, Georgia municipal entities, and rural electric cooperatives. LS Power believes there is no reason to think that it would be inappropriate to cost share similar facilities in the future. LS Power concludes that it is cost sharing, not voltage, that makes a project “regional” and open to competitive pressures.<sup>225</sup>

116. LS Power also argues that the 300 kV minimum voltage threshold for projects to be considered regional versus local appears to be based on the proposition that voltage determines whether a project has regional benefits and that the project must benefit the *entire* SERTP region to be considered regional. LS Power states that SERTP Sponsors’ assertion, that for a facility to provide true “regional” benefits for a region as expansive as the SERTP, the facility needs to provide for significant bulk transfers and address significant regional transmission needs, is misplaced. LS Power argues that it is entirely feasible, for example, that a double circuit 230 kV transmission line would significantly increase regional transfer capacity and could actually be the more efficient or cost-effective transmission project. LS Power thus argues that a transmission line that is short and less than 300 kV should not be automatically excluded from regional cost allocation without further analysis. LS Power maintains that there is nothing special about 300 kV for purposes of cost allocation in any market in the country and that regional cost allocation actually occurs at significantly lower voltage levels.<sup>226</sup>

117. SERTP Sponsors request clarification or, in the alternative, rehearing of the Compliance Order’s rejection of the threshold requirement that a proposed transmission project must be able to be constructed and tied into the transmission system by the required in-service date. SERTP Sponsors believe that the Commission was only

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<sup>224</sup> *Id.* at 6-7.

<sup>225</sup> *Id.* at 8-9.

<sup>226</sup> *Id.*

speculating when it stated that there may be situations in which the transmission planning region decides that the benefits provided by a proposed transmission project are sufficient to justify selecting the project in the regional transmission plan and implementing alternative, shorter-term solutions prior to the project's in-service date to meet the need in a timely manner.<sup>227</sup> Rather than generally requiring the transmission planners to consider all projects that cannot meet their in-service date, the SERTP Sponsors request that the Commission clarify that the general prohibition is permissible provided that an exception be allowed if short-term solutions are proposed to address the project's inability to meet the required service deadline. SERTP Sponsors state that if this clarification is not provided, rehearing is sought because this holding does not facilitate the load serving entities' ability to meet their load service needs, in violation of FPA section 217(b)(4)<sup>228</sup> and is arbitrary and capricious.<sup>229</sup>

## (2) Commission Determination

118. We deny the requests for rehearing or clarification of the Commission's determinations in the First Compliance Order regarding minimum threshold requirements for transmission projects that are eligible to be selected in the regional transmission plan for purposes of cost allocation.

119. With respect to the proposed requirement that a transmission project must be physically located within two balancing authority areas in order to be considered for purposes of regional cost allocation, SERTP Sponsors argue that the threshold is a legitimate restriction. However, as we noted in the First Compliance Order, this restriction may inappropriately exclude certain transmission projects that might provide regional benefits from being evaluated for selection in the regional transmission plan for purposes of cost allocation.<sup>230</sup> We remain concerned that a transmission facility of significant size and scope could be located within a single balancing authority area and yet be presumed ineligible even to be considered for selection in the regional transmission plan for purposes of cost allocation notwithstanding significant regional benefits associated with the transmission facility. Such an outcome would limit the

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<sup>227</sup> SERTP Sponsors Rehearing Request at 64 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 81).

<sup>228</sup> *Id.* (citing 16 U.S.C. § 824q(b)(4) (2012)).

<sup>229</sup> *Id.*

<sup>230</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 78.



ability of transmission developers, whether incumbent or nonincumbent, to develop regional transmission projects in the SERTP region. While a balancing authority area is distinct from a retail distribution service territory,<sup>231</sup> the Commission noted in Order No. 1000 that “a proposed transmission facility located entirely within a public utility’s retail distribution service territory could be determined by public utility transmission providers in the region to provide benefits to others in the region and thus the cost of that transmission facility could be allocated according to that region’s cost allocation method or methods.”<sup>232</sup>

120. We also deny SERTP Sponsors’ request for rehearing of the First Compliance Order’s rejection of the proposed requirement that, to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a transmission project must be materially different than transmission projects that have previously been considered in the regional transmission planning process. SERTP Sponsors are incorrect in asserting that, by stating that alternative transmission solutions may meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified in local transmission plans, the Commission in Order No. 1000 required that a proposal be different than solutions previously considered by the transmission provider; rather, Order No. 1000 requires that transmission providers conduct a regional analysis of proposed transmission solutions to determine if they more efficiently or cost-effectively address identified transmission needs. A decision to not select a transmission solution in the regional transmission plan for purposes of cost allocation in a given transmission planning cycle does not conclusively determine the solution cannot be found to be a more efficient or cost-effective solution in the future as regional transmission needs change over time. It follows then that prior transmission solutions considered but not selected in the regional transmission plan for purposes of cost allocation in a given transmission

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<sup>231</sup> A balancing authority area is the collection of generation, transmission, and loads within metered boundaries of the Balancing Authority. Southern Companies’ balancing authority area has four distinct retail distribution service territories, but is a single transmission provider for purposes of Order No. 1000 compliance, and the LG&E/KU balancing authority area has two retail distribution service territories but is also a single transmission provider. *See* SERTP Sponsors Rehearing Request at 60.

<sup>232</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 564. The Commission also explained the distinction between local transmission facilities that are not eligible for regional cost allocation and regional transmission facilities eligible for regional cost allocation in *Duke Progress Compliance Order*, 145 FERC ¶ 61, 252, at PP 49-51 (2013).

planning cycle should not be barred from consideration in future cycles, particularly when underlying transmission needs may have changed.

121. We reject LS Power's argument that the Commission erred in accepting SERTP Sponsors' proposal to establish a 300 kV minimum voltage threshold for projects to be eligible for regional cost allocation because SERTP Sponsors did not adequately support their proposal with substantial evidence that facilities below 300 kV provide no regional benefit. Order No. 1000 neither mandated, nor prohibited, regional project minimum threshold requirements, such as voltage limits, for a proposed transmission project to be eligible for selection in the regional transmission plan for purposes of cost allocation. Such limits can be a reasonable way to identify transmission facilities that are expected to have regional benefits and, in fact, are used by multiple regions. We affirm our finding that the 300 kV minimum threshold requirement is just and reasonable and was adequately supported by Filing Parties, as transmission projects that operate at or above 300 kV make up the "backbone" of the transmission facilities that convey bulk transfers throughout the SERTP region.<sup>233</sup> We note that higher voltage transmission lines may provide reduced power losses, greater transmission capacity, reduced operating reserve requirements, improved access to generation, and reduced congestion.<sup>234</sup> Higher voltage transmission lines also provide increased transfer capability across the region, assist with power system angle stability, and result in increased surge impedance loading. Higher power transfers with lower loss high voltage transmission lines allow for the potential of further growth and expansion of the transmission system. These benefits help to enlarge and improve the SERTP region's transmission system by promoting the reliable and economically efficient transmission of electric energy in interstate commerce.<sup>235</sup> We note that a transmission planning region's Order No. 1000 compliance proposal does not have to be the same as neighboring regions, as Order No. 1000 allows flexibility for public utility transmission providers to meet the minimum requirements of Order No. 1000 by developing procedures appropriate for their local and regional transmission planning processes.<sup>236</sup>

122. Furthermore, while LS Power concludes that the Commission must have relied on the lower voltage facilities when finding the SERTP region was of sufficient scope to

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<sup>233</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 76.

<sup>234</sup> *See, e.g.*, PJM First Compliance Order, 142 FERC ¶ 61,214 at P 414.

<sup>235</sup> *See, e.g.*, 16 U.S.C. § 824 (2012).

<sup>236</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

comply with Order No. 1000, we find that voltage level of a transmission planning region's interconnected ties by itself does not define the scope of a transmission planning region, but may be a useful metric for assessing new regional transmission projects. The Commission, while declining to prescribe the scope of any particular transmission planning region, has previously explained that 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>237</sup> Therefore, we reject LS Power's argument that SERTP Sponsors cannot rely on lower voltage facilities for regional connection to establish an integrated region while simultaneously implementing a defined voltage threshold for regional transmission facilities.

123. Additionally, we disagree with LS Power that the cost sharing among transmission providers, pursuant to a non-Order No. 1000 cost sharing mechanism, of transmission facilities in Georgia with voltage levels below 300 kV demonstrates that the proposed 300 kV threshold is improper.<sup>238</sup> Filing Parties provided sufficient evidence on compliance that 300 kV facilities form the backbone of regional transmission facilities in the SERTP region, and the fact that certain transmission providers elect to fund transmission facilities with lower voltage thresholds through a pre-Order No. 1000 cost sharing arrangements does not alter the Commission's determination. We also disagree with LS Power's argument that the 300 kV minimum voltage threshold presumes that voltage determines whether a project has regional benefits and that the project must benefit the *entire* SERTP region to be considered regional. As discussed below in the Evaluation Process for Transmission Proposals Selection in the Regional Transmission Plan for Purposes of Cost Allocation section of this order, a 300 kV facility is not presumed to provide benefits to the entire region; transmission providers in the SERTP region will perform an analysis to determine the beneficiaries of a particular transmission project and will allocate costs accordingly.

124. We also deny SERTP Sponsors' request for clarification or, in the alternative, rehearing of the First Compliance Order's rejection of the threshold requirement that a proposed transmission project must be able to be constructed and tied into the transmission system by the required in-service date. While SERTP Sponsors request that the Commission clarify that the general prohibition is permissible, provided that an exception be allowed if short-term solutions are proposed to address the project's inability to meet the required service deadline, we believe this factor is more

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<sup>237</sup> *Id.* P 160 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

<sup>238</sup> *Id.* P 723.

appropriately considered in the evaluation process, where the costs and benefits of a proposed transmission project can be adequately assessed, rather than through categorical exclusion, as would happen under Filing Parties' original proposal. Thus, we affirm our finding that the evaluation process is the more appropriate avenue through which to consider in-service deadlines.<sup>239</sup> Because we are not prohibiting the consideration of a proposed transmission project's in-service date, but rather simply ensuring that it is fairly considered at the appropriate time, our holding does not interfere the load serving entities' ability to meet their load service needs under FPA section 217(b)(4).

(c) **Compliance**

(1) **Summary of Compliance Filings**

125. Filing Parties propose to retain the 100-mile minimum threshold for a transmission project to be eligible for selection in the regional transmission plan for purposes of cost allocation,<sup>240</sup> but also propose a new, separate minimum threshold that could be met instead of the 100-mile minimum threshold. The alternative minimum threshold would require that a transmission line span at least 50 miles and displace transmission projects that would be located in two or more balancing authority areas or states within the SERTP region.<sup>241</sup> Filing Parties explain that these distance thresholds are appropriate for the SERTP region because, due to the SERTP region's expansive size, a transmission line must be significant in order for a transmission project to provide regional benefits commensurate with the scope of the SERTP. Filing Parties state that there are numerous transmission lines within the SERTP region rated 300 kV or higher that would satisfy the SERTP region's proposed minimum threshold criteria. Filing Parties state Exhibit 1 to their compliance filing identifies 63 transmission lines terminating in the SERTP region that are at least 50 miles in length, 32 such transmission lines that are at least 75 miles in length, and 15 that are at least 100 miles in length.<sup>242</sup>

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<sup>239</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 81.

<sup>240</sup> *E.g.*, Southern Companies OATT, Attachment K § 15.1.

<sup>241</sup> *Id.* "Displaced" transmission projects for purposes of this minimum threshold would be in the nature of those that would be identified in the evaluation process. *Id.* n.11.

<sup>242</sup> *E.g.*, Southern Companies Transmittal letter at 15 (citing Exhibit 1).

126. Filing Parties further argue that in order to provide regional benefits commensurate with the scope of the SERTP region, a regional transmission project should effectuate transfers between the major load areas in the SERTP region. Filing Parties state that there are generally larger distances between load areas within the SERTP region than in other portions of the United States. Filing Parties state that the average mileage between a major load area in the SERTP and its closest other major load area is 91 miles and the average mileage between its second closest other major load area is 124 miles.<sup>243</sup> Therefore, Filing Parties argue that a regional transmission line effectuating transfers between major load areas should generally range between 91 to 124 miles in length. Filing Parties also state that no major load area is within 50 miles of its next closest other major load area. Accordingly, given the above justifications, Filing Parties submit that the 100-mile and 50-mile alternative minimum thresholds are appropriate for the SERTP region in identifying and encouraging transmission projects that are regional in nature.<sup>244</sup>

127. Filing Parties further state that if a transmission project is at least 50 miles in length and would displace transmission projects in two or more balancing authority areas or states within the SERTP, then it too would provide sufficient regional benefits comparable to a 100-mile transmission project. Filing Parties assert that even though the project would be half the length of a 100-mile transmission project, the requirement that a 50-mile project displace transmission projects in multiple balancing authority areas or states within the SERTP ensures that the project effectuates regional benefits in terms of effectuating significant electric transfers and addressing significant electric needs in a similar nature to a transmission project of at least 100 miles in length.<sup>245</sup>

128. With regard to the compliance directive to remove the proposed OATT language related to transmission lines needing to be located in two or more SERTP balancing authority areas, Filing Parties have accordingly removed this proposed minimum threshold requirement from their OATTs.<sup>246</sup>

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<sup>243</sup> *Id.* (citing Exhibit 2). Exhibit 2 presents a range of approximately 55 to 220 miles between load centers.

<sup>244</sup> *Id.* at 15-16.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.* at 14.

129. Additionally, with regard to the compliance directive to remove the proposed provision requiring transmission projects to be ‘materially different’ than project(s) that have been previously considered in the transmission planning process, Filing Parties have also removed this proposed minimum threshold requirement from their OATTs.<sup>247</sup>

130. Filing Parties propose to retain the requirement that a transmission project proposed for regional cost allocation purposes must be materially different than projects already under consideration and provide further justification.<sup>248</sup> Filing Parties argue that if a proposal is not materially different than a project already under consideration, then it is axiomatic that the latter proposal of essentially the same project is not a more efficient or cost-effective transmission alternative. Filing Parties note that Order No. 1000 provides that its requirements were meant to ensure that regional transmission planning processes consider and evaluate possible transmission alternatives<sup>249</sup> and states that through the SERTP process, public utility transmission providers will be required to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the transmission needs of the SERTP region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.<sup>250</sup> Filing Parties reason that if a transmission project is already being evaluated in the transmission planning process, it is not a transmission project that has otherwise been missed or overlooked, as it is already being considered. Filing Parties further state that the “materially different” threshold requirement ensures that proposed solutions are materially different from one another and should forestall unnecessary disputes and litigation.<sup>251</sup> Filing Parties also propose to add language to their OATTs stating that a transmission project will be deemed materially different as compared to another transmission alternative(s) under consideration if the proposal

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<sup>247</sup> *Id.*

<sup>248</sup> *E.g.*, Southern Companies OATT, Attachment K §15.3.

<sup>249</sup> *E.g.*, Southern Companies Transmittal Letter at 16 (referencing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 4).

<sup>250</sup> *Id.* at 16-17 (referencing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148).

<sup>251</sup> *Id.* at 17.

contains significant geographical and electrical differences in the alternative's proposed interconnection point(s) and transmission line routing.<sup>252</sup>

131. To comply with the requirement to remove from their OATTs the provision requiring that a proposed transmission project must be able to be constructed and tied in to the transmission system by the required in-service date, Filing Parties state they have relocated the requirement from being a minimum threshold requirement to be a consideration in their evaluation/selection of a transmission project.<sup>253</sup> Finally, regarding the requirement to provide additional detail and explanation about the proposal to permit other transmission facilities capable of providing significant bulk electric transfers and regional benefits to be considered on a case by case basis for potential selection in the regional transmission plan for purposes of cost allocation,<sup>254</sup> Filing Parties instead propose to delete the provision in its entirety.<sup>255</sup> Filing Parties state that they replaced the "case-by-case" exception with the alternative threshold, discussed above, that a transmission project would be eligible for regional cost allocation purposes if it is at least 50 miles in length and would displace transmission projects in two or more balancing authority areas or states within the SERTP.<sup>256</sup>

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<sup>252</sup> *E.g.*, Southern Companies OATT, Attachment K §15.3.

<sup>253</sup> *E.g.*, Southern Companies Transmittal Letter at 17 (referencing Southern Companies OATT, Attachment K § 17.5(e)).

<sup>254</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 82.

<sup>255</sup> *E.g.*, Southern Companies Transmittal Letter at 16. Filing Parties propose to delete the following provision submitted as part of their First Compliance Filing:

A transmission project that does not satisfy [the voltage and distance minimum thresholds] that would effectuate similar, significant bulk electric transfers across the SERTP region and address similar, significant regional electrical needs will be considered on a case-by-case basis.

*See* First Compliance Order, 144 FERC ¶ 61,054 at P 67.

<sup>256</sup> *E.g.*, Southern Companies Transmittal Letter at 16.

(2) **Protests/Comments**

132. LS Power asserts that Filing Parties neither justified nor removed the 100-mile requirement, nor did they justify using the alternative 50-mile requirement if the project displaces transmission projects in multiple balancing authority areas or states. LS Power argues that, with regard to the 100-mile requirement, Filing Parties themselves state that in SERTP there are only 15 transmission lines of greater voltage than 300 kV that are more than 100 miles in length, while there are 95 transmission lines between 50 and 100 miles. LS Power also notes that Filing Parties did not provide information regarding the lines of 300 kV or greater that are less than 50 miles, substation to substation, or affirmatively state that there are no such lines.<sup>257</sup> LS Power states that Filing Parties have only provided information on the average mileage between a major load area in the SERTP region and its closest other major load area, which LS Power argues does nothing to address the minimum length at which regional benefits occur.<sup>258</sup>

133. LS Power argues that Filing Parties seem to conclude that the bigger the region, the bigger the project must be to have regional benefits. However, LS Power claims that the PJM Artificial Island request for proposal to solve a single regional reliability need establishes that short, lower voltage lines can have the same regional benefits as longer, higher voltage lines. LS Power explains that PJM's Artificial Island request for proposal resulted in 28 proposed projects or combinations of projects, ranging from 4.9 miles to 75 miles, 230 kV to 500 kV, and with price tags of less than \$150 million to more than \$1 billion. LS Power argues that under Filing Parties' proposal, the 4.9-mile proposal could not be identified as a regional project, even though it is \$850 million less than the 75-mile proposal.<sup>259</sup>

134. LS Power also states that Filing Parties have not justified requiring a 50-mile project to displace transmission projects in multiple balancing authority areas or states. According to LS Power, projects providing regional benefits do not recognize the borders of balancing authority areas or states and the Commission specifically rejected this type of border restriction in the First Compliance Order.<sup>260</sup> LS Power also states that, with the

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<sup>257</sup> LS Power Protest at 14 & n.24.

<sup>258</sup> *Id.* at 14-15.

<sup>259</sup> *Id.* at 15.

<sup>260</sup> *Id.* at 16 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 78 (“In addition, we reject the requirement that a regional transmission project eligible for potential selection in a regional transmission plan for purposes of cost allocation must be

(continued...)



avoided cost methodology, the likelihood of a regional project of greater than 100 miles displacing local projects is slim. LS Power therefore concludes that Filing Parties have identified no legitimate basis to resurrect the mileage threshold that the Commission rejected.<sup>261</sup>

135. With regard to the requirements regarding transmission projects that are “materially different” than those already under consideration, LS Power states that Filing Parties fail to establish what constitutes “materially different,” such as a scenario in which one transmission developer proposes a project at a certain cost estimate (e.g., \$200 million) with no cost cap or other restriction on cost increases, while another transmission developer proposes the same line but with a cost cap less than the first project’s cost estimate (e.g., \$190 million). LS Power argues that from a rate analysis, these projects are materially different.<sup>262</sup> LS Power states that the Commission required Filing Parties to both justify their proposed requirement and provide additional explanation of how a proposed transmission facility will be determined to be “materially different.” LS Power argues that Filing Parties failed to provide such an explanation and only asserted that the provision is consistent with Order No. 1000 because Order No. 1000 focuses on new or different projects.<sup>263</sup>

136. Public Interest Organizations also assert that the “materially different” requirement and Filing Parties’ proposed justification for maintaining the requirement impermissibly limits the scope of alternatives that may be considered in the transmission planning process. Public Interest Organizations believe that, in contrast to Filing Parties’ claim, it is neither axiomatic nor illogical to conclude that there may be a significant array of potential projects that are obviously different from the projects already identified by the SERTP transmission providers but that do not involve significant geographical and electrical differences in interconnection points and line routing. Public Interest Organizations offer the example that third parties may propose projects that are the same in almost all respects as the identified projects but estimated to cost only 60 percent of a

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located in two balancing authority areas because this requirement may inappropriately exclude certain transmission projects that might provide regional benefits from being evaluated for selection in the regional transmission plan for purposes of cost allocation”).

<sup>261</sup> *Id.*

<sup>262</sup> *Id.* at 17.

<sup>263</sup> *Id.* at 18.

SERTP transmission providers' projects. Public Interest Organizations reason that, assuming comparable reliability and other characteristics, the cheaper projects should be more cost-effective alternatives, or there may be significant geographical or electrical differences in a proposed alternative as compared to the transmission providers' proposal, but not both. Public Interest Organizations believe that the "materially different" requirement should be removed or, should Filing Parties seek to keep it, the requirement should be modified so as not to preclude consideration of all more cost-effective alternatives.<sup>264</sup>

### (3) Answer

137. In regards to the proposal that a project be "materially different" from projects currently under consideration in the planning process, SERTP Sponsors state that protesters are assuming that the selection process for more efficient or cost-effective solutions in the Compliance Filing must be some type of competitive bid process. However, SERTP Sponsors clarify that Order No. 1000 did not require the selection process to employ a competitive bidding model for selection decisions and that SERTP Sponsors did not adopt a competitive bidding model.<sup>265</sup> SERTP Sponsors argue that the compliance filing process specifically encourages the innovative alternatives to meet transmission needs more efficiently and cost-effectively than Order No. 1000 was seeking.<sup>266</sup>

138. SERTP Sponsors explain that the "materially different" criterion is necessary to prevent entities from submitting the same proposals that are already under consideration and that Order No. 1000's express purpose was the search for previously unidentified transmission alternatives that may be more efficient or cost-effective than transmission solutions already under consideration. SERTP Sponsors reiterate that allowing for the

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<sup>264</sup> Public Interest Organizations Protest at 6-7.

<sup>265</sup> SERTP Sponsors Answer at 29-30 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 321 n.302) (stating that the Commission "declines to adopt commenter suggestions to mandate a competitive bidding process for selecting project developers. While the Commission agrees that a competitive process can provide benefits to consumers, we continue to allow public utility transmission providers within each region to determine for themselves, in consultations with stakeholders, what mechanisms are most appropriate to evaluate and select potential transmission solutions to regional needs").

<sup>266</sup> *Id.* at 30.

submission of proposals that are not materially different necessarily means that essentially identical proposals could be submitted by multiple developers, each seeking to secure its right to utilize the regional cost allocation method, while doing nothing to help the SERTP Sponsors identify “alternatives” to the transmission solutions already identified and under evaluation – according to SERTP Sponsors, a recipe for litigation, conflict, and the stifling of the transmission planning and expansion process.<sup>267</sup>

139. In regard to the proposed mileage thresholds, SERTP Sponsors explain that the Commission did not find that mileage based minimum thresholds are inappropriate, but instead held that if the SERTP Sponsors are going to retain that requirement, they must provide further justification. SERTP Sponsors, responding to LS Power’s claim that the distance between major load centers in the SERTP region is a mere “geography lesson,” argue that the distinction between something that is “local” and something that is “regional” does have to do with geography, and that the average distance between load centers has much to do with the evaluation of what is meant by regional benefits. SERTP Sponsors explain that if a transmission facility only serves one load center, it is necessarily focused more on that locality; however, if it connects two remote load centers (thus connecting two locales), it has the potential to be regional in nature. SERTP Sponsors continue that the type of information that the Commission suggested in the First Compliance Order was merely an example of the evidence that could be produced to support the threshold requirements and that the SERTP Sponsors provided the requested information.<sup>268</sup>

140. SERTP Sponsors state that LS Power ignores Order No. 1000’s regional flexibility when it argues that SERTP should adopt PJM’s criteria to define which transmission lines are regional. SERTP Sponsors explain that PJM is geographically smaller with fewer miles of transmission, while having a higher concentration of load and load centers than the SERTP, with the major load centers along the mid-Atlantic being located closer together than those found in the SERTP. SERTP Sponsors state that PJM and the SERTP’s criteria are tailored in a way that is appropriate to their respective regions and that the Commission should acknowledge differences between regions and allow the regional flexibility guaranteed by Order No. 1000 and deny LS Power’s protest on this point.<sup>269</sup>

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<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 31-32.

<sup>269</sup> *Id.* at 32.

141. SERTP Sponsors also explain that their proposal to waive the 100-mile or longer eligibility requirement if a transmission facility is at least 50 miles and displaces transmission projects in multiple balancing authority areas or states is not a resurrection of a threshold requirement rejected by the Commission in the First Compliance Order, as suggested by LS Power. SERTP Sponsors explain that the originally proposed case-by-case criterion has been removed and that the 50-mile criterion at issue has been adopted to specifically address the Commission's concern that the case-by-case exception was not sufficiently prescriptive.<sup>270</sup> SERTP Sponsors also believe the 100-mile threshold has been more than sufficiently justified. SERTP Sponsors explain that they nevertheless crafted an exception that would allow for the consideration of smaller projects that may provide regional benefits while specifying the requisite detail necessary to ensure that the proposal would be adequately transparent and would not result in unjust, unreasonable, or unduly discriminatory outcomes. SERTP Sponsors reiterate that as a transmission project 50 miles in length is approximately half the average distance between major load centers in the SERTP, the project must provide additional attributes to demonstrate that it would potentially provide more than just local benefits. Additionally, SERTP Sponsors state that since a planned project which displaces projects in more than one balancing authority area would likely involve the allocation of costs to multiple transmission owners and would likely displace projects in two or more states, then the transmission project would be subject to oversight by multiple state jurisdictional or governance authorities. SERTP Sponsors request that the Commission approve this exception to the general threshold requirements because it is consistent with the characteristics of the SERTP region, as well as with Order No. 1000 and the First Compliance Order.<sup>271</sup>

#### (4) Commission Determination

142. We find that Filing Parties' proposed revisions to the proposed minimum thresholds for transmission facilities potentially eligible for selection in a regional transmission plan for purposes of cost allocation partially comply with the directives in the First Compliance Order.

143. First, we find that Filing Parties have properly removed from their OATTs the proposed requirements that a transmission facility be: (1) located in two or more SERTP balancing authority areas; (2) "materially different" than projects that have been previously considered in the transmission planning process; and (3) able to be constructed

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<sup>270</sup> *Id.* at 33.

<sup>271</sup> *Id.* at 33-34.

and tied in to the transmission system by the required in-service date. We also accept Filing Parties' proposal to relocate the required in-service date to the evaluation and selection of transmission projects in the regional transmission plan for purposes of cost allocation.<sup>272</sup>

144. We reject Filing Parties' proposed threshold that to be eligible for selection in the regional transmission plan for purposes of cost allocation, a transmission project must be at least 100 miles. We find that Filing Parties have failed to justify why a proposed transmission project must meet the proposed 100 mile threshold to be eligible for consideration for evaluation and potential selection in the regional transmission plan for purposes of cost allocation. The limited data provided by Filing Parties fall short of explaining how the proposed mileage-based threshold will identify transmission facilities that are likely to have regional benefits and do not explain how such a mileage-based threshold will not unnecessarily preclude from evaluation transmission projects that may provide regional benefits. Filing Parties' proposed mileage threshold could eliminate an evaluation of whether such high voltage transmission lines would meet identified transmission needs more efficiently or cost-effectively. Irrespective of distance, higher voltage lines provide reduced congestion, reduced power losses, greater transmission capacity, reduced operating reserve requirements, and improved access to generation, resulting in measurable regional benefits.<sup>273</sup> For example, increased transfer capability from higher voltage transmission lines allows for more uncommitted capacity, allowing for more competition among generation resources to serve load. Indeed, Filing Parties' proposal would dismiss outright the regional benefits provided by high voltage transmission lines less than 100 miles in length in favor of a mileage parameter that has not been adequately supported. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings removing the 100-mile threshold from their OATTs.

145. We also reject Filing Parties' proposed alternative threshold that to be eligible for selection in the regional transmission plan for purposes of cost allocation, a transmission project must be at least 50 miles *and* displace transmission projects in more than one balancing authority area or state. As explained in the First Compliance Order, the Commission rejected the proposed requirement that, to be eligible for regional cost allocation, a regional transmission project must be located in two balancing authority

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<sup>272</sup> See Evaluation Process for Transmission Proposals Selection in the Regional Transmission Plan for Purposes of Cost Allocation section.

<sup>273</sup> See Minimum Threshold Requirements section.

areas within the SERTP region.<sup>274</sup> We reiterate that this requirement may inappropriately exclude certain transmission projects that might provide regional benefits from being evaluated for selection in the regional transmission plan for purposes of cost allocation.<sup>275</sup> The requirement that a transmission project between 50 and 100 miles displace transmission projects in two or more balancing authority areas or states within the SERTP region creates the same concerns, and thus Filing Parties must remove this provision from their OATTs. While Filing Parties propose that the transmission project displace projects in more than one balancing authority area *or* more than one state, the requirement would still improperly prevent a transmission provider from even considering transmission projects that may provide regional benefits but only displace transmission projects within one balancing authority area or within one state. For example, if a nonincumbent transmission provider proposed a transmission project that displaced a transmission project in Georgia Power's footprint and one in Municipal Electric Authority of Georgia's footprint, the transmission project would not qualify for regional cost allocation because it does not cross two states or balancing authorities. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings removing from their OATTs the alternative threshold requiring that a transmission project be at least 50-miles and displace transmission projects in more than one balancing authority area or state.

146. In regard to Filing Parties' proposal that, to be eligible for possible selection in the regional transmission plan for purposes of cost allocation, a transmission project must be "materially different" than transmission projects currently being considered in the SERTP process, we conditionally accept this requirement and direct Filing Parties, as further discussed below, to: (1) provide stakeholders with an explanation detailing why a particular transmission project was deemed not "materially different" than a project already under consideration in the SERTP process; and (2) revise the standard by which transmission projects will be considered "materially different" to require that a transmission project will be deemed "materially different" if it has significant geographical *or* electrical differences to the transmission project already under consideration in the regional transmission planning process. We find that these modifications are necessary to ensure that the proposal does not improperly limit the scope of transmission proposals that could be considered in the regional transmission planning process. We agree with Filing Parties that without the "materially different" threshold, multiple developers could submit essentially identical proposals, which would

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<sup>274</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 78.

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

not identify alternatives to the transmission solutions already identified and under evaluation, and instead could require additional resources and reduce the overall efficiency of the regional transmission planning process. Furthermore, as Filing Parties point out, allowing transmission developers to propose nearly identical proposals could result in disputes between and among transmission developers and transmission planners over selection of transmission projects in the regional transmission plan for purposes of cost allocation and related access to the cost allocation determinations.

147. 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 Filing Parties to make transparent any determination that a proposed transmission facility is not materially different than a project already under consideration. To satisfy this requirement, Filing Parties must revise their OATTs to require a posting be made for stakeholders in the regional transmission planning process of any determinations made by the transmission providers that a proposed transmission project is not “materially different,” which also may include an explanation regarding cost estimates. This posting will provide affected stakeholders with an opportunity to challenge that decision 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>276</sup> We direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings revising their OATTs with these changes.

148. In addition, we require that Filing Parties’ proposed definition of “materially different” should be revised to ensure that it does not unduly exclude from evaluation transmission facilities that have the potential to provide benefits to the transmission planning region.<sup>277</sup> Filing Parties’ current proposal states that a transmission project “will be deemed materially different, as compared to another transmission alternative(s) under consideration, if the proposal consists of significant geographical *and* electrical differences in the alternative’s proposed interconnection point(s) and transmission line routing.”<sup>278</sup> Therefore, unless a transmission developer’s proposed project had

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<sup>276</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328.

<sup>277</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 79.

<sup>278</sup> *E.g.*, Southern Companies OATT, Attachment K § 15.3 (emphasis added).

significant geographical *and* electrical differences in both interconnection points *and* route, it would be ineligible for consideration regardless of whether it is materially different in other respects and would be the more cost-effective or efficient project, or whether it would provide regional benefits. Filing Parties' current proposal could unreasonably restrict transmission projects that may, in fact, be significantly different than transmission projects already under consideration in the regional transmission planning process. Filing Parties' proposal would preclude proposals where the interconnection points may be similar where there are transmission projects seeking to resolve the same transmission need or to meet transmission needs to address a public policy requirement to interconnect remote renewable resources to load, but project proposals could be significantly electrically and geographically different, such as a single high voltage direct current transmission line versus a double circuit alternating current transmission line with different transmission line routing. Therefore, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to state that a transmission project will be deemed materially different as compared to another transmission alternative(s) under consideration if the proposal contains significant geographic *or* electrical differences in the alternative's proposed interconnection point(s) *or* transmission line routing.

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

149. Order No. 1000 required public utility transmission providers to amend their OATTs to include procedures for the consideration of transmission needs driven by Public Policy Requirements in both the local and regional transmission planning processes.<sup>279</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>280</sup>

150. 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

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<sup>279</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

<sup>280</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.



(2) evaluate potential solutions to meet those identified transmission needs.<sup>281</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>282</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>283</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>284</sup>

151. 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>285</sup> The evaluation procedures must give stakeholders the opportunity to provide input and enable the Commission and stakeholders to review the record created by the process.<sup>286</sup>

**i. First Compliance Order**

152. In the First Compliance Order, the Commission found that Filing Parties partially complied with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements in the regional transmission planning process.<sup>287</sup>

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<sup>281</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

<sup>282</sup> *Id.* PP 206-209; Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

<sup>283</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 208-209.

<sup>284</sup> *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

<sup>285</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211 & n.191.

<sup>286</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 320-321.

<sup>287</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 111.

153. The Commission found that Filing Parties correctly included in the proposed definition of public policy requirements those public policy requirements established by an enacted state or federal law(s) and/or regulation(s). However, the Commission directed Filing Parties to revise the definition of public policy requirements to explicitly include local laws or regulations along with state or federal laws or regulations.<sup>288</sup>

154. The Commission found that Filing Parties described in sufficient detail how stakeholders can offer proposals in the regional transmission planning process regarding the transmission needs they believe are driven by public policy requirements such that the process for doing so is transparent to all interested stakeholders. However, the Commission expressed concerns about Filing Parties' proposal to limit the transmission needs driven by public policy requirements that stakeholders may propose to those transmission needs that the current transmission expansion plan does not adequately address. The Commission thus directed Filing Parties to remove from their OATTs the requirement that a stakeholder proposing a transmission need driven by public policy requirements in the regional transmission planning process must explain and/or demonstrate that the current transmission expansion plan does not adequately address the identified need.<sup>289</sup>

155. The Commission further found that Filing Parties did not describe when and how stakeholders could provide input regarding the identification of transmission needs driven by public policy requirements and the evaluation of potential solutions to those identified transmission needs when governing OATT processes are not appropriate, i.e., when analyses are not specifically tied to a stakeholder's request for transmission service. The Commission thus required Filing Parties to revise their OATTs to clearly state how stakeholders can provide input in the regional transmission planning process regarding the identification of transmission needs driven by public policy requirements and the evaluation of potential solutions to those identified transmission needs.<sup>290</sup>

156. Moreover, the Commission found that Filing Parties' proposal did not comply with Order No. 1000's requirement that they explain the just and reasonable and not unduly discriminatory process by which they will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which

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<sup>288</sup> *Id.* P 113.

<sup>289</sup> *Id.* P 115.

<sup>290</sup> *Id.* P 116.

transmission solutions will be evaluated in the regional transmission planning process.<sup>291</sup> The Commission directed Filing Parties to establish a just and reasonable and not unduly discriminatory process by which they will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated in the regional transmission planning process, as required by Order No. 1000.<sup>292</sup>

157. The Commission also found that Filing Parties' compliance proposals did not explain how the public utility transmission providers will evaluate potential transmission solutions to identified transmission needs driven by public policy requirements. The Commission thus directed Filing Parties to establish procedures that must both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements and allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs.<sup>293</sup>

158. The Commission found that Filing Parties' OATTs failed to meet the requirement for transmission providers to post an explanation of which transmission needs driven by public policy requirements they have identified to be evaluated for potential solutions in the regional transmission planning processes, as well as an explanation of why other suggested transmission needs will not be evaluated. The Commission thus required Filing Parties to require each public utility transmission provider to 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 regional transmission planning process; and (2) why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation.<sup>294</sup>

159. The Commission found that Southern Companies and OVEC had not demonstrated that they comply with the provisions of Order No. 1000 addressing consideration of transmission needs driven by public policy requirements in the local

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<sup>291</sup> *Id.* (referencing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209).

<sup>292</sup> *Id.*

<sup>293</sup> *Id.* P 117.

<sup>294</sup> *Id.* P 118. *See also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

transmission planning process. The Commission found that it was unclear whether Southern Companies and OVEC intend to use the SERTP regional transmission planning process to consider transmission needs driven by public policy requirements in separate local transmission planning processes or if they intend to combine consideration of transmission needs driven by public policy requirements in both of their local transmission planning processes into the SERTP regional transmission planning process. The Commission directed Southern Companies and OVEC to explain how their respective local transmission planning processes comply with the requirements of Order No. 1000 addressing consideration of transmission needs driven by public policy requirements and to make any necessary OATT revisions.<sup>295</sup>

160. The Commission found that LG&E/KU partially complied with the requirement to describe procedures that provide for the consideration of transmission needs driven by public policy requirements in the local transmission planning process. The Commission noted that the provisions in LG&E/KU's OATT governing the consideration of transmission needs driven by public policy requirements in the local transmission planning process are nearly identical to the provisions governing the consideration of transmission needs driven by public policy requirements in the regional transmission planning process. Thus, the Commission stated that its findings and requirements with respect to the consideration of transmission needs driven by public policy requirements in the regional transmission planning process also apply to LG&E/KU's proposal to consider transmission needs driven by public policy requirements in the local transmission planning process.<sup>296</sup>

161. In addition, the Commission found that LG&E/KU's proposed OATT revisions addressing the consideration of transmission needs driven by public policy requirements in the local transmission planning process did not describe what role(s), if any, the Stakeholder Planning Committee and the Independent Transmission Organization will play in addressing these new requirements. The Commission therefore required LG&E/KU to submit a further compliance filing to clarify how the Stakeholder Planning Committee and the Independent Transmission Organization will be involved in the consideration of transmission needs driven by public policy requirements in LG&E/KU's local transmission planning process.<sup>297</sup>

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<sup>295</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 124.

<sup>296</sup> *Id.* P 125.

<sup>297</sup> *Id.* P 127.

162. In the Duke-Progress Compliance Order, the Commission found that Duke-Progress' filing partially complied with the provisions of Order No. 1000 addressing local transmission needs driven by public policy requirements.<sup>298</sup> The Commission expressed concern over Duke-Progress' proposal to limit the transmission needs driven by public policy requirements that stakeholders may provide input on or propose to those transmission needs not readily addressed through the individual resource planning process of the load serving entities and individual requests for network resource designations. The Commission thus directed Duke-Progress to remove that provision from its OATT.<sup>299</sup>

163. The Commission noted that Duke-Progress had revised its OATT to provide that the Oversight and Steering Committee of the North Carolina Transmission Planning Collaborative (NCTPC) will post the Oversight and Steering Committee's decision as to whether any public policies are driven by transmission needs to the NCTPC website and will consider solutions to identified transmission needs.<sup>300</sup> The Commission accepted this aspect of Duke-Progress' proposal. However, the Commission noted that Duke-Progress' proposed OATT revisions do not include the requirement to post an explanation of why other suggested transmission needs will not be evaluated, as required by Order No. 1000. The Commission thus required Duke-Progress to post on its website an explanation of why other transmission needs driven by public policy requirements as well as transmission needs suggested by stakeholders were not selected for further evaluation.<sup>301</sup>

164. The Commission also found that Duke-Progress did not comply with Order No. 1000's requirement that public utility transmission providers establish procedures in their OATTs to evaluate at the local level potential solutions to identified transmission needs driven by public policy requirements. The Commission noted that Duke-Progress' current OATT includes a Commission-approved process for evaluating at the local level transmission projects that allow for stakeholder input and provide stakeholders with an opportunity to propose alternative transmission solutions. The Commission thus directed Duke-Progress to revise its OATT to reflect that it will use its existing local transmission planning process to evaluate at the local level potential transmission solutions to

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<sup>298</sup> Duke-Progress Compliance Order, 145 FERC ¶ 61,252 at P 76.

<sup>299</sup> *Id.* P 79.

<sup>300</sup> Duke-Progress OATT, Attachment N-1 § 4.3.3.

<sup>301</sup> Duke-Progress Compliance Order, 145 FERC ¶ 61,252 at P 82.

identified transmission needs driven by both public policy requirements, and those proposed by stakeholders, as well as to provide stakeholders an opportunity to provide input.<sup>302</sup>

**ii. Requests for Rehearing or Clarification**

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

165. SERTP Sponsors seek clarification that Southern Companies' original proposal that developers proposing projects, whether incumbents or nonincumbents, be able to identify potential transmission needs driven by public policy requirements not already addressed in the transmission planning process complies with Order No. 1000.<sup>303</sup> In the alternative, SERTP Sponsors request rehearing of the Commission's rejection of Filing Parties' proposal requiring stakeholders and transmission developers, not the transmission provider, to demonstrate that the current transmission expansion plan does not already adequately address a transmission need when proposing alternatives to address that long term firm transmission need. SERTP Sponsors argue that the Commission's rejection of this proposal does not constitute reasoned decision making, is inconsistent with the requirements of Order No. 1000, is otherwise arbitrary and capricious, and violates FPA section 217(b)(4).<sup>304</sup> SERTP Sponsors argue that the Commission erred in its fundamental misunderstanding of how the SERTP transmission system is planned. In the SERTP region, transmission is planned to meet long-term firm transmission commitments resulting from the state-level integrated resource planning processes and third parties' long term firm transmission reservations under the OATT, and as such, there is no transmission "need" driven by a public policy requirement unless a long-term firm commitment has been made. SERTP Sponsors argue, therefore that it is

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<sup>302</sup> *Id.* P 83.

<sup>303</sup> SERTP Sponsors Rehearing Request at 68.

<sup>304</sup> *Id.* at 65. SERTP Sponsors state that, for the same reasons as SERTP Sponsors provide to support their request for rehearing, LG&E/KU also seek rehearing of the requirement that LG&E/KU remove from its local planning process the proposed requirement that a stakeholder must demonstrate that the current local transmission expansion plan does not adequately address the pertinent public policy. *Id.* at 69 (citing First Compliance Order, 144 FERC ¶ 61,054 at 125).

reasonable for stakeholders and developers to identify an actual need, i.e., one supported by a long-term transmission commitment.<sup>305</sup>

166. SERTP Sponsors argue that the Commission's requirement that Filing Parties identify speculative/non-firm transmission needs that are not tied to any long-term firm commitments is fundamentally inconsistent with SERTP's market structure and in violation of FPA section 201 in failing to consider an important aspect of the problem.<sup>306</sup> SERTP Sponsors argue that the Commission confused identification of transmission needs driven by public policy requirements with consideration of transmission solutions in finding that "Filing Parties' proposal to limit the transmission needs driven by public policy requirements that stakeholders may propose to those transmission needs not adequately addressed by the current transmission expansion plan does not fully comply with Order No. 1000's requirement to consider transmission needs driven by public policy requirements."<sup>307</sup>

167. SERTP Sponsors state that Order No. 1000 identified two steps in the consideration of transmission needs driven by public policy requirements: "(1) the identification of transmission needs driven by Public Policy Requirements; and (2) the evaluation of potential solutions to meet those needs."<sup>308</sup> SERTP Sponsors argue that their proposed language related to step (1), the identification of transmission needs driven by public policy requirements; however the First Compliance Order rejects the proposal as failing to satisfy step (2), i.e., the evaluation of potential solutions to meet those transmission needs.<sup>309</sup>

168. SERTP Sponsors state that in the SERTP region, transmission needs driven by public policy requirements are no different than any other type of need. SERTP Sponsors maintain that there must be a long-term firm transmission commitment, such as a long-term service agreement under the OATT, in order to be considered a need for which a transmission solution is required. SERTP Sponsors state that once all native load transmission needs are identified in the integrated resource planning processes and then

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<sup>305</sup> *Id.* at 65.

<sup>306</sup> *Id.* at 66, 70.

<sup>307</sup> *Id.* at 66 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 115).

<sup>308</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205).

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

combined with the long-term commitments made by third parties under the OATTs, the transmission planners evaluate transmission solutions to meet those transmission needs on a least-cost and reliable basis. SERTP Sponsors state that the process for considering transmission needs driven by public policy requirements as proposed by SERTP Sponsors allows any stakeholder to identify a new public policy-driven transmission need that has not been met. SERTP Sponsors state that if such a new need is identified, the transmission planners would analyze that need. SERTP Sponsors further state that if the need is already addressed in the current transmission expansion plan, there would be no need to identify it a second time. SERTP Sponsors argue that this process satisfies the requirement of the first step from Order No. 1000, noted above, namely, the identification of transmission needs driven by public policy requirements.<sup>310</sup>

169. SERTP Sponsors argue that it is appropriate to include the general requirement that a stakeholder demonstrate that the existing transmission expansion plan does not adequately address the public policy-driven transmission needs. SERTP Sponsors argue that if the transmission plan already addresses the public policy needs, then the existing plans will include the necessary transmission projects to address that long-term firm need and transmission developers or stakeholders are free to propose alternatives pursuant to SERTP Sponsors' OATT provisions. SERTP Sponsors argue that to facilitate SERTP Sponsors' ability to plan and expand their transmission system to meet their load service needs, it is reasonable to require stakeholders to have reviewed those plans and identify where they may believe that the plan fails to meet a public policy need.<sup>311</sup>

170. SERTP Sponsors contend that the First Compliance Order also seems to require *transmission providers* to engage in the identification of public policy transmission needs. SERTP Sponsors contend that Order No. 1000 required the adoption of procedures "to identify at the local and regional level those transmission needs driven by Public Policy Requirements for which potential transmission solutions will be evaluated." They argue that Order No. 1000 did not require transmission providers themselves to identify transmission needs in the first instance.<sup>312</sup>

171. SERTP Sponsors also seek clarification or rehearing that the First Compliance Order does not require public utility transmission providers to perform transmission

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<sup>310</sup> *Id.* at 66-67.

<sup>311</sup> *Id.* at 68.

<sup>312</sup> *Id.* at 18.



planning for non-firm or speculative transmission needs.<sup>313</sup> SERTP Sponsors allege that the First Compliance Order's holdings on public policy requirements reflect a misunderstanding of the SERTP region's physical transmission regime. SERTP Sponsors note that the First Compliance Order stated that Filing Parties "do not describe in their respective OATTs when and how stakeholders can provide input regarding the identification of transmission needs driven by public policy requirements and the evaluation of potential solutions to those identified needs when governing OATT processes are not appropriate, i.e., when analyses are not specifically tied to a stakeholder's request for transmission service."<sup>314</sup> SERTP Sponsors state that under the physical transmission model used in the SERTP region, the electric grid is planned and expanded to meet long-term firm commitments resulting from integrated resource planning and third parties' long-term firm reservations under the OATT. SERTP Sponsors state that there is no transmission need driven by a public policy requirement unless a long-term firm commitment has been made. SERTP Sponsors state that even when a public policy-driven transmission need identified by a stakeholder is not tied to a stakeholder's long-term commitment for transmission service, if the public policy need is tied to someone's long-term firm commitment for transmission service, then there is an actual transmission need. SERTP Sponsors argue that, if the First Compliance Order's holdings are construed to imply that the SERTP Sponsors should be analyzing speculative and non-firm transmission needs that are not tied to any new or existing long-term firm commitment (regardless if related to a public policy or any other type of "need"), then it would be fundamentally inconsistent with SERTP region's market structure, does not provide the requisite regional flexibility for this physical transmission regime, and is otherwise arbitrary and capricious and in violation of FPA Section 201.<sup>315</sup>

172. In addition, SERTP Sponsors argue that they already meet the requirement to revise their OATTs to clearly state how stakeholders can provide input regarding the identification of transmission needs driven by public policy requirements, and evaluation of potential solutions to those identified needs. SERTP Sponsors assert that their transmission planning process as originally proposed already states how stakeholders can provide input regarding (1) the identification of transmission needs driven by public

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<sup>313</sup> *Id.* at 71. SERTP Sponsors state that LG&E/KU also seek clarification or rehearing that LG&E/KU are not required to perform transmission planning for non-firm or speculative transmission needs at the local level. *Id.*

<sup>314</sup> *Id.* at 69 (quoting First Compliance Order, 144 FERC ¶ 61,054 at P 116).

<sup>315</sup> *Id.* at 70.

policy requirements<sup>316</sup> and (2) the evaluation of potential transmission solutions to those identified needs in the transmission expansion planning process.<sup>317</sup> SERTP Sponsors argue that the Commission has previously found that the SERTP process satisfies Order No. 890's transmission planning principles, meaning that the SERTP Sponsors' processes for evaluating potential transmission solutions for inclusion into the transmission expansion plan and for providing feedback to stakeholders is sufficiently open and transparent.<sup>318</sup>

**(b) Commission Determination**

173. We deny rehearing.<sup>319</sup> Many of SERTP Sponsors' arguments on transmission needs are based on the definition of "Transmission Need," which SERTP Sponsors included in this compliance filing. As discussed above in the Affirmative Obligation to Plan section, we find that that definition does not comply with Order No. 1000 and we have directed Filing Parties to remove or revise it.

174. SERTP Sponsors seek clarification that Filing Parties' original proposal complies with the requirement that incumbent and nonincumbent developers alike be able to identify potential transmission needs driven by public policy requirements not already

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<sup>316</sup> *Id.* at 71 (citing, e.g., Southern Companies OATT, Attachment K §§ 10.2.1 and 10.2.2).

<sup>317</sup> *Id.* at 72 (citing, e.g., Southern Companies OATT, Attachment K §§ 1.2.2, 3.2, 3.5.3, 6.6.3, 10.3, and 15).

<sup>318</sup> *Id.* SERTP Sponsors state that for the same reasons, LG&E/KU request rehearing of the requirement that they revise their OATT to state how stakeholders can provide input in the local transmission planning process regarding the identification of transmission needs driven by public policy requirements and the evaluation of potential solutions to those identified needs. LG&E/KU point to the Order No. 890 coordination provisions of the LG&E/KU OATT as satisfying requirements for stakeholder participation. *Id.* at 73.

<sup>319</sup> LG&E/KU also requested rehearing of many of the same issues raised by SERTP Sponsors but applied to their local transmission planning process. Unless discussed specifically below, our findings on the SERTP Sponsors' requested rehearing apply equally to LG&E/KU's requested rehearing on their local transmission planning process.

addressed in the transmission planning process.<sup>320</sup> In the alternative, SERTP Sponsors request rehearing of the rejection in the First Compliance Order of the proposal requiring a stakeholder that wants to propose a transmission need driven by public policy requirements to demonstrate that the current transmission expansion plan does not adequately address that transmission need. SERTP Sponsors also request rehearing or clarification that the First Compliance Order does not require public utility transmission providers to perform transmission planning for non-firm or speculative needs that are not tied to a specific request for firm transmission service.

175. We deny the requested rehearing and clarification. SERTP's requested clarification would essentially limit stakeholder input because the process would not even consider a potential transmission need or potential solution unless it is related to a specific request for long-term firm transmission service. However, Order No. 1000 is clear with respect to allowing stakeholders to propose transmission needs driven by public policy requirements and to propose transmission solutions to those needs. The Commission stated that the procedures adopted by public utility transmission providers in complying with Order No. 1000 must allow all stakeholders to bring forth any transmission needs they believe are driven by public policy requirements.<sup>321</sup>

176. As described above, SERTP Sponsors state that the electric grid in the SERTP region is planned and expanded to meet long-term firm commitments resulting from state-level integrated resource planning and third parties' long-term firm reservations under the OATT. Accordingly, without such a reservation, SERTP Sponsors would refuse to recognize a transmission need driven by public policy requirements, considering it "speculative" or "non-firm" in nature.<sup>322</sup> SERTP Sponsors' requested clarification

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<sup>320</sup> *Id.* at 68.

<sup>321</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 209, 215. The Commission also stated that "all stakeholders must have an opportunity to provide input and offer proposals regarding the transmission needs they believe should be so identified...." *Id.* P 209.

<sup>322</sup> The Commission stated in Order No. 1000-A that the public utility transmission providers may use the transmission planning process to enable them to comply with the obligations imposed by laws and regulations by considering new transmission facilities needed by the utilities to meet those public policy obligations. *See* Order No. 1000-A, 139 FERC ¶ 61,132 at P 327. Thus, public policies are factors that planners should take into consideration and not merely the speculative considerations SERTP Sponsors allege.

makes clear that they believe they do not need to perform transmission planning for such “non-firm or speculative” needs and will not do so in the SERTP region in the absence of a Commission requirement. Thus, SERTP Sponsors’ proposal fails to satisfy the basic requirement of Order No. 1000 that stakeholders be allowed to provide input during the identification of transmission needs driven by public policy requirements and the evaluation of potential solutions to the identified needs.<sup>323</sup>

177. The Commission acknowledges that Order No. 1000 allows flexibility for public utility transmission providers to meet the minimum requirements of Order No. 1000 by developing procedures appropriate for their local and regional transmission planning processes.<sup>324</sup> However, the Commission stressed that all stakeholders must have an opportunity to provide input during the identification of transmission needs driven by public policy requirements and the evaluation of potential solutions to the identified needs.<sup>325</sup> As discussed in the Affirmative Obligation to Plan section, 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 process. We deny SERTP Sponsors’ other arguments on the nature of “Transmission Needs” because they are based on its proposed definition of Transmission Needs, which we reject as unduly restrictive.<sup>326</sup>

178. SERTP Sponsors contend that the First Compliance Order also seems to require *transmission providers* to engage in the identification of public policy transmission needs. We disagree. SERTP Sponsors misinterpret our intent in requiring the removal of any obstacles to *stakeholder* input into the identification of transmission needs and transmission solutions such as the requirement that stakeholders demonstrate that the existing transmission expansion plan does not adequately address the public policy driven transmission needs. In Order No. 1000, the Commission explained that a regional transmission plan will identify transmission facilities that more efficiently or cost-effectively meet the region’s reliability, economic and public policy-related transmission needs.<sup>327</sup> In Order No. 1000-A, the Commission stated that even if a public utility

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<sup>323</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 220.

<sup>324</sup> *Id.* P 61.

<sup>325</sup> *Id.* P 220.

<sup>326</sup> *See* Affirmative Obligation to Plan section.

<sup>327</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 11, 47.

transmission provider takes a less active approach on this issue, the Commission's expectation was that interested stakeholders will participate and suggest transmission needs driven by Public Policy Requirements.<sup>328</sup> The Commission clearly stated, as recognized by the SERTP Sponsors themselves: "We emphasize that, although a public utility transmission provider is not obligated to proactively identify transmission needs driven by Public Policy Requirements, it still must consider the transmission needs driven by Public Policy Requirements raised by other stakeholders in the transmission planning process."<sup>329</sup>

179. We also deny rehearing of the requirement that Filing Parties revise their OATTs to clearly state how stakeholders can provide input in the regional transmission planning process regarding the identification of transmission needs driven by public policy requirements and evaluation of potential solutions to those identified needs. We also deny LG&E/KU's requested rehearing of the requirement that the LG&E/KU OATT be revised to state how stakeholders can provide input in the local transmission planning process regarding the identification of transmission needs driven by public policy requirements and evaluation of potential solutions to those identified needs. In requiring these revisions, the Commission directed a broader description in the transmission providers' OATTs regarding how stakeholders may provide input during the evaluation of public policy driven transmission needs and possible transmission solutions, beyond long-term firm transmission service requests.

### iii. Compliance

#### (a) Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process

##### (1) Summary of Compliance Filing

180. Filing Parties propose to revise their OATTs to define public policy requirements to include local laws and/or regulations.<sup>330</sup> Filing Parties also propose adding the following phrase to the last sentence of the Procedures for the Consideration of

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<sup>328</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 322.

<sup>329</sup> *Id.* P 322 n.363.

<sup>330</sup> *E.g.*, Southern Companies OATT, Attachment K § 10.1.

Transmission Needs Driven by Public Policy Requirements section in their OATTs (see italicized): “The Transmission Provider addresses Transmission Needs driven by the Public Policy Requirements of load serving entities and wholesale transmission customers through the planning for and *expansion of physical transmission system delivery capacity to provide* long-term firm transmission services to meet i) native load obligations and ii) wholesale Transmission Customer obligations under the Tariff.”<sup>331</sup> Filing Parties also remove the requirement for stakeholders to demonstrate that their proposed transmission need driven by a public policy requirement is not already addressed in the transmission planning process.

181. In response to the directive to state clearly how stakeholders can provide input in the regional transmission planning process regarding the identification of transmission needs driven by public policy requirements and evaluation of potential solutions to those identified needs, Filing Parties state that the OATT language that they proposed as part of their first compliance filing clearly state how stakeholders may provide input and what information should be provided.<sup>332</sup> Filing Parties further propose new language in the OATT permitting stakeholders, including those that are not transmission customers, to provide input regarding stakeholder-proposed possible Transmission Needs and to provide input during the evaluation of possible transmission solutions to identified Transmission Needs, consistent with the transparency provisions of the SERTP process.<sup>333</sup>

182. To comply with the directive to explain how they will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which

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

<sup>332</sup> E.g., Southern Companies Transmittal Letter at 17 (citing, *e.g.*, Southern Companies OATT, Attachment K § 10.2.1).

<sup>333</sup> E.g., Southern Companies OATT, Attachment K § 10.4.2; Southern Companies Transmittal Letter at 17. The transparency provisions describe opportunities for stakeholder input and indicate that if Stakeholders have transmission expansion plan enhancements/alternatives that they would like the Transmission Provider and other Sponsors to consider, they must provide an analysis. *E.g.*, Southern Companies OATT, Attachment K § 3.5.3. These transparency provisions were previously approved in Southern Companies’ Order No. 890 compliance filing. *See Southern Co. Servs., Inc.*, 124 FERC ¶ 61,265 (2008), *order on reh’g and compliance*, 127 FERC ¶ 61,282 (2009), *order on reh’g and compliance*, 132 FERC ¶ 61,091 (2010)).

transmission solutions will be evaluated, Filing Parties propose to revise their OATTs to specify that the transmission provider will assess: (1) whether the stakeholder-identified public policy requirement is an enacted local, state, or federal law(s) and/or regulation(s); (2) whether the stakeholder-identified public policy requirement drives a Transmission Need(s); and (3) if the answers to the foregoing questions (1) and (2) are affirmative, whether the Transmission Need(s) driven by the public policy requirement is already addressed or otherwise being evaluated in the then-current planning cycle.<sup>334</sup> Filing Parties propose that if a Transmission Need is identified that is not already being addressed or already being evaluated in the regional transmission planning process then the Transmission Provider will identify a transmission solution to address the Transmission Need in the transmission planning process. The evaluation of such solutions will be performed consistent with the regional planning evaluative process and the existing Order No. 890 criteria.<sup>335</sup>

183. According to Filing Parties, the transmission provider will determine whether a stakeholder-identified public policy requirement has driven a Transmission Need(s), which (based upon the definition of Transmission Need) necessarily means the transmission provider will determine whether the identified public policy requirement has resulted in a long-term firm transmission commitment. If so, then Filing Parties will determine whether that Transmission Need is already addressed or being evaluated in the then-current planning cycle.<sup>336</sup>

184. Filing Parties further propose to revise their OATTs to require the transmission provider to post on the regional planning website an explanation of: (1) those Transmission Needs driven by public policy requirements that have been identified for evaluation for potential transmission projects in the then-current planning cycle and (2) why other suggested possible Transmission Needs driven by public policy requirements proposed by stakeholders were not selected for further evaluation.<sup>337</sup>

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<sup>334</sup> E.g., Southern Companies OATT, Attachment K § 10.3.1.

<sup>335</sup> *Id.* §§ 6, 10.3.2, 11; Southern Companies Transmittal Letter at 18.

<sup>336</sup> E.g., Southern Companies Transmittal Letter at 18.

<sup>337</sup> E.g., Southern Companies OATT, Attachment K § 10.5.

(2) **Protests/Comments**

185. Public Interest Organizations state that Filing Parties' proposal continues to unduly limit the consideration of public policies in a manner that does not comply with Order No. 1000.<sup>338</sup> Public Interest Organizations state that the new proposal would require transmission providers to assess "whether the Transmission Need(s) driven by the Public Policy Requirement is already addressed or otherwise being evaluated in the then-current planning cycle."<sup>339</sup> Public Interest Organizations state that the new language merely moves the issue from what stakeholders must explain as part of their input on public policy requirement-driven transmission needs to what the SERTP region transmission providers must consider when deciding whether to further evaluate a stakeholder-proposed public policy requirement-driven transmission need.<sup>340</sup> Public Interest Organizations argue that the First Compliance Order required Filing Parties' OATTs to not categorically bar consideration of more efficient or cost-effective regional solutions simply because an identified transmission need was addressed in a past regional plan or is being addressed at the local level, and the proposal does not comply with that requirement.<sup>341</sup>

186. Public Interest Organizations assert that the SERTP process does not provide the transparency necessary to ascertain whether, and if so, how, public policy requirements at the local, state, and federal level are factored into the load forecasts and modeling involved in local and regional transmission planning.<sup>342</sup> Public Interest Organizations assert that because state integrated resource planning by the SERTP retail affiliates is not under the jurisdiction of the Commission, Public Interest Organizations are uninformed as to how public policy requirements are considered in these state processes and how the public policy requirements would then be integrated into Order No. 890 and Order No. 1000 transmission planning.<sup>343</sup>

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<sup>338</sup> Public Interest Organizations Protest at 4.

<sup>339</sup> *Id.* (citing, *e.g.*, Southern Companies OATT, Attachment K §10.3.1.3).

<sup>340</sup> *Id.*

<sup>341</sup> *Id.* at 5.

<sup>342</sup> *Id.* at 9-10.

<sup>343</sup> *Id.*



187. Public Interest Organizations note that Filing Parties' revised proposal provides that the transmission providers will determine which public policy requirement-driven transmission needs are not already otherwise addressed as part of determining whether to consider solutions for public policy requirement-driven needs identified by stakeholders. Public Interest Organizations request that the Commission require the SERTP transmission providers to provide a sufficient explanation of the term "already addressed." Public Interest Organizations argue that the SERTP transmission providers must explain how the public policy requirement-driven needs are being addressed so that stakeholders have an opportunity to provide input.<sup>344</sup>

188. Public Interest Organizations argue that Filing Parties' definition of "Transmission Need" impermissibly restricts the scope of transmission planning.<sup>345</sup> Public Interest Organizations assert that public policies may affect transmission needs regardless of whether a current transmission customer asks to interconnect policy-driven resources.<sup>346</sup> Public Interest Organizations argue that Order No. 1000 imposes new obligations on transmission providers to engage in affirmative regional planning and that to the extent traditional approaches to planning in SERTP are inconsistent with Order No. 1000's directives to ensure just and reasonable rates, planning in SERTP must be adjusted to meet Order No. 1000's requirements.<sup>347</sup>

189. Similarly, Public Interest Organizations argue that Filing Parties' restrictive definition of "Transmission Need" would not allow for the consideration of public policy requirements that may decrease the need for transmission capacity.<sup>348</sup> Public Interest Organizations note that while the proposed definition of Transmission Needs may not be inconsistent with the reality that some public policies affecting grid needs do not drive new transmission development, Public Interest Organizations contend that transparency concerns make it difficult to assess how the public policy requirements will be factored into the local and regional transmission planning process.<sup>349</sup> Public Interest

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<sup>344</sup> *Id.* at 10.

<sup>345</sup> *Id.*

<sup>346</sup> *Id.* at 11-12.

<sup>347</sup> *Id.* at 12.

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

<sup>349</sup> *Id.* at 12-13.

Organizations request that the definition of “Transmission Needs” be modified to account for public policy requirements that may decrease the need for new transmission infrastructure.<sup>350</sup>

(3) Answer

190. SERTP Sponsors argue that Public Interest Organizations misunderstand the SERTP transmission planning process and have confused two separate concepts from Order No. 1000: 1) the identification and evaluation of transmission needs driven by Public Policy Requirements; and 2) the identification and evaluation of more efficient or cost-effective transmission solutions to satisfy such transmission needs.<sup>351</sup> SERTP Sponsors state that the electric grid in the Southeast is planned and expanded to meet long-term firm commitments resulting from integrated resource planning processes and third parties’ long-term firm service reservations. SERTP Sponsors state that so long as a public policy transmission need is tied to someone’s long-term firm transmission commitment, then there is an actual transmission need.<sup>352</sup>

191. SERTP Sponsors state that Public Interest Organizations object to any assessment of whether an actual transmission need exists. SERTP Sponsors state that the transmission system serves one principal purpose: to provide delivery of electrical energy between sources of supply and load. SERTP Sponsors state that if a public policy requirement does not drive a need for such transportation of electrical energy, then that public policy requirement does not affect transmission planning.<sup>353</sup> SERTP Sponsors argue that if a public policy requirement does create a need for the transportation of electrical energy, then the transmission planning process must plan to have adequate transmission infrastructure built to satisfy the delivery commitment. SERTP Sponsors dispute Public Interest Organizations’ argument that the SERTP Sponsors should not be allowed to assess whether adequate facilities or the current planning processes already address the public policy requirement driven transmission need as an indication that the Public Interest Organizations have little interest in transmission planning.<sup>354</sup>

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<sup>350</sup> *Id.*

<sup>351</sup> SERTP Sponsors Answer at 24.

<sup>352</sup> *Id.*

<sup>353</sup> *Id.* at 25.

<sup>354</sup> *Id.*

192. SERTP Sponsors argue Public Interest Organizations' concern that even if a public policy requirement driven need is already addressed, there may still be more efficient or cost-effective regional solutions to the identified need is misplaced. SERTP Sponsors state Public Interest Organizations have mistaken the requirement that transmission planners identify whether further expansion of the transmission system is necessary to meet the transmission needs with a conclusion that this requirement will prevent the evaluation of potentially more efficient and cost-effective solutions to all identified transmission needs.<sup>355</sup> SERTP Sponsors contend that Public Interest Organizations erroneously argue that the SERTP Sponsors' proposed means to identify transmission needs driven by public policy requirements are deficient because they do not evaluate potential transmission solutions to meet those public policy requirement driven needs.<sup>356</sup> SERTP Sponsors state once all native load long-term firm commitments are identified in the integrated resource planning processes along with the long-term firm service commitments made by third parties, the transmission planners on a bottom-up iterative basis evaluate transmission solutions to meet those needs. SERTP Sponsors state that stakeholders may identify for consideration any additional public policy driven transmission needs that have not been met.<sup>357</sup> SERTP Sponsors state that the transmission planners will consider such needs and if the needs are already addressed in the transmission plan, there is no need to identify the needs a second time. According to SERTP Sponsors, this process satisfies Order No. 1000's requirements on the identification of transmission needs driven by Public Policy Requirements.<sup>358</sup>

193. SERTP Sponsors assert that Public Interest Organizations err when they assume that nonincumbents and other stakeholders will not be able to propose potential transmission solutions to an identified public policy requirement driven transmission need.<sup>359</sup> SERTP Sponsors state that transmission needs driven by public policy requirements, whether identified by integrated resource planning or suggested by a stakeholder, are those needs for which transmission solutions must be identified

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<sup>355</sup> *Id.* at 25-26.

<sup>356</sup> *Id.* at 26.

<sup>357</sup> *Id.*

<sup>358</sup> *Id.*

<sup>359</sup> *Id.* at 27.

consistent with the public utility SERTP Sponsors' obligation to serve.<sup>360</sup> SERTP Sponsors assert that nonincumbent transmission developers may offer more efficient or cost-effective transmission solutions to meet transmission needs driven by public policy requirements pursuant to the method outlined in their respective provisions on submission of proposals for potential selection in a regional transmission plan for regional cost allocation.<sup>361</sup> SERTP Sponsors state that stakeholders not seeking cost allocation may propose potential solutions to identified transmission needs pursuant to provisions on stakeholder participation in the transmission planning process.<sup>362</sup>

#### (4) Commission Determination

194. We find that Filing Parties' proposed OATT provisions partially comply with the directives in the First Compliance Order addressing consideration of transmission needs driven by public policy requirements in the regional transmission planning process. Specifically, we find that as directed in the First Compliance Order, Filing Parties (1) revised their definition of public policy requirements to include local laws and/or regulations;<sup>363</sup> (2) removed the requirement for stakeholders to demonstrate that a proposed transmission need driven by public policy requirement is not adequately addressed in the current transmission plan;<sup>364</sup> and (3) revised their OATTs to provide that each public utility transmission provider will post on its website an explanation of (a) those transmission needs driven by public policy requirements that have been identified

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<sup>360</sup> SERTP Sponsors assert that transmission solutions within the SERTP are not designed to meet either reliability, economic, or public policy-driven transmission needs but that transmission solutions within the SERTP transmission plan are designed to cumulatively meet all transmission needs. SERTP Sponsors assert that transmission solutions driven by public policy-driven transmission needs must be associated with a firm service commitment and that all firm service commitments are met with the set of transmission facilities in the transmission plan. SERTP Sponsors state that a transmission solution does not uniquely address a public policy need within the SERTP region but rather the transmission solution ensures that the transmission system is designed to simultaneously meet all transmission needs. *Id.* at 27, n.82.

<sup>361</sup> *Id.* at 27 (citing, *e.g.*, Southern Companies OATT, Attachment K §16).

<sup>362</sup> *Id.* (citing, *e.g.*, Southern Companies OATT, Attachment K §§ 1.2.2, 6.6.3).

<sup>363</sup> *E.g.*, Southern Companies OATT, Attachment K § 10.1.

<sup>364</sup> *Id.* § 10.2.1.2.

for evaluation for potential transmission solutions in the regional transmission planning process; and (b) why other possible transmission needs suggested by stakeholders were not selected for further evaluation.<sup>365</sup>

195. We find, however, that Filing Parties have only partially complied with the directive from the First Compliance Order to state clearly how stakeholders can provide input in the regional transmission planning process regarding the identification of transmission needs driven by public policy requirements and evaluation of potential solutions to those identified needs. Filing Parties' proposed OATT language revises the section of their OATTs on the consideration of Transmission Needs driven by public policy requirements identified through stakeholder input and proposals.<sup>366</sup> The revised language provides that the stakeholder must provide an explanation of the possible Transmission Need(s) driven by the public policy requirement without having to demonstrate or explain that the current transmission expansion plan does not adequately address the Transmission Need. Filing Parties also propose language in their OATTs allowing stakeholders, including those that are not transmission customers, to provide input regarding stakeholder-proposed possible Transmission Needs and to provide input during the evaluation of possible transmission solutions to identified Transmission Needs, consistent with the transparency provisions of the SERTP process.<sup>367</sup>

196. However, Filing Parties' proposed OATT language states, in part, that stakeholders "may provide input during the evaluation of potential transmission solutions to identified Transmission Needs *consistent with* [the Transparency section of their OATTs]."<sup>368</sup> The proposed language in the Transparency section of Filing Parties' OATTs requires stakeholders to provide an analysis of any transmission expansion plan enhancements/alternatives that they would like the transmission provider and other sponsors to consider in the regional transmission planning process.<sup>369</sup> We find that requiring a stakeholder to perform such an analysis is unreasonable and could be so cumbersome as to effectively prohibit stakeholders from proposing transmission expansion plan enhancements/alternatives. As we found in Order No. 1000, such

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<sup>365</sup> *Id.* § 10.5.

<sup>366</sup> *Id.* § 10.2.1.

<sup>367</sup> *Id.* § 3.5.

<sup>368</sup> *Id.* § 10.4.2 (emphasis added).

<sup>369</sup> *Id.* § 3.5.3(3).

analyses may appropriately be performed in the regional transmission planning process, but cannot be required to *propose* a transmission project in the regional transmission planning process.<sup>370</sup> We therefore direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise the proposed OATT language so as not to require stakeholders to submit an analysis of any transmission plan alternatives or enhancements that they intend to propose in the regional transmission planning process.

197. We find that Filing Parties have also complied with the directive from the First Compliance Order to revise their OATTs to establish procedures to evaluate at the regional level potential transmission solutions to identified transmission needs driven by public policy requirements. The Commission specified that the procedures must both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements and allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs. In response, Filing Parties have added a new provision to their OATTs that states that if a public policy-driven Transmission Need is identified that is not already addressed, or that is not already being evaluated in the transmission expansion planning process, the transmission provider will identify a transmission solution(s) to address the Transmission Need in the planning processes.<sup>371</sup> The section also provides that potential transmission solutions will be evaluated consistent with the existing OATT provision on regional participation and the provisions on regional analysis of potentially more efficient or cost-effective transmission solutions that were submitted in the instant filing.<sup>372</sup>

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<sup>370</sup> See *NorthWestern Corp.*, 143 FERC ¶ 61,056, at P 64 (2013).

<sup>371</sup> *E.g.*, Southern Companies OATT, Attachment K §10.3.2.

<sup>372</sup> *Id.* § 6 (Regional Participation) and 11 (Regional Analyses of Potentially More Efficient or Cost-Effective Transmission Solutions). Filing Parties' provisions in the OATT on regional participation include a section on how stakeholders may participate through the SERTP process and describe opportunities for stakeholder participation in the transmission planning process during the planning cycle. *Id.* § 6.6.3(a)(i). As noted above, the provisions in the OATT on regional participation were existing provisions and do not specifically mention transmission needs driven by public policy requirements. Filing Parties' OATT section on the regional analysis of potentially more efficient or cost-effective transmission solutions includes various provisions on the type of analyses done by the transmission provider and specifically provides for the inclusion of public

(continued...)

198. Public Interest Organizations contend that Filing Parties' definition of Transmission Need is too restrictive. As discussed above in the Affirmative Obligation to Plan section of this order, we require Filing Parties to remove or modify the definition of Transmission Need. Therefore, we do not find it necessary to address Public Interest Organizations' concerns on this issue at this time. However, we also note that Filing Parties added the following language to their OATTs in the section on Procedures for the Consideration of Transmission Needs Driven by Public Policy Requirements (see italicized): "The Transmission Provider addresses Transmission Needs driven by the Public Policy Requirements of load serving entities and wholesale transmission customers through the planning for and *expansion of physical transmission system delivery capacity to provide* long-term firm transmission services to meet i) native load obligations and ii) wholesale Transmission Customer obligations under the Tariff."<sup>373</sup> This language is tied to the definition of Transmission Need which the Commission has found to be noncompliant with Order No. 1000 and must be eliminated or modified. Accordingly, we require Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to either remove this language or revise it in accord with the directive to remove or revise the definition of Transmission Need.

199. Filing Parties' OATT provisions on the regional analysis of potentially more efficient or cost-effective transmission solutions also include a section on stakeholder input. That section states that stakeholders may provide input on potential transmission alternatives for the transmission provider to consider throughout the SERTP planning process for each planning cycle in accordance with the OATT's transparency provisions.<sup>374</sup> In these various OATT sections, Filing Parties have described the types of analyses used to evaluate transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements. The OATT provisions also allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified Transmission Needs. Filing Parties have complied with this directive from the First Compliance Order.

200. We find that Filing Parties' proposed provisions that identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which

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policy requirements in the Transmission Needs to be considered and evaluated. *Id.* §§11.1.1, 11.1.2, 11.2.1.

<sup>373</sup> *Id.* § 10.1 (emphasis added).

<sup>374</sup> *Id.* §11.2.2.

transmission solutions will be evaluated in the regional transmission planning process also comply with the directives in the First Compliance Order. Filing Parties propose to revise their OATTs to specify that the transmission provider will assess: (1) whether the stakeholder-identified public policy requirement is an enacted local, state, or federal law(s) and/or regulation(s); (2) whether the stakeholder-identified public policy requirement drives a Transmission Need(s); and (3) if the answers to the foregoing questions (1) and (2) are affirmative, whether the Transmission Need(s) driven by the public policy requirement is already addressed or otherwise being evaluated in the then-current planning cycle.<sup>375</sup> This three-step process embodied in these provisions appears reasonable as specified in this section<sup>376</sup> on identification of public policy driven transmission needs and we accept it as compliant with the directive of the First Compliance Order.

201. We agree with Public Interest Organizations that Filing Parties may not categorically bar consideration of more efficient or cost-effective regional transmission solutions simply because an identified transmission need was addressed in a past regional transmission plan or is being addressed at the local level. However, we find that Filing Parties' proposal does not bar such consideration. Public utility transmission providers have an affirmative obligation to develop a regional transmission plan that reflects the evaluation of whether alternative regional solutions may be more efficient or cost-effective than solutions identified in local transmission planning processes.<sup>377</sup> The transmission providers will also consider transmission alternatives proposed by stakeholders to address transmission needs, including those driven by public policy requirements, reliability and/or economic considerations.<sup>378</sup> Therefore, even if a

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<sup>375</sup> *Id.* §10.3.1(1-3).

<sup>376</sup> *Id.* §10.3.1. However, as discussed above, the Commission is requiring Filing Parties to modify the definition of Transmission Needs. While we do not require Filing Parties to modify the language of this proposed provision on the identification of public policy driven transmission needs, we note that the basis for it, i.e., the definition of Transmission Needs, does not comply with Order No. 1000 and must be revised. Accordingly, we require Filing Parties to make any appropriate changes to these provisions on the identification of public policy-driven transmission needs at the same time that it submits the corresponding revisions made to the definition of Transmission Need required by this order.

<sup>377</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 396.

<sup>378</sup> *E.g.*, Southern Companies, Attachment K § 11.2.1.



proposed transmission need driven by public policy requirements is already being addressed, transmission providers must look for,<sup>379</sup> and stakeholders may propose, alternative solutions that may be able to meet the need more efficiently or cost-effectively.<sup>380</sup>

202. Public Interest Organizations argue that Filing Parties' revised proposal lacks clarity on which public policy requirements are to be considered and how public policy requirements are addressed in planning, and that the process lacks transparency. However, as we note further below, when discussing Southern Companies and OVEC's consideration of transmission needs driven by public policy requirements in the local transmission planning process, we expect that the proposed OATT provisions to address the Order No. 890 transparency principle will allow for stakeholder participation in the identification and evaluation of possible transmission needs and transmission solutions for public policy driven transmission requirements at the regional and local levels. As discussed above, Filing Parties have applied their OATTs' transparency provisions to the consideration of transmission needs driven by public policy requirements.

(b) **Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Local Transmission Planning Process**

(1) **LG&E/KU, Southern Companies, and OVEC**

(i) **Summary of Compliance Filings**

203. Southern Companies and OVEC propose new OATT language stating that the transmission provider uses the SERTP as its open, coordinated, and transparent planning process for both its local and regional planning processes for purposes of Order Nos. 890 and 1000, such that the transmission provider's 10 year transmission expansion plan and the regional transmission plan are vetted with stakeholders in accordance with the SERTP region open, coordinated, and transparent transmission planning provisions.<sup>381</sup> Filing

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<sup>379</sup> See Affirmative Obligation to Plan section.

<sup>380</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

<sup>381</sup> *E.g.*, Southern Companies OATT, Attachment K, Local Transmission Planning; OVEC OATT, Attachment M, Local Transmission Planning.

Parties state that with particular regard to Order No. 1000's public policy requirements, stakeholders will be allowed to raise considerations of possible transmission needs driven by public policy requirements concerning Southern Companies' and OVEC's local transmission planning and all new transmission projects adopted by Southern Companies and OVEC in their local transmission planning will have been vetted with stakeholders and evaluated in compliance with Order No. 1000's public policy requirements.<sup>382</sup>

204. Filing Parties state that LG&E/KU propose revisions to their local transmission planning process regarding consideration of transmission needs driven by public policy requirements that follow the changes Filing Parties submitted for the SERTP regional transmission planning process.<sup>383</sup> LG&E/KU also propose to modify its OATT to include the Stakeholder Planning Committee and the Independent Transmission Organization in its local transmission planning process. Specifically, Filing Parties assert that LG&E/KU will consult with a subcommittee of the Stakeholder Planning Committee in the identification of public policy-driven local transmission needs.<sup>384</sup> The proposed OATT provision states that in order to identify, out of the set of possible transmission needs driven by public policy requirements proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated in the current planning cycle, LG&E/KU, in consultation with the Economic Expansion Planning and public policy requirements Subcommittee, will assess: 1) whether the stakeholder-identified public policy requirement is an enacted local, state, or federal law(s) and/or regulation(s); 2) whether the stakeholder-identified public policy requirement drives a Transmission

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<sup>382</sup> Southern Companies Transmittal Letter at 9.

<sup>383</sup> *Id.* at 18-19.

<sup>384</sup> The Economic Expansion Planning Subcommittee has been renamed the Economic Expansion Planning and Public Policy Requirements Subcommittee. This subcommittee will be responsible for developing a process for considering local economic projects and will provide input to LG&E/KU's identification and evaluation of transmission needs driven by public policy requirements. Each member of the Stakeholder Planning Committee, including current transmission customers, current network customers, eligible customers (e.g., retail customers taking unbundled transmission service pursuant to state requirement, electric utilities, Federal power marketing agency or any person generating energy for sale for resale), regulatory bodies, developers of generation, transmission, demand resources, and the general public, may nominate one person to serve on the subcommittee. *E.g.*, LG&E/KU OATT, Part 1 Definitions § 1.12, Attachment K §§ 1, 8(A)(B).

Need(s); and 3) if the answers to the foregoing questions are affirmative, whether the potential transmission need(s) driven by the public policy requirement is already addressed or otherwise being evaluated in the then-current planning cycle.<sup>385</sup>

205. LG&E/KU also proposes to add new provisions in its OATT on stakeholder input during the evaluation of public policy driven transmission needs and possible transmission solutions.<sup>386</sup> The proposed language provides a role for both the Economic Expansion Planning and Public Policy Requirements Subcommittee and the Independent Transmission Organization. Specifically, the proposed language states that not later than the second quarter Stakeholder Planning Committee meeting for the given transmission planning cycle, LG&E/KU will review the stakeholder-proposed transmission needs driven by public policy requirements to be evaluated in the then-current planning cycle. In performing the assessment, LG&E/KU will consult with the Economic Expansion Planning and Public Policy Requirements Subcommittee via conference call or web-based meeting, as appropriate. Information about such conference call or web-based meeting will be communicated to the members of the Expansion Planning and Public Policy Requirements Subcommittee via e-mail, and will also be posted on the Open Access Same-time Information System (OASIS).<sup>387</sup> The proposed language also states that prior to the meeting at which transmission needs driven by public policy requirements will be reviewed, the Independent Transmission Organization will post on OASIS which possible transmission needs driven by public policy requirements proposed by stakeholders (if any) are transmission needs(s) that are not already addressed in the planning process and will be evaluated in the current planning cycle. Stakeholders, including those who are not Transmission Customers,<sup>388</sup> may provide input regarding stakeholder-proposed possible transmission need(s) and may provide input during the evaluation of potential transmission solutions to identified transmission needs consistent with the provisions in the OATT on transparency.<sup>389</sup>

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<sup>385</sup> *E.g.*, LG&E/KU OATT, Attachment K § 8(C)(3)(a).

<sup>386</sup> *Id.* § 8(C)(4).

<sup>387</sup> *Id.* § 8(C)(4)(a).

<sup>388</sup> *Id.* § 8(C)(4)(b).

<sup>389</sup> *Id.* § 8(C)(4). LG&E/KU's provisions in the OATT regarding transparency are found in section 13 of their Attachment K.

206. LG&E/KU also modified the provisions dealing with identification and evaluation of possible local transmission solutions for public policy-driven local Transmission Needs that have not already been addressed.<sup>390</sup> The new provisions include a role for stakeholders, although not specifically for the Economic Expansion Planning and Public Policy Requirements Subcommittee or the Stakeholder Planning Committee, stating that if a public policy-driven transmission need is identified that is not already addressed, or that is not already being evaluated in the transmission expansion planning process, LG&E/KU will identify a transmission solution(s) to address the need. LG&E/KU will study the potential solution to the extent it has the data necessary to perform such a study.<sup>391</sup> LG&E/KU may solicit the stakeholder(s) (if any) that identified the specific transmission need driven by public policy requirements, or LG&E/KU's Load Serving Entity, for additional information and data necessary to evaluate the proposed transmission solution. Such information and data will be subject to confidentiality provisions, and/or Standards of Conduct, as appropriate.<sup>392</sup>

207. LG&E/KU's OATT revisions also provide that the Independent Transmission Organization will establish a queue on LG&E/KU's OASIS for stakeholders to submit requests for consideration of possible transmission needs driven by public policy requirements.<sup>393</sup> The Independent Transmission Organization will also post on OASIS an explanation of the transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission projects in the then-current planning cycle and why other suggested possible transmission needs driven by public policy requirements proposed by stakeholders were not selected for further evaluation.<sup>394</sup>

208. In addition to the changes required by the First Compliance Order to describe the role of the Stakeholder Planning Committee and the Independent Transmission Organization in the local consideration of public policy requirements, LG&E/KU have added language to the local provisions of the OATT that are identical to the regional provisions submitted by Filing Parties. For example, in the section on Procedures for the Consideration of Local Transmission Needs Driven by Public Policy Requirements,

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<sup>390</sup> *Id.* § 8(C)(3)(b).

<sup>391</sup> *Id.*

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

<sup>393</sup> *Id.* § 8(C)(2)(a).

<sup>394</sup> *Id.* § 8(C)(5); LG&E/KU Transmittal Letter at 19.

LG&E/KU have incorporated local laws and regulations into the definition of public policy requirements<sup>395</sup> and have added the following language that is identical to that noted above in Filing Parties' compliance filing: "The Transmission Owner addresses Transmission Needs driven by the Public Policy Requirements of load serving entities and wholesale transmission customers through the planning for and *expansion of physical transmission system delivery capacity to provide* long-term firm transmission services to meet i) native load *obligations* and ii) wholesale Transmission Customer obligations under the Tariff."<sup>396</sup>

(ii) **Protests/Comments**

209. Public Interest Organizations argue that Southern Companies' and OVEC's OATT provisions decrease transparency and create confusion by combining local and regional transmission planning.<sup>397</sup> Public Interest Organizations argue that Southern Companies' and OVEC's OATT provisions blur the Order No. 890 transmission planning that Southern Companies and OVEC do within their own service territories with the regional transmission planning across service territories with neighboring utilities. Public Interest Organizations argue that the result is the elimination or minimization of opportunities for consideration of the most cost-effective solutions to identified transmission needs.<sup>398</sup> Public Interest Organizations note that Filing Parties argue that their transmission planning is bottom-up and that the basis for their Commission-jurisdictional local and regional transmission planning is the state-regulated integrated resource planning.<sup>399</sup> Public Interest Organizations argue that if Filing Parties identify only one solution to transmission needs from local and regional transmission planning then a lever for engaging in cost-effectiveness comparison and analysis may have been removed. Public Interest Organizations argue that whether transmission needs have been addressed through local planning, considered and dismissed at the regional level, or considered and incorporated into a regional solution matters for purposes of consideration of potential alternative solutions.<sup>400</sup> Public Interest Organizations argue that Filing Parties must

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<sup>395</sup> *E.g.*, LG&E/KU OATT, Attachment K § 8(C)(1).

<sup>396</sup> *Id.* The new language has been italicized in the quote above.

<sup>397</sup> Public Interest Organizations Protest at 7-8.

<sup>398</sup> *Id.* at 8.

<sup>399</sup> *Id.* at 9.

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

distinguish throughout their OATTs whether provisions are referring to local or regional transmission planning.<sup>401</sup>

(iii) **Answer**

210. In response to Public Interest Organizations' argument that failure by Filing Parties to engage in separate local and regional transmission planning processes may remove a lever for engaging in cost-effectiveness comparisons and analyses, SERTP Sponsors argue that all transmission projects adopted by Southern Companies and OVEC will be vetted with stakeholders through the SERTP's open processes.<sup>402</sup> SERTP Sponsors argue that the Commission should not require OVEC and Southern Companies to engage in separate local and regional planning processes. SERTP Sponsors state that other utilities may have separate local and regional transmission planning processes due to various utility-specific factors but that such separation of processes is neither required by Order No. 1000 nor necessary for OVEC and Southern Companies to engage in effective transmission planning.<sup>403</sup> SERTP Sponsors argue that requiring OVEC and Southern Companies to have separate local and regional transmission planning processes would require OVEC and Southern Companies to add additional layers of bureaucracy, give stakeholders multiple opportunities to litigate the same issue and frustrate the ability of load serving entities to timely plan and expand their transmission systems to meet their load service obligations.<sup>404</sup>

(iv) **Commission Determination**

211. We find that Southern Companies and OVEC have complied with the provisions of Order No. 1000 and the First Compliance Order addressing consideration of transmission needs driven by public policy requirements in the local transmission planning process, subject to our review of the provisions that apply to the regional transmission planning process. Southern Companies and OVEC have clarified that the SERTP process is used for both local and regional transmission planning and satisfies Order No. 1000's public policy requirements. We also note, however, that because Southern Companies and OVEC use the SERTP process for both local and regional transmission planning under Order No. 1000, changes to the regional transmission

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

<sup>402</sup> SERTP Sponsors Answer at 28.

<sup>403</sup> *Id.* at 28-29.

<sup>404</sup> *Id.* at 29.

planning process required by this order will also apply to the local transmission planning process. Public Interest Organizations express concern that opportunities for consideration of the most cost-effective solutions to identified transmission needs will be eliminated or minimized if the local and regional transmission planning processes are merged. However, as noted above, Filing Parties have applied the Order No. 890 transparency provisions of their OATTs to the consideration of transmission needs driven by public policy requirements in the SERTP process. Thus, the Order No. 890 principle of transparency, as it applies to stakeholder participation, applies to both local and regional transmission planning and should thus foster stakeholder participation.

212. We find that LG&E/KU have complied with the provisions of Order No. 1000 and the First Compliance Order addressing consideration of transmission needs driven by public policy requirements in the local transmission planning process. First, LG&E/KU revised the definition in its OATT of public policy requirements to explicitly include local laws or regulations along with state or federal laws or regulations.<sup>405</sup> Second, LG&E/KU removed from its OATT the requirement that a stakeholder proposing a transmission need driven by public policy requirements in the local transmission planning process must explain and/or demonstrate that the current transmission expansion plan does not adequately address the identified need.<sup>406</sup> Third, LG&E/KU revised its OATT to clearly state how stakeholders can provide input in the local transmission planning process regarding the identification of transmission needs driven by public policy requirements, and evaluation of potential solutions to those identified transmission needs.<sup>407</sup> Fourth, LG&E/KU revised its OATT to establish a just and reasonable and not unduly discriminatory process by which it will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated in the local transmission planning process.<sup>408</sup> Fifth, LG&E/KU revised its OATT to include procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements that both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements and allow stakeholders an opportunity to provide input during the evaluation of potential

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<sup>405</sup> LG&E/KU OATT, Attachment K § 8(C)(1).

<sup>406</sup> *Id.* § 8(C)(2)(a)(ii).

<sup>407</sup> *Id.* § 8(C)(4).

<sup>408</sup> *Id.* § 8(C)(3)(a).

transmission solutions to identified transmission needs.<sup>409</sup> Sixth, LG&E/KU revised its OATT to provide that, consistent with the requirements of Order No. 1000, each public utility transmission provider will 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>410</sup>

213. LG&E/KU have also revised the OATT to clarify the role of the Stakeholder Planning Committee and the Independent Transmission Organization in the consideration of transmission needs driven by public policy requirements in LG&E/KU's local transmission planning process. LG&E/KU thus comply with the requirements of the First Compliance Order in this regard. We note that LG&E/KU's OATT currently provides that the Independent Transmission Organization has the role of reviewing, revising, and approving the annual transmission plan.<sup>411</sup> We expect that the role of the Independent Transmission Organization will remain unchanged and that it will exercise the same responsibilities with respect to the consideration of transmission needs driven by public policy requirements in LG&E/KU's local transmission planning process.<sup>412</sup>

(2) **Duke-Progress**

(i) **Summary of Compliance Filings**

214. In response to the Duke-Progress Compliance Order, Duke-Progress removed language from its OATT that stated that a transmission need will not be considered to be driven by public policy if the need is readily addressed through the individual resource planning processes of the load serving entities and individual requests for network resource designations. Duke-Progress also deleted language that stated that the Oversight and Steering Committee would issue a decision as to whether any public policies are driving local transmission needs within two weeks of the Transmission Advisory Group meeting and post such determination on the NCTPC website. In place of the deleted provisions, Duke-Progress proposes language that modifies the criteria used to determine

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<sup>409</sup> *Id.* § 8(C)(3)(b) & 8(C)(4).

<sup>410</sup> *Id.* § 8(C)(5).

<sup>411</sup> *Id.* § 1.

<sup>412</sup> *Id.*



whether a transmission need is driven by a public policy requirement. The proposed provisions state that the criteria used by the Oversight and Steering Committee for determining if public policy drives a transmission need include the existence of facts showing that the public policy drives a physical transmission system delivery capacity requirement that must be fulfilled on a reliable basis to satisfy long-term (i.e., one year or more) firm transmission commitments.<sup>413</sup>

215. Also in response to the Duke-Progress Compliance Order, Duke-Progress has inserted new language in its OATT that states that within two weeks of the Transmission Advisory Group meeting, the Oversight and Steering Committee will post on the NCTPC website an explanation of those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission projects in the then-current planning cycle and why other suggested possible transmission needs driven by public policy requirements proposed by Transmission Advisory Group participants or the Oversight and Steering Committee were not selected for further evaluation.<sup>414</sup>

216. Finally, in response to the Duke-Progress Compliance Order, Duke-Progress has modified its OATT to state that the Planning Working Group identifies potential solutions to specified transmission problems, including public policy transmission needs.<sup>415</sup> The revised provisions also specify that Transmission Advisory Group participants will have the opportunity to propose alternative transmission, generation, and/or demand response solutions. These alternative transmission solutions may include potential solutions that could address reliability, economic and/or public policy transmission needs.<sup>416</sup>

#### (ii) Commission Determination

217. We find that Duke-Progress has partially complied with the requirements of Order No. 1000 and the Duke-Progress Compliance Order. Duke-Progress has modified its OATT to remove the language that stated that a transmission need will not be considered to be driven by public policy if the need is readily addressed through the individual resource planning processes of the load serving entities and individual requests for

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<sup>413</sup> Duke-Progress OATT, Attachment N-1 § 4.3.2.2.

<sup>414</sup> *Id.* § 4.3.3.

<sup>415</sup> *Id.* § 5.7.1.

<sup>416</sup> *Id.* § 5.7.2.

network resource designations.<sup>417</sup> Duke-Progress has also inserted into its OATT, as required by the Commission, language providing that it will post an explanation of why suggested possible transmission needs driven by public policy requirements proposed by Transmission Advisory Group participants or the Oversight and Steering Committee were not selected for further evaluation.<sup>418</sup> Duke-Progress has also modified its OATT to clarify that it will use its existing local transmission planning process to evaluate at the local level potential transmission solutions to identified transmission needs driven by both public policy requirements, and those proposed by stakeholders, as well as to provide stakeholders an opportunity to provide input.<sup>419</sup>

218. However, Duke-Progress has included in its OATT new language stating that that the criteria for determining if public policy drives a transmission need include the existence of facts showing that the public policy drives a physical transmission system delivery capacity requirement that must be fulfilled on a reliable basis to satisfy long-term (i.e., one year or more) firm transmission commitments.<sup>420</sup> We find that this requirement is based on the SERTP Sponsors' definition of Transmission Need which we have found to be noncompliant with Order No. 1000.<sup>421</sup> Accordingly, we require Duke-Progress to submit, within 60 days of the date of issuance of this order, a further compliance filing to either remove this requirement or modify it based on the revised definition of Transmission Need that SERTP Sponsors will submit in response to this order.

### **3. Nonincumbent Transmission Developer Reforms**

219. 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>417</sup> *Id.* § 4.3.2.2.

<sup>418</sup> *Id.* § 4.3.3.

<sup>419</sup> *Id.* §§ 5.7., 5.8 & 5.9.

<sup>420</sup> *Id.* § 4.3.2.2.

<sup>421</sup> *See* Affirmative Obligation to Plan section.

**a. Federal Rights of First Refusal**

220. 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>422</sup> The requirement to eliminate a federal right of first refusal does not apply to local transmission facilities,<sup>423</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>424</sup> In addition, the requirement does not remove, alter, or limit an

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<sup>422</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>423</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>424</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319, *order on reh’g*,; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term “upgrade” means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

incumbent transmission provider's use and control of its existing rights-of-way under state law.<sup>425</sup>

**i. First Compliance Order**

221. The Commission found that the proposed provisions in Filing Parties' compliance filing concerning federal rights of first refusal partially complied with the requirements of Order No. 1000.<sup>426</sup> Specifically, the Commission found that Filing Parties' OATTs did not have an existing federal right of first refusal provision that Filing Parties would be required to remove.<sup>427</sup> The Commission found that Filing Parties' proposed exceptions to the requirement to eliminate the federal right of first refusal partially complied with the exceptions contemplated in Order No. 1000.<sup>428</sup> The Commission directed Filing Parties to: (1) remove from their OATTs the proposed provision that to be considered for evaluation and potential selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the owner; and (2) revise their OATTs to define the term "upgrade" consistent with Order No. 1000.<sup>429</sup>

222. The Commission found that Filing Parties' proposed exception to the requirement to eliminate a federal right of first refusal that instead would allow an incumbent transmission owner to retain a federal right of first refusal associated with an existing right-of-way or the consent of a property owner was not permitted by Order No. 1000.<sup>430</sup> The Commission directed Filing Parties to remove the proposed provision that to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a proposed project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the

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<sup>425</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

<sup>426</sup> First Compliance Order, 144 FERC ¶ 61,054 at PP 136, 138.

<sup>427</sup> *Id.* P 136.

<sup>428</sup> *Id.* PP 136-138.

<sup>429</sup> *Id.* P 139.

<sup>430</sup> *See Id.* P 136.

owner of the right-of-way.<sup>431</sup> 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 or the ownership of the property on which the proposed facility would be located.”<sup>432</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>433</sup>

223. Regarding Filing Parties’ proposal that to be considered for evaluation and potential selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be an upgrade to an existing facility, the Commission noted that Order No. 1000 does not remove or limit any right an incumbent transmission owner may have to build, own, and recover costs for upgrades to the transmission facilities owned by an incumbent.<sup>434</sup> The Commission therefore found that Filing Parties’ proposal partially complied with Order No. 1000. However, Filing Parties had not defined the term “upgrade” and the Commission therefore directed Filing Parties to define the term “upgrade” in their OATTs, consistent with the definition of upgrade in Order No. 1000-A, so that it is clear which transmission facilities may fall within the definition of upgrade.<sup>435</sup>

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<sup>431</sup> *Id.*

<sup>432</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31, 323 at P 319).

<sup>433</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>434</sup> *Id.*

<sup>435</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 138 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426, which states that the term “upgrade” means

(continued...)

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

224. SERTP Sponsors, the Alabama Commission, and NARUC<sup>436</sup> challenge the Commission's direction that Filing Parties remove the provision that stated that a transmission project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the owner of the existing facility or right-of-way. They argue that the Commission exceeded its directive in Order No. 1000 to remove rights of first refusal provisions from Commission-jurisdictional tariffs. SERTP Sponsors state that a reference in an OATT that state laws shall apply does not create a federal right of first refusal and that, by requiring SERTP Sponsors to engage in time-consuming and costly analysis of projects that will necessarily be rejected because they cannot satisfy state law, the First Compliance Order hinders, rather than facilitates, the expansion of the SERTP region's transmission system. The Alabama Commission echoes SERTP Sponsors' concern that the Commission's holding will require regional transmission planners to consider proposals that are virtually impossible under state law, adding additional inefficiency to an already cumbersome process.<sup>437</sup> SERTP Sponsors further assert that the requirement is inconsistent with Order No. 1000, which requires the elimination from Commission-jurisdictional tariffs and agreements of rights of first refusal for "transmission facilities

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an improvement to, addition to, or replacement of a part of, an existing transmission facility and does not refer to an entirely new transmission facility).

<sup>436</sup> Alabama Commission Rehearing Request at 5; NARUC Rehearing Request at 7.

<sup>437</sup> Alabama Commission Rehearing Request at 5. The Alabama Commission explains that, to obtain use of an incumbent transmission owner's right-of-way under Alabama law, a nonincumbent transmission developer must either purchase the right-of-way from the incumbent or pursue condemnation under Alabama law. To sell the right-of-way to a nonincumbent transmission developer, the incumbent transmission owner must first obtain approval from the Alabama Commission, and if the nonincumbent transmission developer pursues condemnation, it will have an extraordinarily high burden to obtain rights to property that is already devoted to public use. *Id.* at 6.

selected in a regional transmission plan for purposes of cost allocation.”<sup>438</sup> However, SERTP Sponsors state that a transmission project rejected from consideration for purposes of cost allocation is not and cannot be a facility “selected in a regional transmission plan for purposes of cost allocation,” which the First Compliance Order acknowledges by stating that such projects would be rejected during the *evaluation* stage.<sup>439</sup>

**(b) Commission Determination**

225. On rehearing, petitioners argue that Filing Parties’ OATT provision requiring that, to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the owner of the right-of-way 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 and, as explained below, Filing Parties may retain this provision in their OATTs.

226. 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>440</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>441</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

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<sup>438</sup> SERTP Sponsors Rehearing Request at 47 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313).

<sup>439</sup> *Id.* at 47-48.

<sup>440</sup> *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 257.

<sup>441</sup> *Id.* P 313.

transmission providers.<sup>442</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>443</sup>

227. 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 Filing Parties from merely recognizing the rights and restrictions relating to a state or local right-of-way 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 Filing Parties from recognizing state or local laws and regulations, such as a right-of-way, as a threshold issue. Regardless of whether state or local laws or regulations are expressly referenced in Filing Parties' OATTs, some such laws or regulations may independently prohibit a nonincumbent transmission developer from developing a particular transmission project on existing rights-of-way, 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 SERTP 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

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<sup>442</sup> *Id.* P 226; *see also, Id.* 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>443</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); *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 200 (2013) (MISO First Compliance Order).



state or local laws or regulations with respect to construction of transmission facilities.”<sup>444</sup>

228. We find compelling the arguments petitioners expressed on rehearing regarding the potential for inefficiencies and delays that may occur if Filing Parties must remove the provision requiring that, to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a proposed project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the owner of the right-of-way. In light of these arguments, we conclude that requiring Filing Parties to remove this provision from their OATTs 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 Filing Parties’ 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 Filing Parties 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 is to facilitate the likelihood that needed transmission facilities will move forward.<sup>445</sup> Petitioners have persuaded us that it is appropriate for Filing Parties to recognize state or local laws and regulations, such as a right-of-way, as a threshold matter in the regional transmission planning process and, accordingly, we grant rehearing and find that Filing Parties may retain the provision requiring that, to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be located on the property and/or

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<sup>444</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 381.

<sup>445</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”).

right-of-way belonging to anyone other than the transmission developer absent the consent of the owner of the right-of-way.

**iii. Compliance**

**(a) Summary of Compliance Filings**

229. In compliance with the requirement that Filing Parties remove the provision that, to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the owner of the right-of-way, Filing Parties propose to remove this provision from their OATTs.<sup>446</sup> Filing Parties also propose to add, consistent with the Commission's clarification in the First Compliance Order, a provision in the evaluation section allowing them to consider, among other things, whether a "transmission developer should be considered reasonably able to acquire the necessary rights-of-way."<sup>447</sup>

230. In addition, Filing Parties propose to revise their OATTs to state that a transmission upgrade includes any expansion, replacement, or modification, for any purpose, made to existing transmission facilities, including, but not limited to: (1) transmission line reconductors; (2) the addition, modification, and/or replacement of transmission line structures and equipment; (3) increasing the nominal operating voltage of a transmission line; (4) the addition, replacement, and/or reconfiguration of facilities within an existing substation site; and (5) the interconnection/addition of new terminal equipment and/or substations onto existing transmission lines.<sup>448</sup> In addition, Filing Parties propose revisions to their OATTs to clarify that, even though a transmission project proposed for purposes of cost allocation may not constitute an "upgrade" to an existing transmission facility, a transmission project proposed for potential selection in a regional transmission plan for purposes of cost allocation may rely on the implementation

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<sup>446</sup> *E.g.*, Southern Companies Transmittal Letter at 21 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 136).

<sup>447</sup> *Id.*; *see also, e.g.*, Southern Companies OATT, Attachment K § 17.5.

<sup>448</sup> *E.g.*, Southern Companies OATT, Attachment K § 15.2.

of one or more transmission upgrades by the impacted utilities<sup>449</sup> in order to reliably implement the proposed transmission project.<sup>450</sup>

231. Finally, Filing Parties propose to add to the introduction of the Regional Transmission Planning section of their OATTs the statement that nothing precludes the transmission provider from building new transmission facilities located solely in its local footprint and/or that are not submitted for regional cost allocation purposes.<sup>451</sup>

**(b) Protests/Comments**

232. LS Power argues that Filing Parties' proposed OATT language for the exemption of upgrades to their existing system should be revised to mirror Order No. 1000-A's language concerning upgrades.<sup>452</sup> LS Power argues that the Commission provided explicitly the definition of upgrades in Order No. 1000-A, and that the "expansion" of transmission facilities was not among the items identified as an upgrade. LS Power states that Filing Parties' have improperly revised their OATTs to reference the interconnection/addition of new terminal equipment and/or substations onto existing transmission lines despite the fact that the Commission specifically rejected a similar proposal by the Midwest Independent Transmission System Operator, Inc. (MISO) to include a similar provision to the extent that it would define a mid-line substation addition as an upgrade.<sup>453</sup>

233. LS Power argues that Filing Parties' proposed addition to its Regional Transmission Planning introduction, which states that nothing in their regional transmission planning processes precludes them from building new transmission facilities

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<sup>449</sup> Filing Parties state that Impacted Utilities "shall mean: i) the Beneficiaries identified in the evaluation of the proposed transmission project and ii) any entity identified ... to potentially have increased costs on its transmission system located in the SERTP region in order to implement the proposal." *Id.* § 17.2.1.

<sup>450</sup> *Id.* § 15.2; Southern Companies Transmittal Letter at 21.

<sup>451</sup> *E.g.*, Southern Companies OATT, Attachment K, Regional Transmission Planning.

<sup>452</sup> LS Power Protest at 16.

<sup>453</sup> *Id.* at 16-17 (citing MISO First Compliance Order, 142 FERC ¶ 61,215 at P 235).

within their local footprints or that are not submitted for regional cost allocation, appear to be an effort to expand the right of first refusal allowed by Order No. 1000 for local transmission projects. LS Power argues that this proposal would exclude projects spanning more than one retail distribution service territory if the cost was not regionally allocated, even though costs apportioned to more than one retail distribution service territory are, by definition, regional. LS Power contends that Filing Parties fail to identify how the cost of such projects would be recovered and why any cost allocation would not be considered regional. LS Power therefore contends that the added language should be deleted.<sup>454</sup>

(c) Answer

234. SERTP Sponsors argue that Filing Parties' proposed definition of upgrades is consistent with Order No. 1000 and, to the extent it departs from the definition of "upgrades" in Order No. 1000, it is a superior definition and should be approved. SERTP Sponsors state that their proposal provides more detail concerning what constitutes an upgrade and, thus, will prevent the likelihood of disputes, misunderstandings, and potential litigation.<sup>455</sup> SERTP Sponsors argue that LS Power objects to the term "expansion," through this word merely stands in for the term used in Order No. 1000 (to which LS Power does not object): "addition to." SERTP Sponsors assert that LS Power lodged an identical objection to MISO's compliance filing, which the Commission rejected.<sup>456</sup> SERTP Sponsors contend that the Commission should again reject LS Power's objection.<sup>457</sup>

235. Noting that LS Power objects to Filing Parties' proposal to define upgrades to include "the interconnection/addition of new terminal equipment and/or substations onto existing transmission lines,"<sup>458</sup> SERTP Sponsors state that, contrary to LS Power's assertion that the Commission rejected a similar proposal by MISO, the Commission merely required MISO to justify this example on further compliance, rather than rejecting

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<sup>454</sup> *Id.* at 11-12.

<sup>455</sup> SERTP Sponsors Answer at 34.

<sup>456</sup> *Id.* (citing MISO First Compliance Order, 142 FERC ¶ 61,215 at P 226).

<sup>457</sup> *Id.*

<sup>458</sup> *E.g.*, Southern Companies OATT, Attachment K § 15.2.

it outright.<sup>459</sup> SERTP Sponsors explain that, under Filing Parties' proposal, a transmission developer, whether nonincumbent or incumbent, that proposes a project for purposes of cost allocation is not barred from including within its proposal the addition of a substation to existing transmission facilities.<sup>460</sup> SERTP Sponsors also note that a proposed transmission plan project can rely on implementation of one or more transmission upgrades.<sup>461</sup> As a result, SERTP Sponsors argue the inclusion of new substations added to existing transmission facilities in the definition of "upgrades" does not have an adverse effect on the consideration of more efficient or cost-effective transmission solutions that may or may not rely upon such upgrade.<sup>462</sup>

236. With respect to the introductory language in the Regional Transmission Planning section of their OATTs, SERTP Sponsors state that, contrary to LS Power's characterization of the language as expanding the right of first refusal for local transmission projects, the language does not give them a right to build anything. Instead, they allege that this language merely restates the explicit holding of Order No. 1000 that the elimination of rights of first refusal applies only to transmission facilities selected in a regional transmission plan for purposes of cost allocation, and falls squarely within Order No. 1000's description of which transmission facilities may retain a right of first refusal. SERTP Sponsors conclude that LS Power's protest is simply a collateral attack on Order No. 1000.<sup>463</sup>

**(d) Commission Determination**

237. In light of our decision to grant rehearing regarding whether Filing Parties may require that, to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the owner of the right-of-way, we find that Filing Parties' proposal to delete the provision originally proposed in the "Transmission Facilities Potentially Eligible for [Regional Cost Allocation Purposes]" section of Attachment K is moot.

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<sup>459</sup> SERTP Sponsors Answer at 35.

<sup>460</sup> *Id.* at 36.

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

<sup>462</sup> *Id.*

<sup>463</sup> *Id.* at 37-38.

Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to restore that provision of their OATTs as it was originally proposed.<sup>464</sup>

238. In addition, Filing Parties state that they are proposing to add the provision to consider at the evaluation stage “[w]hether, based on the stages of development provided by the transmission developer ... the transmission developer should be considered reasonably able to acquire the necessary rights-of-way” in response to the Commission’s directive to remove the provision limiting transmission projects eligible for potential selection in the regional transmission plan for purposes of cost allocation to those not located on the property and/or right-of-way belonging to anyone other than the transmission developer.<sup>465</sup> Filing Parties also propose language to their OATTs stating that the analysis of more efficient or cost-effective transmission projects may consider “[f]easibility, including the viability of acquiring rights-of-way.”<sup>466</sup> Given our decision to grant rehearing of the directive that prompted these proposed changes, we find that these revisions are moot. Accordingly, we direct Filing Parties to submit, within 60 days of the date of the issuance of this order, further compliance filings to delete these provisions from their OATTs.

239. We find that Filing Parties’ proposed definition of upgrades partially complies with Order No. 1000. Order No. 1000-A defines an upgrade as “an improvement to, addition to, or replacement of a part of, an existing transmission facility,” and provides that the term “does not refer to an entirely new transmission facility.”<sup>467</sup> Filing Parties’ proposed definition is inconsistent with the definition in Order No. 1000-A because it would include as an upgrade the replacement of an entire transmission facility rather than the replacement *of a part* of an existing transmission facility. We therefore direct Filing Parties to submit, within 60 days of the issuance of this order, further compliance filings

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<sup>464</sup> We note that the original provision also included the language regarding upgrades, which has now been expanded and is its own separate provision. *See, e.g.*, Southern Companies OATT, Attachment K § 15.2. Therefore, the restored right-of-way provision should not include the language about upgrades.

<sup>465</sup> *E.g.*, Southern Companies Transmittal Letter at 21 (citing Southern Attachment K, § 17.5).

<sup>466</sup> *E.g.*, Southern Companies OATT, Attachment K § 11.2.1.

<sup>467</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

that revise their OATTs to modify the definition of upgrades so that only the replacement of part of an existing transmission facility can be considered an upgrade.

240. We nevertheless accept Filing Parties' use of the term "expansion" as providing clarity as to what transmission facilities will be treated as upgrades within the SERTP footprint. We find unnecessary and reject LS Power's request to replace "expansion" with "addition to" in the proposed upgrades definition.<sup>468</sup> We find that the specific examples offered, subject to one revision, will prevent the term "expansion" from being too broadly construed. With respect to Filing Parties' proposal to list "the interconnection/addition of new terminal equipment and/or substations onto existing transmission lines" as an example of a transmission upgrade,<sup>469</sup> we find that Filing Parties have not provided sufficient support to demonstrate why a new substation that interconnects existing transmission lines should be considered an upgrade instead of a new project. Accordingly, we direct Filing Parties to submit, within 60 days of the issuance of this order, further compliance filings that removes the proposed language in Filing Parties' OATTs to treat as an upgrade the construction of a new substation that interconnects existing transmission lines that may be owned by a single transmission order or group of transmission owners or, in the alternative, provide further justification.<sup>470</sup>

241. In addition, Filing Parties' proposal in the introduction of the Regional Transmission Planning section of their OATTs stating that nothing precludes the transmission provider from building new transmission facilities located solely in its local footprint and/or that are not submitted for regional cost allocation is inconsistent with Order No. 1000.<sup>471</sup> It appears Filing Parties intend this language to be consistent with language in Order No. 1000 stating that Order No. 1000 continues to permit an incumbent transmission provider to meet its reliability needs or service obligations by choosing to build new transmission facilities located solely within its retail distribution service territory or footprint *and* that are not submitted for regional cost allocation.<sup>472</sup>

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<sup>468</sup> *Cf.* MISO First Compliance Order, 142 FERC ¶ 61,215 at P 226.

<sup>469</sup> *E.g.*, Southern Companies OATT, Attachment K § 15.2.

<sup>470</sup> MISO First Compliance Order, 142 FERC ¶ 61,215 at P 235.

<sup>471</sup> *E.g.*, Southern Companies OATT, Attachment K, Regional Transmission Planning.

<sup>472</sup> *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 262.

However, Filing Parties have made this language inconsistent with Order No. 1000 by proposing that the transmission facilities in question are located solely in a local footprint and/or are not submitted for regional cost allocation. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to delete the “or” from the proposed language in their OATTs so that, consistent with Order No. 1000, it will now read that nothing precludes the transmission provider from building new transmission facilities located solely in its local footprint *and* that are not submitted for regional cost allocation purposes.

**b. Qualification Criteria**

242. 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>473</sup> These criteria must not be unduly discriminatory or preferential when applied to either an incumbent transmission provider or a nonincumbent transmission developer.<sup>474</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>475</sup>

243. 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>476</sup>

**i. First Compliance Order**

244. In the First Compliance Order, the Commission found that the provisions in the OATT concerning financial and technical qualification criteria in Filing Parties’ proposal partially complied with the qualification criteria requirements of Order No. 1000. The Commission found that Filing Parties sufficiently established procedures for timely

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<sup>473</sup> *Id.* PP 225, 323.

<sup>474</sup> *Id.* P 323.

<sup>475</sup> *Id.* P 324.

<sup>476</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.



notifying transmission developers of whether they satisfy the region's qualification criteria and providing opportunities for transmission developers to remedy any deficiencies.<sup>477</sup>

245. The Commission noted, however, that several other aspects of Filing Parties' proposal did not comply with Order No. 1000 requirements. First, the Commission found that Filing Parties' proposal that only transmission developers that satisfy initial qualification criteria are eligible to *propose* a regional transmission project for potential selection in a regional transmission plan for purposes of cost allocation is inconsistent with Order No. 1000.<sup>478</sup> The Commission therefore directed Filing Parties to clarify in their OATTs that: (1) any entity may submit a transmission project into the regional transmission planning process for consideration for purposes of cost allocation; and (2) their proposed qualification criteria will only apply to a transmission developer that intends to develop a transmission project that it submits into the regional transmission planning process for purposes of cost allocation.<sup>479</sup> The Commission also required Filing Parties to revise their OATTs to clarify that the qualification criteria apply to both incumbent transmission providers and nonincumbent transmission developers.<sup>480</sup>

246. The Commission found that Filing Parties' proposed technical qualification criteria are fair and not unreasonably stringent, are not unduly discriminatory or preferential, and provide each potential transmission developer the opportunity to demonstrate that it has the necessary technical expertise to develop, construct, own, operate, and maintain transmission facilities.<sup>481</sup> However, the Commission found that

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<sup>477</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 151.

<sup>478</sup> *E.g.*, Southern Companies OATT, Attachment K § 13.1.

<sup>479</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 152.

<sup>480</sup> *Id.* P 153.

<sup>481</sup> *Id.* P 154. A prospective transmission developer may demonstrate it meets the technical qualification criteria by providing, at a minimum, the following information: (1) a summary of the transmission developer's transmission projects that are in-service, under construction, and/or abandoned or otherwise not completed (including locations, operating voltages, mileages, development schedules, and approximate installed costs); (2) whether delays in project completion were encountered; and (3) how these facilities are owned, operated and maintained. Filing Parties propose that this showing may include projects and experience provided by a parent company or affiliate or other experience relevant to the development of the proposed transmission project. *Id.* P 144.

Filing Parties' proposed financial qualification criteria are unfair and unreasonably stringent and that their proposal lacks appropriate flexibility because it fails to provide an alternative in lieu of a credit rating. Consequently, the Commission directed Filing Parties to revise their OATTs to provide an appropriate alternative to investment credit ratings, such as financial statements.<sup>482</sup>

247. With regard to Filing Parties' proposal to require that a transmission developer provide documentation of its capability to finance U.S. energy projects equal to or greater than the cost of the proposed transmission project to be eligible to propose a transmission project for consideration for selection in a regional transmission plan for purposes of cost allocation, the Commission directed Filing Parties to revise their OATTs to include detailed provisions regarding the financial information that prospective transmission developers must provide.<sup>483</sup>

248. With respect to Filing Parties' proposal that additional financial and technical criteria may be required for a proposed transmission project to be selected in a regional transmission plan for purposes of cost allocation, the Commission found it was unclear whether the additional financial and technical criteria are part of the evaluation process for selection in a regional transmission plan for purposes of cost allocation or milestones of required steps necessary to maintain status as a regional project. The Commission therefore directed Filing Parties to explain in detail the additional financial and technical criteria that apply to a transmission project selected in a regional transmission plan for purposes of cost allocation.<sup>484</sup>

249. Finally, the Commission accepted Filing Parties' proposal to impose an ongoing compliance obligation upon transmission developers and their proposed transmission facilities to continue to satisfy the region's qualification criteria and information requirements but directed Filing Parties to propose (1) procedures for timely notifying a

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<sup>482</sup> *Id.* P 154 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324, *S.C. Elec. & Gas Co.*, 143 FERC ¶ 61,058, at P 145 (2013); *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"); *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>483</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 155.

<sup>484</sup> *Id.* P 156.

transmission developer of whether it continues to satisfy the region's requirements, or (2) to grant to transmission developers the opportunity to remedy any deficiency identified by the transmission provider in conjunction with a transmission developer's obligation to update any changes in information that it provides to satisfy the region's qualification criteria and information requirements.<sup>485</sup>

**ii. Requests for Rehearing or Clarification**

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

250. LS Power requests that the Commission clarify or confirm on rehearing that the submission of financial statements cannot be the only alternative to a credit rating for establishing financial qualification. Specifically, LS Power requests clarification that the Commission's intent was to require Filing Parties to make a compliance filing allowing "financial statements or evidence satisfactory to the Transmission Provider that it has the capability to finance the regional Transmission Facility it proposes to construct, operate and maintain." In the alternative, LS Power requests rehearing as suggesting that providing for a review of financial statements alone would be sufficient additional flexibility to address the shortcomings of the SERTP financial qualification proposal is arbitrary agency action.<sup>486</sup> LS Power agrees with the Commission's holding that the proposed financial qualifications are unreasonably stringent and unfair, particularly related to transmission developers that will use special purpose entities to develop, finance, operate, and maintain transmission facilities; however, LS Power seeks clarification, or alternatively rehearing, solely to confirm that the Commission's instruction to Filing Parties does not allow them to limit the alternative mechanism to the filing of financial statements as that would likewise be unreasonably stringent and unfair. LS Power argues that for there to be true flexibility for all entities and business models there must be an alternative provision that allows an independent entity to establish its creditworthiness outside the restrictive scope of credit ratings, financial statements, or blanket parental guarantees.<sup>487</sup>

251. LS Power argues that the Public Utility Commission of Texas faced this same commercial issue in its Competitive Renewable Energy Zone process, which provided

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<sup>485</sup> *Id.* PP 157-158.

<sup>486</sup> LS Power Request for Rehearing and Clarification at 14.

<sup>487</sup> *Id.* at 11-12.

several mechanisms to establish creditworthiness, including owning existing transmission, investment grade credit ratings, net asset tests or bond guarantees or corporate commitment. LS Power states that the process also provided a fourth mechanism which was a catch-all provision, similar to the financial qualification language the Commission approved in PJM, that allowed a prospective transmission service provider to establish its financial credibility by providing evidence satisfactory to the commission that it has the capability to finance the project it proposed to construct, operate, and maintain. Thus, LS Power indicates, through the experience of its own affiliate, that a stand-alone transmission company without a credit rating, a statement of assets, or a parent guarantee can nevertheless establish that it is creditworthy to finance and operate a significant transmission expansion.<sup>488</sup>

252. While LS Power accepts the Commission's determination that the technical qualification criteria are generally fair and not unreasonably stringent, it asks for clarification that the request for information regarding whether delays in prior transmission project completion were encountered cannot be grounds for disqualification in the qualification process if the delays were for reasons outside of a party's reasonable control, or for project delays that do not affect a required online date. LS Power explains that although information regarding prior project completion or delays can be relevant to a proposed developer's capability to develop a transmission project, LS Power is concerned that without clarification the criterion could be applied in a manner in which non-relevant construction delays or construction delays outside of a party's reasonable control would be used as a barrier to entry.<sup>489</sup>

253. In addition, LS Power requests clarification that the technical qualification criterion of "other experience relevant to the development of the proposed project" includes an entity's contracts and/or contract history with third parties to develop, construct, maintain, and/or operate transmission facilities.<sup>490</sup> LS Power explains that the Commission has already set precedent on this matter with the PJM Compliance Order, in which the Commission held that PJM must also consider an entity's contracts with third parties to develop, construct, maintain, and/or operate transmission facilities in determining an entity's technical qualification.<sup>491</sup>

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<sup>488</sup> *Id.* at 12-13.

<sup>489</sup> *Id.* at 15.

<sup>490</sup> *Id.*

<sup>491</sup> *Id.* (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013)).

**(b) Commission Determination**

254. We deny LS Power's requests for rehearing, but grant limited clarification of our holdings in the First Compliance Order. We affirm the finding in the First Compliance Order that Filing Parties' financial qualification criteria are unfair and unreasonably stringent, while their technical qualification criteria are fair and not unreasonably stringent.<sup>492</sup> We maintain that Filing Parties' proposal to rely on credit ratings as the sole measurement of a transmission developer's financial ability did not provide sufficient flexibility for potential transmission developers to demonstrate their financial capabilities to develop, construct, own, operate, and maintain transmission facilities.

255. The reference to financial statements in the First Compliance Order was not meant to indicate that financial statements are the only acceptable alternative for the financial qualification criteria. Rather, the Commission was indicating that financial statements were one acceptable alternative that we had considered in other Order No. 1000 planning regions.<sup>493</sup> For example, the Commission found that South Carolina Electric & Gas Company provided sufficient flexibility in their financial qualification criteria by allowing for credit ratings, financial statements or written guarantee from a parent company to be unconditionally responsible for all financial obligations.<sup>494</sup>

256. It is reasonable for SERTP Sponsors to require transmission developers to submit information regarding whether they have previously experienced delays in completing a transmission project. The Commission has approved similar requirements in other regions with respect to the submission of information regarding capability of transmission developers to complete regional transmission projects in a timely manner, including the transmission developer's past history of meeting transmission project schedules.<sup>495</sup> We believe it is reasonable to expect transmission developers, as the entities responsible for the transmission project, to identify those delays for which they were responsible and to provide, at their option, reasons for the delay. We find it is unreasonable, however, for the transmission provider to disqualify a transmission developer for any delays that were outside of the transmission developers' control. Therefore, while we find that it is reasonable to give SERTP Sponsors discretion in

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<sup>492</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 154.

<sup>493</sup> *See, e.g., PacifiCorp*, 143 FERC ¶ 61,151 at PP 153, 157.

<sup>494</sup> *S.C. Elec. & Gas Co.*, 143 FERC ¶ 61,058 at P 145.

<sup>495</sup> *Tampa Elec. Co.*, 143 FERC ¶ 61,254, at P 123 (2013).

determining whether the delays adversely impact a transmission developer's ability to develop, construct, own, operate and maintain transmission facilities, we also find that it is appropriate for prospective transmission developers to challenge any findings made by SERTP Sponsors related to delays using the region's dispute resolution procedures and, if necessary, bring those challenges before the Commission.

257. Additionally, we find the provision allowing a transmission developer to submit other experience relevant to the development of the proposed project is sufficiently broad and gives the transmission developer the opportunity to submit any additional evidence that it deems relevant to its technical capabilities, including an entity's contracts and/or contract history with third parties. Experience relevant to the development of a proposed transmission project could include an entity's contracts and/or contract history with third parties to develop, construct, maintain, and/or operate transmission facilities.

### iii. Compliance

#### (a) Summary of Compliance Filings

258. Filing Parties revised their qualification criteria and proposed a new "pre-qualification" process under which an interested transmission developer must apply to demonstrate its general financial and technical capabilities, and if determined to satisfy the pre-qualification requirements, then the pre-qualified developer may propose transmission projects for potential selection in a regional transmission plan for purposes of cost allocation.<sup>496</sup> Filing Parties propose that such a developer would remain pre-qualified for a period of three years unless there is a material change in the developer's qualification criteria.<sup>497</sup> Filing Parties assert that the adoption of a pre-qualification approach will allow for the evaluation of additional and/or alternative qualification criteria required by the First Compliance Order without impacting the timeframe for project evaluation in any given planning cycle.<sup>498</sup> Accordingly, Filing Parties removed the requirement that additional financial and technical criteria may be required to be satisfied for a proposed project to be selected in a regional transmission plan for cost allocation.

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<sup>496</sup> *E.g.*, Southern Companies OATT, Attachment K § 14; Southern Companies Transmittal Letter at 21.

<sup>497</sup> *E.g.* Southern Companies OATT, Attachment K § 14.4; Southern Companies Transmittal Letter at 21.

<sup>498</sup> *E.g.*, Southern Companies Transmittal Letter at 22.

259. Under the pre-qualification proposal, potential transmission developers, which include incumbent transmission providers and nonincumbent transmission developers, must submit their pre-qualification application by August 1 of the then-current planning cycle to be eligible to propose a transmission project (that the transmission developer intends to develop) for consideration for the regional transmission plan for purposes of cost allocation.<sup>499</sup> A potential transmission developer must also submit a non-refundable administrative fee of \$25,000 to off-set the cost to review, process, and evaluate the transmission developer's prequalification application.<sup>500</sup>

260. Filing Parties also revise their financial pre-qualification requirements to allow a potential transmission developer to demonstrate it has sufficient financial qualifications by meeting one of three financial criteria. Under the first financial criterion, Filing Parties propose that a potential transmission developer have and maintain a credit rating of BBB- or better from Standard and Poor's Financial Services LLC, a credit rating of Baa3 or better from Moody's Investor Services, or a credit rating of BBB- or better from Fitch Ratings, Inc. In addition, under this criterion, a potential transmission developer may not have or obtain less than these minimum credit ratings from any of the three rating agencies. Filing Parties propose that the senior unsecured debt (or similar) rating from the rating agencies will be considered the credit rating, and, in the event of multiple credits ratings from one rating agency or credit ratings from more than one rating agency, Filing Parties will use the lowest of those credit ratings to evaluate the pre-qualification application. If a senior unsecured debt (or similar) rating is unavailable, Filing Parties will consider Rating Agencies' issuer (or similar) ratings as the credit rating.<sup>501</sup>

261. Under the second financial criterion, Filing Parties revised the proposal from the first compliance filing which allowed transmission developers to use the credit rating of their parent company to satisfy the credit rating requirement, and instead propose that a transmission developer without a credit rating will be considered "unrated," and only then may the transmission developer use its parent company or the entity that plans to create a new subsidiary that will be the transmission developer to demonstrate the same minimum credit ratings as in criterion 1. In addition, the parent company must commit in writing to provide an acceptable guaranty to the transmission provider that the transmission developer will meet all credit and security requirements if one of their

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<sup>499</sup> *E.g.*, Southern Companies OATT, Attachment K § 14.1.

<sup>500</sup> *Id.* § 14.1.1.

<sup>501</sup> *Id.* § 14.1.2.A.

proposed transmission projects is selected in the regional transmission plan for cost allocation.<sup>502</sup>

262. Under the third financial criterion, Filing Parties propose that unrated transmission developers without a parent company capable of meeting necessary credit ratings must maintain a rating equivalent of BBB- or better, as determined by the transmission provider. Filing Parties propose that, upon an unrated transmission developer's request, a credit rating equivalent will be determined comparable to a rating agency rating based on the process outlined in the OATT. Under that process, an unrated transmission developer must submit: (1) a non-refundable annual fee of \$15,000 for its credit to be evaluated/reevaluated on an annual basis;<sup>503</sup> (2) audited financial statements for each completed fiscal quarter of the then current fiscal year including the most recent fiscal quarter, as well as the most recent three fiscal years;<sup>504</sup> (3) its Standard Industrial Classification and North American Industry Classification System codes; (4) at least one bank and three acceptable trade references;<sup>505</sup> (5) information as to any material litigation, commitments or contingencies as well as any prior bankruptcy declarations or material defaults or defalcations by, against or involving the transmission developer or its predecessors, subsidiaries or affiliates, if any; (6) information as to the ability to recover

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<sup>502</sup> *Id.* § 14.1.2.B.

<sup>503</sup> *Id.* § 14.1.2.C.i.

<sup>504</sup> *Id.* For unrated transmission developers with publicly-traded stock, this information must include annual reports on Form 10-K (or successor form) for the three fiscal years most recently ended, and quarterly reports on Form 10-Q (or successor form) for each completed quarter of the then current fiscal year, together with any amendments thereto, and Form 8-K (or successor form) reports disclosing material changes, if any, that have been filed since the most recent Form 10-K (or successor form), if applicable. For unrated transmission developers that are privately held, this information must include: (1) financial statements, including balance sheets, income statements, statement of cash flows, and statement of stockholder's equity; (2) report of independent accountants; (3) management's discussion and analysis; and (4) notes to financial statements. *Id.*

<sup>505</sup> We interpret the term "acceptable trade references" to refer to the payment experience information provided by a supplier on its customer. *See* Dun & Bradstreet Credibility Corp., <http://mycredit.dnb.com/glossaries/trade-references/> (last visited Jun. 17, 2014).



investment in and return on its projects; (7). information as to the financial protections afforded to unsecured creditors contained in its contracts and other legal documents related to its formation and governance; (8) information as to the number and composition of its members or customers; (9) its exposure to price and market risk; (10) information as to the scope and nature of its business; and (11) any additional information, materials and documentation which such unrated transmission developer deems relevant evidencing such unrated transmission developer's financial capability to develop, construct, operate and maintain transmission developer's projects for the life of the projects.<sup>506</sup> Filing Parties assert their proposal for a transmission developer without a credit rating is similar to the one outlined in Southern Companies' OATT at Attachment Q and that the Commission referenced in the First Compliance Order.<sup>507</sup>

263. Filing Parties propose that the transmission provider will notify the unrated transmission developer after the determination of its rating equivalent, and upon request, provide information regarding the procedures, products and/or tools used to determine the rating equivalent, as well as provide an explanation of the rating equivalent upon request by the transmission developer.<sup>508</sup>

264. Filing Parties also propose certain revisions to the technical qualification criteria the Commission found complied with Order No. 1000. Filing Parties propose to require that a transmission developer provide evidence that it has the capability to develop, construct, operate, and maintain *significant* U.S. electric transmission projects instead of U.S. electric transmission projects of similar or larger complexity, size, and scope as the proposed transmission project.<sup>509</sup> Filing Parties also propose that the technical qualification criteria may be satisfied by the transmission developer's parent company or affiliates as it is applicable. In addition, Filing Parties propose to limit the requirement to

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<sup>506</sup> *E.g.*, Southern Companies OATT, Attachment K § 14.1.2.C.ii.A-J.

<sup>507</sup> *E.g.*, Southern Companies Transmittal at 24 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 154).

<sup>508</sup> *E.g.*, Southern Companies OATT, Attachment K §§ 14.1.2.C.iii. An unrated transmission developer desiring an explanation of its rating equivalent must request such an explanation in writing within five business days of receiving its rating equivalent. The transmission provider will respond within fifteen business days of receipt of such request with a summary of the analysis supporting the rating equivalent decision. *Id.* §14.1.2.C.iv.

<sup>509</sup> *Id.* § 14.1.3.

submit violations of NERC and/or Regional Entity reliability standard(s) and/or violations of regulatory requirement(s) pertaining to the development, construction, ownership, operation, and/or maintenance of electric transmission infrastructure facilities to those violations that have been made public and that violations of Critical Infrastructure Protection standards are not required to be identified.<sup>510</sup> Filing Parties also propose to revise the requirement to submit information about a transmission developer's existing, under construction and/or abandoned transmission projects to include "other relevant experience regarding" such transmission projects.<sup>511</sup>

265. Filing Parties also proposed additional technical information requirements from transmission developers, or their parent company and its affiliates, to demonstrate their capability to develop, construct, operate, and maintain significant transmission projects, and included it as part of the new pre-qualification process. Specifically, a potential transmission developer must provide: (1) evidence of its ability to address and timely remedy failure of transmission facilities;<sup>512</sup> (2) a description of its experience in acquiring rights-of-way;<sup>513</sup> and (3) evidence that it or its parent company, if relevant, has been in existence at least three years.<sup>514</sup>

266. Filing Parties also propose that the Transmission Provider will notify those transmission developers that submitted pre-qualification applications or updated information by the first of August whether they have pre-qualified by the first of November of the then-current planning cycle. The Transmission Provider will post a list of prequalified transmission developers for the upcoming planning cycle on the regional planning website.<sup>515</sup> Additionally, Filing Parties propose that if a transmission developer does not meet the pre-qualification criteria or provides an incomplete application, it will have 15 calendar days to resubmit the necessary supporting documentation to remedy the identified deficiency. The transmission provider will then notify the transmission

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<sup>510</sup> *Id.* §14.1.3.D

<sup>511</sup> *Id.* § 14.1.3.A.

<sup>512</sup> *Id.* § 14.1.3.B.

<sup>513</sup> *Id.* § 14.1.3.D.

<sup>514</sup> *Id.* § 14.1.4.

<sup>515</sup> *Id.* § 14.2.

developer of its qualification status within 30 calendar days of the resubmittal.<sup>516</sup> If a transmission developer is pre-qualified in the then-current planning cycle, Filing Parties propose that they may not be required to re-submit information to prequalify with respect to the upcoming planning cycle, but in the event any information on which the entity's pre-qualification is based has changed, such entity must submit all updated information by the August 1 deadline. In addition, all transmission developers must submit a full pre-qualification application once every 3 years.<sup>517</sup>

267. Filing Parties also add a requirement that if a transmission developer or its parent company or owner or any affiliate, member, or subsidiary has load in the SERTP region, the transmission developer must have enrolled in the SERTP region to be eligible to pre-qualify to propose a transmission project for potential selection in the regional transmission plan for purposes of cost allocation.<sup>518</sup> Filing Parties also propose language stating that any entity may propose a transmission project for consideration by the transmission provider for potential selection in the regional transmission plan for purposes of cost allocation.<sup>519</sup>

**(b) Protests/Comments**

268. LS Power supports Filing Parties' proposal to switch to a pre-qualification process, but states that the financial requirements remain unreasonably stringent. LS Power asserts that the proposed use of a rating equivalent, which is determined internally by Filing Parties assuming the role of credit rating agency, as the only alternative to a credit rating, misses the mark.<sup>520</sup> LS Power argues that Filing Parties do not have the expertise to determine rating equivalents and states a rating equivalent does not provide the required flexibility since it continues to rely on a manufactured credit rating and not

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<sup>516</sup> *Id.* § 14.3.

<sup>517</sup> *Id.* §§ 14.2-14.4.

<sup>518</sup> *Id.* §14.5.

<sup>519</sup> *Id.* § 16; Southern Companies Transmittal Letter at 23. An entity that wants to propose a transmission project for potential selection in the regional transmission plan for purposes of cost allocation but does not intend to develop the transmission project must submit certain information, which is discussed below in the Information Requirements section of this order.

<sup>520</sup> LS Power Protest at 18-19.

on the demonstration that an entity is capable of financing the project for which it might be selected.<sup>521</sup>

269. LS Power references the Public Utility Commission of Texas' Competitive Renewable Energy Zone process which allows a potential developer to demonstrate ownership of existing transmission, investment grade credit ratings, net asset tests, bond guaranties, corporate commitment, or a catch-all "evidence satisfactory to the commission" provision to establish creditworthiness. LS Power states these mechanisms allow a stand-alone transmission company without a credit rating, a statement of assets, or parent guarantee to still prove that it is creditworthy to finance and operate a significant transmission expansion.<sup>522</sup> LS Power argues that relying on established credit ratings or rating equivalents for the transmission developer or its parent company would disqualify a large group of independent power companies from participation, and that the Commission should therefore reject Filing Parties' proposal.<sup>523</sup>

270. Rather than using Filing Parties' proposed rating equivalent criteria, LS Power suggests that the Commission consider the financial criteria proposed by the New York Independent System Operator, Inc. (NYISO). According to LS Power, NYISO's financial qualification proposal requires the developer to provide demonstrated experience financing transmission facilities, audited financial statements from the most recent three years, its credit rating or equivalent information if available, a description of any bankruptcy declarations, material defaults, dissolution, or mergers and acquisitions, as well as other such evidence that demonstrates the developer's current and expected capability to finance a project. LS Power states that NYISO's financial qualification proposal is an excellent balancing of financial qualification issues, and it would also facilitate entities with diverse corporate structures to qualify and participate in the SERTP process.<sup>524</sup>

271. LS Power also contends that Filing Parties do not explain what kind of information transmission developers need to provide to demonstrate their ability to address and timely remedy failure of transmission facilities. LS Power similarly

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<sup>521</sup> *Id.* at 19.

<sup>522</sup> *Id.* at 20.

<sup>523</sup> *Id.* at 20-21.

<sup>524</sup> *Id.* at 21-22 (citing NYISO FERC Electronic Tariff, Attachment III § 31.2.4.1.1.3).

contends that Filing Parties do not provide any information explaining how a transmission developer can demonstrate that they or their parent company, if relevant, have been in existence at least three years. LS Power argues it is unclear what evidence Filing Parties are seeking, that these requirements are arbitrary, and that they should be struck from the OATT.<sup>525</sup>

(c) Answer

272. SERTP Sponsors state that LS Power's claim that the financial qualification criteria still focus largely on credit ratings is erroneous. They argue that the compliance filing directly responded to the Commission directive to allow for appropriate flexibility and therefore allows transmission developers who do not have a credit rating to nevertheless establish that they are financially qualified.<sup>526</sup> SERTP Sponsors state they followed the Commission's directive and related guidance by making provisions for the evaluation of unrated developers' creditworthiness based on financial statements and other information to determine a rating equivalent for an unrated transmission developer. They further state that the rating equivalent described in the compliance filing to be used as an alternative for entities without a credit rating is similar to the "Credit Score" option for unrated entities provided for in Southern Companies' Attachment Q, as referenced by the Commission.<sup>527</sup>

273. As emphasized by LS Power, SERTP Sponsors agree that the capability of a transmission developer to finance its project is an important component of establishing its financial qualification, and therefore provided the catch-all that an "Unrated transmission developer must submit . . . for the determination of a Rating Equivalent . . . information . . . evidencing such Unrated transmission developer's financial capability to develop, construct, operate and maintain transmission developer's projects for the life of the projects."<sup>528</sup> Therefore, SERTP Sponsors state that a compliant unrated transmission developer certainly would submit information regarding its ability to finance its project,

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<sup>525</sup> *Id.* at 22-23.

<sup>526</sup> SERTP Sponsors Answer at 38 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 154).

<sup>527</sup> *Id.* at 39 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 154).

<sup>528</sup> *Id.* at 40 (citing, *e.g.*, Southern Companies OATT, Attachment K § 14.1.2.C).

which would be used along with the other information (including, without limitation, financial statements) to determine a rating equivalent.<sup>529</sup>

274. However, SERTP Sponsors state that a transmission developer's ability to obtain one-time project financing does not necessarily indicate its ability to develop, construct, own, operate, and maintain a project essential to the operation and reliability of the SERTP Sponsors' electric systems for decades.<sup>530</sup> SERTP Sponsors further state that analyses and risks associated with lending money are far different from those associated with determining whether a transmission developer is financially qualified to develop, construct, operate and maintain a transmission project, and that the adverse impacts to a bank if a borrower defaults on a loan are less severe than the financial, operational and reliability risks if a transmission developer delays or abandons a transmission project. Transmission providers are not able to hedge against such damages with their debt portfolio or fully secure the commitment through extensive collateral positions like banks are able to, and therefore the exposure to risk for each project is significant.<sup>531</sup> Additionally, SERTP Sponsors state this exposure to risk continues for the life of the project due to the developer's responsibility to operate and maintain it for many years.<sup>532</sup>

275. SERTP Sponsors argue the Competitive Renewable Energy Zone process rules do not allow a transmission provider "*to establish* its financial credibility by providing 'evidence satisfactory to the [Texas PUC] that it has the capability to finance the proposed [project]'" as LS Power states.<sup>533</sup> Instead, SERTP Sponsors state the relevant Texas PUC rule provides that "the [PUC] *may* determine" that the transmission service provider is eligible for selection based on such information and it clearly has the flexibility to reach the opposite determination.<sup>534</sup> SERTP Sponsors state they have

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<sup>529</sup> *Id.*

<sup>530</sup> *Id.*

<sup>531</sup> *Id.* at 41-42.

<sup>532</sup> *Id.* at 42.

<sup>533</sup> *Id.* at 44 (citing LS Power Protest at 20 (emphasis added by SERTP Sponsors)).

<sup>534</sup> *Id.* (citing § 25.216(e)(2)(D) of the Texas PUC Electric Substantive Rules (emphasis added by SERTP Sponsors)).

similarly assessed the appropriate evaluation criteria to establish creditworthiness and have adopted such an approach in the Compliance Filing.<sup>535</sup>

276. Similarly, SERTP Sponsors state that the cited NYISO OATT provisions do not provide that merely obtaining initial project financing is dispositive of financial qualification. They state that NYISO's determination is based on several criteria, including the "current and *expected* capabilities of the Developer *to finance, develop and construct* a transmission facility *and to operate and maintain it for the life of the facility*" as well as "*current and expected capability to finance . . . transmission facilities.*"<sup>536</sup> Thus, SERTP Sponsors maintain that NYISO may consider several important pieces of information, including audited financial statements from the most recent three years, credit ratings, prior defaults, bankruptcies and other evidence to determine creditworthiness, not just project financing.<sup>537</sup>

277. SERTP Sponsors also disagree with LS Power's objections to the pre-qualification requirement that a developer submit evidence demonstrating its ability to address and timely remedy failure of transmission facilities.<sup>538</sup> SERTP Sponsors argue this requirement is appropriate since Order No. 1000 specifies that the "qualification criteria must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, *operate and maintain* transmission facilities."<sup>539</sup> SERTP Sponsors state that they do not have experience allowing third parties to operate and maintain parts of their system, making the requirement necessarily open ended, and is therefore similar to the following evidentiary requirement in the NYISO financial qualification language that LS Power has

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<sup>535</sup> *Id.*

<sup>536</sup> *Id.* at 44-45 (citing NYISO OATT at § 31.2.4.1.1 (emphasis added by SERTP Sponsors)).

<sup>537</sup> *Id.* at 45.

<sup>538</sup> *Id.* at 47 (citing LS Power Protest at 22-23).

<sup>539</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323 (emphasis added by SERTP Sponsors)).

cited with approval in its Second Protest: “(5) such other evidence that demonstrates its current and expected capability to finance a project to solve a Reliability Need.”<sup>540</sup>

278. Similarly, SERTP Sponsors state that while LS Power apparently endorsed the NYISO financial criteria that require “audited financial statements from the most recent three years,” it objects to the same requirement in the SERTP Sponsors’ OATTs.<sup>541</sup> SERTP Sponsors aver that the three-year requirement will help the SERTP Sponsors establish creditworthiness, and it will help ensure that a nonincumbent is able to build, own, operate, and maintain (including potential restoration of) a regional transmission project necessary to meet the SERTP Sponsors’ transmission service obligations.<sup>542</sup>

**(d) Commission Determination**

279. We find that Filing Parties’ proposed qualification criteria provisions partially comply with the directives in the First Compliance Order. Specifically, we find that Filing Parties (1) sufficiently clarified that any entity may submit a transmission project into the regional transmission planning process for selection in the regional transmission plan for purposes of cost allocation; (2) specified that their proposed qualification criteria will only apply to transmission developers that intend to develop a transmission project selected in the regional transmission plan for purposes of costs allocation; (3) ensured that the qualification criteria apply to both incumbent transmission providers and nonincumbent transmission developers; (4) proposed procedures for timely notifying a transmission developer of whether it continues to satisfy the region’s requirements; (5) granted transmission developers the opportunity to remedy any deficiency identified by the transmission provider; and (6) provided detailed provisions regarding the financial information that prospective transmission developers must provide with an appropriate alternative to investment credit ratings to demonstrate financial capabilities, subject to certain modifications discussed below. Additionally, given that Filing Parties removed the statement that additional financial and technical criteria may be required to be satisfied for projects to be selected in the regional transmission plan, we find that detailed explanation of these additional criteria is no longer necessary, and that the proposed OATT revisions are therefore compliant in this regard.

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<sup>540</sup> *Id.* at 47-48 (citing LS Power Second Protest at 22 (quoting NYISO OATT § 31.2.4.1.1.3)).

<sup>541</sup> *Id.* at 48 (citing LS Power Second Protest at 22 (quoting NYISO OATT § 31.2.4.1.1.3)).

<sup>542</sup> *Id.*



280. We find that the proposed \$25,000 prequalification fee and the \$15,000 credit evaluation fee for unrated transmission developers are not unreasonably burdensome.<sup>543</sup> We note that the \$15,000 fee is only for those entities that do not have a credit rating and for which the region must develop a proxy rating. We further note that the \$25,000 fee will off-set the cost to review, process, and evaluate the transmission developer's pre-qualification application.

281. We are not persuaded by LS Power's argument that the rating equivalent does not provide a sufficient alternative to a credit rating or that SERTP Sponsors do not possess the requisite expertise to determine the creditworthiness of a transmission provider. We find that the information required of unrated developers to determine their rating equivalent is adequate to determine their financial capabilities in the absence of a credit rating because SERTP Sponsors provided a credit rating equivalent similar to the initial credit evaluation provisions for entities that apply for transmission service.<sup>544</sup> Further, we find that it is reasonable for the transmission provider to be the entity which determines the rating equivalent for unrated transmission developers.<sup>545</sup> We are not persuaded by the argument that SERTP Sponsors lack the required expertise to make these determinations. We also note that, if needed, SERTP Sponsors may hire external expertise to do the work. Additionally, their OATTs provide the transmission developers the ability to request information regarding the procedures, products, and/or tools utilized to determine the rating equivalents, as well as the ability to request an explanation of the rating equivalent.<sup>546</sup> For these reasons, and the transparency they create for the rating process, we find the determination of rating equivalents by the transmission provider to be an acceptable alternative to credit ratings.

282. While we find the information that Filing Parties propose to require to determine the rating equivalent is adequate for them to make such determinations, we are concerned about the possibility that not all entities that wish to develop, construct, own, operate, and maintain transmission facilities in the SERTP region and have the financial capabilities do so, do in fact possess all of the required information. For example, the requirements state that the unrated transmission developer must submit audited financial statement for

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<sup>543</sup> *E.g.*, Southern Companies OATT, Attachment K §§ 14.1.1 & 14.1.2.C.i

<sup>544</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 154.

<sup>545</sup> LS Power Protest at 19.

<sup>546</sup> *E.g.*, Southern Companies OATT, Attachment K §§ 14.1.2.C.iii, 14.1.2.C.iv.

the most recent three fiscal years.<sup>547</sup> However, it is possible that special purpose entities, created to participate in the regional transmission planning process, may not have existed for three years, but may still have the financial and technical capabilities to develop and construct transmission projects. Therefore, while we find the list of required information to be comprehensive, we also find that it could be prohibitive to some capable unrated developers. We therefore find that requiring a potential transmission developer without a credit rating to submit only the financial information applicable to that potential transmission developer will eliminate the potential for precluding any unrated transmission developer from being considered for regional transmission projects that they may otherwise be qualified to develop, construct, own, operate, and maintain. For that reason, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that revise their OATTs to state that the information required for assigning rating equivalents must be submitted by unrated transmission developers, as applicable.<sup>548</sup>

283. Likewise, we are not persuaded by SERTP Sponsors' arguments regarding the new proposed requirement that a transmission developer or its parent company, if relevant, provide evidence that it has been in existence for at least three years.<sup>549</sup> SERTP Sponsors indicate that this requirement exists to establish an evidentiary basis to determine whether or not the potential developer is creditworthy.<sup>550</sup> However, this is the intent of the credit rating and credit rating equivalent qualification criteria; therefore this additional requirement is unnecessary because a transmission developer will have to meet the creditworthiness requirements regardless of the number of years it or its parent company has been in existence. We find that this requirement would needlessly restrict the pool of creditworthy transmission developers that may become qualified to companies that are at least three years old. Thus, Filing Parties' proposal to require that transmission developers or their parent be in existence for at least three years is

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<sup>547</sup> *Id.* § 14.1.2.C.i

<sup>548</sup> *Id.*, which reads “Upon request by the transmission provider, an Unrated transmission developer must submit to the Transmission Provider for the determination of a Rating Equivalent, and not less than annually thereafter, the following information with respect to the transmission developer:”.

<sup>549</sup> *E.g.*, Southern Companies OATT, Attachment K § 14.1.4.

<sup>550</sup> SERTP Sponsors Answer at 47 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323 (emphasis added)).

unreasonably stringent because it unduly restricts newly-formed companies from proposing transmission projects in the regional transmission planning process, regardless of their financial and other abilities to undertake a transmission project. We therefore direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that revise their OATTs to remove the requirement that a transmission developer provide evidence that it or its parent company has been in existence for at least three years.

284. LS Power also objects to the proposed requirement that transmission developers provide evidence demonstrating their ability to address and timely remedy failure of transmission facilities.<sup>551</sup> However, we do not find that this requirement is so vague that a transmission developer would not know what information to provide, nor do we generally find it inappropriate for information requests to provide discretion to the transmission developer applicant to decide what evidence they wish to provide. We agree with SERTP Sponsors that a transmission developer's ability to remedy issues with its transmission facilities is important for reliability of the system, and that this requirement provides a transmission developer with an opportunity to do so. Furthermore, even if a potential developer does not have direct experience remedying failures of transmission facilities, making them provide evidence of their approach to do so does help demonstrate the relative strength of a company's ability to operate and maintain transmission facilities.

285. We also find that the proposed requirement for transmission developer applicants to provide a description of their experience in acquiring rights-of-way complies with Order No. 1000.<sup>552</sup> While it would be an impermissible barrier to entry for Filing Parties to require a potential transmission developer to demonstrate it has the ability to acquire rights-of-way to become qualified,<sup>553</sup> Filing Parties require only that a transmission developer submit information about its experience in acquiring such rights. In addition, we expect that a potential transmission developer will be able to submit information

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<sup>551</sup> LS Power Protest at 22-23.

<sup>552</sup> *E.g.* Southern Companies OATT, Attachment K § 14.1.3.D.

<sup>553</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441 (stating 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 and the right to eminent domain, to be eligible to propose a transmission facility).

about the experience in acquiring rights-of-way by third-party contractors on which they intend to rely. In any event, we emphasize that, consistent with Order No. 1000-A, Filing Parties may not require as part of the qualification criteria that a potential transmission developer already have the ability to acquire rights-of-way.

**c. Information Requirements**

286. 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>554</sup> The information requirements must be sufficiently detailed to allow a proposed transmission project to be evaluated comparably to other transmission facilities proposed in the regional transmission planning process. The information requirements must be fair and not be so cumbersome as to effectively prohibit transmission developers from proposing transmission facilities, yet not be so relaxed that they allow for relatively unsupported proposals.<sup>555</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>556</sup>

**i. First Compliance Order**

287. In the First Compliance Order, the Commission found that Filing Parties' proposed information requirements partially complied with the requirements of Order No. 1000. Specifically, the Commission found that Filing Parties satisfied the requirement that each public utility transmission provider identify the date by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle.<sup>557</sup> The Commission also accepted certain information requirements as reasonable and sufficiently detailed, such as the requirement that the transmission developer provide a description of the proposed transmission project that details the intended scope of the transmission project along with a capital cost estimate of the proposed transmission project.

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<sup>554</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

<sup>555</sup> *Id.* P 326.

<sup>556</sup> *Id.* P 325.

<sup>557</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 167 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325).

288. The Commission found, however, that Filing Parties' proposal to require a prospective transmission developer to provide documentation supporting the position that a proposed transmission project addresses the transmission needs more efficiently and cost-effectively than specific projects included in the latest transmission expansion plan (including the identification of transmission projects in the latest expansion plan that would be displaced by the proposed transmission project and any additional projects that may be required to implement the proposed transmission project, as well as the data and/or files necessary to evaluate the transmission developer's analysis of the proposed transmission project) does not comply with Order No. 1000. The Commission found that this requirement was unreasonable and could be so cumbersome as to effectively prohibit transmission developers from proposing transmission projects and therefore directed Filing Parties to either remove it from their OATTs or submit OATT revisions stating that such documentation is not required, but is permitted to the extent the transmission developer voluntarily performed technical analysis supporting its position.<sup>558</sup>

289. The Commission also directed Filing Parties to revise their OATTs to ensure that all provisions in the OATT applicable to transmission developers, including the information requirements addressed in this section, uniformly apply to transmission projects proposed by incumbent and nonincumbent transmission developers. Finally, the Commission required Filing Parties to revise their OATTs to (1) adopt procedures for timely notifying a transmission developer of whether it and its proposed transmission facility continue to satisfy the region's qualification criteria and information requirements; and (2) grant to transmission developers the opportunity to remedy any deficiency identified by the transmission provider in conjunction with a transmission developer's obligation to update any changes in information that it provided to satisfy the region's information requirements.<sup>559</sup>

**ii. Requests for Rehearing or Clarification**

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

290. SERTP Sponsors argue that the Commission's directive to remove from their OATTs the requirement that transmission developers proposing a transmission project for potential selection in the regional transmission plan for regional cost allocation purposes

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<sup>558</sup> *Id.* PP 168-170

<sup>559</sup> *Id.* ¶ 61,054 at P 171 (citing, *e.g.*, Southern Companies OATT, Attachment K § 15.4).

must provide documentation that the proposed transmission project actually addresses transmission needs more efficiently and cost-effectively than specific projects included in the latest transmission expansion plan is “fundamentally inconsistent with Order Nos. 890’s and 1000’s ‘openness, transparency, and coordination’ goals and is unduly discriminatory.”<sup>560</sup> According to SERTP Sponsors, the First Compliance Order violates FPA Section 217(b)(4) by placing an unreasonable burden upon the SERTP Sponsors by shifting the responsibility of a potential transmission developer from doing the necessary analysis to determine whether a proposed project is actually needed and beneficial.<sup>561</sup>

291. SERTP Sponsors further argue that the First Compliance Order will result in unnecessary disputes and litigation if the SERTP Sponsors do not eventually identify the same benefits of a project that a transmission developer had assumed but had not disclosed. SERTP Sponsors argue that the First Compliance Order appears to push the SERTP process towards transmission planning by litigation rather than a process characterized by openness, transparency, and coordination.<sup>562</sup>

292. SERTP Sponsors argue that the First Compliance Order provides transmission developers with an incentive to not perform the analyses that should be done to identify a more efficient and cost-effective project. SERTP Sponsors state that the First Compliance Order would force SERTP Sponsors to perform the necessary analyses, a result contrary to Order No. 1000’s objective of encouraging processes to elicit from stakeholders more efficient and cost-effective solutions and to have transmission providers consider those proposals.<sup>563</sup>

293. SERTP Sponsors state that the First Compliance Order’s rejection of the SERTP Sponsors’ information requirements is inconsistent with the Commission’s treatment of other transmission providers that have imposed extensive information demands on entities seeking to submit regional projects for review. SERTP Sponsors state that the Commission has allowed CAISO to require project developers to provide project

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<sup>560</sup> SERTP Sponsors Rehearing Request at 73.

<sup>561</sup> *Id.*

<sup>562</sup> *Id.* at 75.

<sup>563</sup> *Id.* at 75-76. SERTP Sponsors state that if the Commission does not grant rehearing of this stipulation for them to perform the required analyses, SERTP Sponsors will have to consider increasing their administration fee to cover their actual evaluation costs. SERTP Sponsors Rehearing Request at n.156.

objectives, system needs being addressed, a network model for power flow study, and construction cost estimates, schedule, anticipated operations and other data.<sup>564</sup> SERTP Sponsors state that the Commission has allowed PJM to require a detailed engineering analysis report on proposed solutions and equipment parameters.<sup>565</sup> SERTP Sponsors argue that the type of information required by SERTP Sponsors is not onerous or inappropriate.<sup>566</sup>

**(b) Commission Determination**

294. We deny SERTP Sponsors' request for rehearing. We affirm the finding in the First Compliance Order that it is unreasonable to require that a prospective transmission developer provide, as part of its submission of a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation, documentation that its proposed transmission project addresses the transmission needs more efficiently and cost-effectively than specific projects included in the latest transmission expansion plan.<sup>567</sup> Order No. 1000 requires that the regional transmission planning process, not transmission developers, identify transmission solutions that more efficiently or cost-effectively meet the transmission planning region's transmission needs.<sup>568</sup> Accordingly, it is appropriate that detailed studies necessary to evaluate whether a proposed transmission project is a more efficient or cost-effective solution to the region's transmission needs be performed as part of the regional transmission planning process, and it would be inappropriate to prevent a transmission developer from proposing a transmission solution into the regional transmission planning process unless it has first performed that analysis and provided it to the regional transmission planning process.

295. As SERTP Sponsors note, all transmission developers that want to propose a transmission project for potential selection in the regional transmission plan for purposes

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<sup>564</sup> *Id.* at 76 (citing California ISO Request Window Submission Form and Attachment A).

<sup>565</sup> *Id.* at 76-77 (citing PJM RTEP – Artificial Island Area Proposal Window Problem Statement & Requirements Document).

<sup>566</sup> *Id.*

<sup>567</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 168 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 326).

<sup>568</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 4, 6, 11.

of cost allocation have access to the existing regional transmission plan for the SERTP region, which includes underlying assumptions. A transmission developer will likely have performed an analysis based on this information when deciding whether to submit a transmission project for potential selection and has an incentive to provide as much information as possible to assist the region in determining whether its proposed transmission project will be a more efficient or cost-effective solution. For this reason, the Commission found in the First Compliance Order that Filing Parties may revise their OATTs to permit a transmission developer to submit any detailed studies and technical analysis it performed to support a proposed transmission project.<sup>569</sup> However, Order No. 1000 places the obligation to conduct a regional transmission planning process that produces a regional transmission plan that identifies the more efficient or cost-effective solutions to regional transmission needs on the public utility transmission providers.<sup>570</sup>

296. Finally, we deny rehearing or clarification in regard to the assertion that the aforementioned compliance requirement, that Filing Parties remove the requirement that developers seeking cost allocation must provide documentation supporting the position that the proposed transmission project addresses transmission needs more efficiently and cost-effectively than specific projects included in the latest transmission expansion plan, violates FPA section 217(b)(4). SERTP Sponsors have not explained how this requirement is in violation of the FPA, and it is therefore unclear what the basis for their argument is, or what the basis for our clarification or rehearing would need to be.

### **iii. Compliance**

#### **(a) Summary of Compliance Filings**

297. Filing Parties propose OATT revisions to provide that any entity, including entities that do not intend to develop the project, may propose a transmission project for consideration by the transmission developer for potential selection in the regional transmission plan for purposes of cost allocation.<sup>571</sup> Filing Parties revised their OATTs to specify that the entity proposing a project must submit a description of why the proposed transmission project is expected to be more efficient or cost-effective than other transmission projects included in the then-current regional transmission plan. Filing Parties also propose to revise their OATTs to state that, if available, and to facilitate the

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<sup>569</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 169.

<sup>570</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 396.

<sup>571</sup> *E.g.*, Southern Companies OATT, Attachment K § 16.



evaluation of a proposed transmission project and to mitigate the potential for disputes, a pre-qualified transmission developer may submit documentation of detailed technical analyses performed to support the position that the proposed transmission project addresses the specified transmission need more efficiently or cost-effectively in order to facilitate the evaluation of the proposal and mitigate the potential for disputes.<sup>572</sup> This optional documentation could include: (1) a list of transmission projects in the latest transmission expansion plan or regional transmission plan that would be displaced by the proposed transmission project; (2) any additional projects that may be required to implement the transmission proposed project; or (3) any reduction/increase in real-power transmission system losses.<sup>573</sup> Filing Parties state that, to ensure the transmission provider still has the necessary technical data to model the proposed transmission project, they propose to require the transmission developer to provide the data and/or files necessary for the transmission provider to model the project.<sup>574</sup> Filing Parties also propose a requirement that transmission developers must provide documentation of the specific transmission need(s) that the project is intended to address, including a description of the transmission need(s), timing of the transmission need(s), as well as the technical analysis performed to support that the proposed transmission project addresses the specified transmission need(s).<sup>575</sup>

298. Filing Parties propose the following additional new information requirements that transmission developers must submit with their project proposals: (1) how the transmission developer intends to comply with all applicable standards and obtain the appropriate NERC certifications;<sup>576</sup> (2) the transmission developers experience specific to

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<sup>572</sup> *Id.* § 16.1.6; Southern Companies Transmittal Letter at 25-26.

<sup>573</sup> *E.g.*, Southern Companies OATT, Attachment K § 16.1.6.

<sup>574</sup> *Id.* § 16.1.4; Southern Companies Transmittal Letter at 26.

<sup>575</sup> *E.g.*, Southern Companies OATT, Attachment K § 16.1.5; Southern Companies Transmittal Letter at 26.

<sup>576</sup> *E.g.*, Southern Companies OATT, Attachment K § 16.1.8. If the transmission developer or a parent, owner, affiliate, or member who will be performing work in connection with the potential transmission project is registered with NERC or other industry organizations pertaining to electric reliability and/or the development, construction, ownership, or operation, and/or maintenance of electric infrastructure facilities, a list of those registrations must be provided. *Id.*

developing, constructing, maintaining and operating the type of transmission facilities contained in the proposed transmission project, including verifiable past achievements in controlling costs and adhering to schedules as well as a description of emergency response and restoration of damaged equipment capabilities;<sup>577</sup> (3) the planned or proposed project implementation management teams and the types of resources, including relevant capability and experience, contemplated for use in the development and construction of the proposed transmission project;<sup>578</sup> (4) a written commitment to comply with all application standards, including Good Utility Practices governing the engineering, design, construction, operation, and maintenance of transmission projects in the SERTP region;<sup>579</sup> and (5) evidence of the ability of the transmission developer, its affiliate, partner, or parent company to secure a financial commitment from an approved financial institution(s) agreeing to finance the construction, operation, and maintenance of the transmission project if selected in the regional transmission plan for purposes of cost allocation.<sup>580</sup>

299. Filing Parties further propose that the transmission provider will notify a transmission developer whose submittal does not meet the information requirements or who provides an incomplete submittal within 45 calendar days of the submittal deadline, and then allow the transmission developer 15 calendar days to remedy any identified information deficiency(ies) by resubmitting the necessary supporting documentation. The transmission provider will then notify the transmission developer whether it has adequately remedied the deficiency within 30 calendar days of the resubmittal and, if the deficiencies remain, the transmission project will not be considered for potential selection in the regional transmission plan for purposes of cost allocation.<sup>581</sup> Filing Parties also propose that the transmission developer proposing the transmission project has an obligation to update changes to its or any of its parent company's information that was previously provided.<sup>582</sup>

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<sup>577</sup> *Id.* § 16.1.9.

<sup>578</sup> *Id.* § 16.1.10.

<sup>579</sup> *Id.* § 16.1.11.

<sup>580</sup> *Id.* § 16.1.12.

<sup>581</sup> *Id.* § 16.4.

<sup>582</sup> *Id.* § 16.5.1.

300. Filing Parties also propose that the transmission developer must inform the transmission provider of the existence of any material new or ongoing investigations against the transmission developer (or parent company, if relied upon to meet the qualification or information requirements, and any affiliate that is a transmitting utility) by the Commission, the Securities and Exchange Commission, or any other governing, regulatory, or standards body that has been or was required to be made public.<sup>583</sup> The transmission developer must also inform the transmission provider of any event or occurrence which could constitute a material adverse change in the transmission developer's (or parent company's, if relied upon to meet the qualification or information requirements) financial condition, such as: (i) a downgrade or suspension of any debt or issuer rating by any Rating Agency; (ii) being placed on a credit watch with negative implications (or similar) by any Rating Agency; (iii) a bankruptcy filing or material default or defalcation; (iv) insolvency; (v) a quarterly or annual loss or a decline in earnings of twenty-five percent or more compared to the comparable year-ago period; (vi) a restatement of any prior financial statements; or (vi) any government investigation or the filing of a lawsuit that reasonably would be expected to adversely impact any current or future financial results by twenty-five percent or more.<sup>584</sup> Filing Parties propose these notifications take place: (i) within five business days of the occurrence if the developer has a pending pre-qualification application; (ii) upon the submission of a renewal request if the development occurs after the developer is prequalified; (iii) prior to, or as part of, proposing a transmission project if the development occurs after the developer is prequalified; and (iv) within five business days of the occurrence if the transmission developer has a transmission project selected or under consideration for cost allocation.<sup>585</sup>

301. Additionally, if the transmission provider determines at any time that the transmission developer no longer satisfies the requirements for having a project considered for selection in the regional transmission plan for purposes of cost allocation, Filing Parties propose the transmission provider will notify the transmission developer and allow it 15 days to cure any such deficiencies.<sup>586</sup> If the transmission developer does not meet the 15-day deadline or the transmission provider determines that the

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<sup>583</sup> *Id.* § 16.5.2.1.

<sup>584</sup> *Id.* § 16.5.2.2.

<sup>585</sup> *Id.* § 16.5.2.

<sup>586</sup> *Id.* § 16.5.3.

transmission developer continues to no longer satisfy the requirements, then Filing Parties propose that the transmission provider may, without limiting other rights and remedies, immediately remove the transmission developer's potential transmission project(s) from consideration for potential selection in the regional transmission plan for purposes of cost allocation and, if previously selected, from being selected in a regional transmission plan for purposes of cost allocation.<sup>587</sup>

302. Lastly, Filing Parties propose that any stakeholder may propose transmission projects for consideration in the regional transmission planning process and that they may negotiate alternative transmission development arrangements for those projects.<sup>588</sup> Filing Parties propose that if an entity proposes a transmission project that it does not intend to develop, then it must submit: (1) sufficient information for the transmission provider to determine that the potential transmission project satisfies the regional eligibility requirements; (2) documentation of the specific transmission need(s) that the proposed project is intended to address, including a description of the transmission need(s), timing of the transmission need(s), and the technical analysis performed to support that the proposed project addresses the specified transmission need(s); and (3) a description of why the proposed project is expected to be more efficient or cost-effective, including, if available, documentation of the detailed technical analyses performed that supports the position that the project is more efficient or cost-effective.<sup>589</sup> Filing Parties propose that these submissions are due within the same 60-day window as all other transmission project proposals and, if the requirements are met, the transmission provider will make information describing the proposal available on the SERTP website. In addition, Filing Parties propose to revise their OATTs to state that the entity proposing the transmission project should coordinate with a transmission developer (either incumbent or nonincumbent) to have the developer submit the rest of the information required for project proposals during that same 60-day window. If all required information is not submitted within that 60-day window, Filing Parties propose that the transmission

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<sup>587</sup> *Id.*

<sup>588</sup> *E.g.*, Southern Companies Transmittal Letter at 23 (citing, *e.g.*, Southern Companies OATT, Attachment K § 16.6).

<sup>589</sup> *E.g.*, Southern Companies OATT, Attachment K § 16.6 (referencing Southern Companies OATT, Attachment K §§ 16.1.1, 16.1.5, and 16.1.6).

provider may treat the project as a stakeholder-proposed project and handle it according to those respective conditions.<sup>590</sup>

(b) **Commission Determination**

303. We find that Filing Parties' proposed revisions addressing information requirements partially comply with the directives in the First Compliance Order. We find that the new information requirements proposed by Filing Parties, which do not address specific directives from the First Compliance Order, comply with Order No. 1000, while the proposed approach for allowing stakeholders that do not intend to be the transmission developer to propose projects for regional cost allocation<sup>591</sup> partially complies.

304. Specifically, we find Filing Parties have complied with the requirements to (1) adopt procedures for timely notifying a transmission developer of whether it and its proposed transmission facility continue to satisfy the region's information requirements; and (2) grant to transmission developers the opportunity to remedy any deficiency identified by the transmission provider in conjunction with a transmission developer's obligation to update any changes in information that it provided to satisfy the region's information requirements. Filing Parties have clarified that any entity, including pre-qualified incumbent and nonincumbent transmission developers as well as any stakeholder, may propose projects for potential selection in the regional transmission plan for purposes of cost allocation.<sup>592</sup> We note that, during the 60-day transmission project proposal window, the transmission provider will post information on the SERTP website about transmission projects stakeholders propose but do not intend to develop. Stakeholders must then coordinate with a transmission developer so that the transmission developer can submit the remaining required information by the end of the 60-day proposal window. While we understand that a stakeholder could begin coordinating with a transmission developer that is interested in its proposal prior to the submission window for project proposals, the OATT does not specify how quickly the transmission provider will post the transmission project information after it receives it from a stakeholder.<sup>593</sup> However, we require the transmission provider to post such information as expeditiously as possible so that the stakeholder proposing a transmission project and a transmission

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<sup>590</sup> *Id.* (citing, *e.g.*, Southern Companies OATT, Attachment K § 3.5.3).

<sup>591</sup> *Id.*

<sup>592</sup> *E.g.*, Southern Companies OATT, Attachment K §§ 16, 16.1 and 16.6.

<sup>593</sup> *Id.* § 16.6.

developer that is interested in proposing to develop that project will have sufficient time to coordinate with respect to the additional information that the transmission developer is required to provide. Additionally, Filing Parties propose to notify transmission developers of any information deficiencies within 45 days of the submittal deadline, as well as, at any time, to allow the transmission provider to conclude and notify the transmission developer that it no longer satisfies the qualification criteria or information requirements.<sup>594</sup> After the identification of any information deficiency, Filing Parties propose that a transmission developer will have 15 days to resubmit information to remedy any potential deficiency.<sup>595</sup>

305. We find acceptable Filing Parties' proposal to replace the requirement that transmission developers and stakeholders proposing transmission projects that they do not intend to develop provide documentation of the technical analyses performed to show a project is more efficient or cost-effective with the requirements that transmission developers and stakeholders proposing projects that they do not intend to develop provide a description of why a proposed transmission project is expected to be more efficient or cost-effective than other transmission projects included in the then-current regional transmission plan.<sup>596</sup> We agree with Filing Parties that providing such a description should not prove overly cumbersome and should facilitate the region's evaluation of the transmission project by providing supporting context. We also accept Filing Parties' proposal to allow transmission developers and stakeholders proposing projects that they do not intend to develop the option of providing documentation of any technical analyses that have been performed, as well as descriptions of any projects that will be displaced, any additional projects that may be required, and any changes in real-power transmission systems losses from the proposed project.<sup>597</sup>

306. However, we find it unacceptable for Filing Parties to require transmission developers and stakeholders proposing projects that they do not intend to develop to provide documentation of the technical analyses performed to support that the proposed

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<sup>594</sup> *Id.* §§ 16.4 and 16.5.3.

<sup>595</sup> *Id.* We note that stakeholders that propose transmission projects they do not intend to develop will, to the extent that a transmission developer agrees to coordinate with them, be able to use the cure period to continue working with a transmission developer to make sure all the information requirements are satisfied.

<sup>596</sup> *Id.* §§ 16.1.6 and 16.6.

<sup>597</sup> *Id.*

transmission project addresses the specified transmission needs.<sup>598</sup> While we find that it is acceptable to require transmission developers and stakeholders proposing projects that they do not intend to develop to identify the transmission needs that the proposed transmission projects are intended to address, we do not believe that it is appropriate to require the transmission developers and stakeholders proposing projects that they do not intend to develop to perform detailed technical analyses of how the proposed projects addresses the specific transmission needs and provide documentation of those analyses.<sup>599</sup> Similar to our reasoning in the First Compliance Order, we find that this requirement is unreasonable and could be so cumbersome as to effectively prohibit transmission developers and stakeholders proposing projects that they do not intend to develop from proposing transmission projects. We therefore direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to either remove the requirement from their OATTs or submit OATT revisions stating that such documentation is not required, but is permitted to the extent the transmission developer or the stakeholders proposing projects that they do not intend to develop voluntarily performed technical analysis supporting that the proposed transmission project addresses the specified transmission needs.

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

307. 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>600</sup> The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.<sup>601</sup> In addition, the evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to

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<sup>598</sup> *Id.* § 16.1.5.

<sup>599</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 326.

<sup>600</sup> *Id.* P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132; at P 452.

<sup>601</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.<sup>602</sup>

**i. State and Governance Approvals**

**(a) First Compliance Order**

308. The Commission found that Filing Parties' 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>603</sup> The Commission noted that in Order No. 1000-A it held that if a transmission facility is selected in the regional transmission plan for purposes of cost allocation, then the developer must submit a development schedule indicating the steps required to develop and construct the transmission facility, such as the granting of state approvals.<sup>604</sup> Thus, the Commission found that Filing Parties must revise their respective OATTs 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.<sup>605</sup> The Commission agreed that, to the extent that "jurisdictional and/or governance authorities" want to participate, they are able to participate.<sup>606</sup> 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>607</sup> The Commission further explained that it has the responsibility to ensure that the rates, terms, and conditions of service provided by public utility transmission providers are just and

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<sup>602</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

<sup>603</sup> First Compliance Order, 144 FERC ¶ 61,054 at PP 199-201.

<sup>604</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 442.

<sup>605</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 200 (citing *S.C. Elec. & Gas Co.*, 143 FERC ¶ 61,058, at PP 192-193).

<sup>606</sup> *Id.*

<sup>607</sup> *Id.*



reasonable and not unduly discriminatory or preferential and that public utility transmission providers comply with its rules and regulations enacted to meet this responsibility.<sup>608</sup> Thus, the Commission stated that it is responsible for ensuring that public utility transmission providers in a region adopt transparent and not unduly discriminatory criteria for selecting a new transmission project in a regional transmission plan for purposes of cost allocation.<sup>609</sup> The Commission directed Filing Parties to file further compliance filings to: (1) revise their OATTs to remove the requirement that a transmission developer obtain approvals from all of the “jurisdictional and/or governance authorities of the [i]mpacted [u]tilities” as a precondition of its transmission facility being selected in a regional transmission plan for purposes of cost allocation; and (2) revise their OATTs 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.<sup>610</sup>

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

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

309. Several state commissions and SERTP Sponsors object to the removal in the First Compliance Order of the requirement to obtain approval from the requisite jurisdictional and/or governance authorities prior to selection in a regional transmission plan for purposes of cost allocation.<sup>611</sup> For example, the Alabama Commission argues that FERC’s rejection of the requirement to obtain approvals from the appropriate regulatory body, such as the Alabama Commission, before including a proposed project in the regional plan for purposes of cost allocation is inconsistent with Order No. 1000 and impedes the development of transmission facilities.<sup>612</sup> The Alabama Commission explains that according to Alabama law, a utility shall not construct a facility for the production, transmission, delivery or furnishing of electricity, “except ordinary extensions or existing systems in the usual course of business,” until the Alabama

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<sup>608</sup> *Id.*

<sup>609</sup> *Id.*

<sup>610</sup> *Id.* PP 199-201.

<sup>611</sup> *E.g.*, North Carolina Commission Rehearing Request at PP 7-9.

<sup>612</sup> Alabama Commission Request for Rehearing at 3.

Commission issues a certificate of convenience and necessity. The Alabama Commission argues that in issuing a certificate, it has the authority to place conditions on the construction of such a facility that it deems appropriate.

310. In addition, NARUC argues that the Commission directive to remove language requiring the approvals be obtained from all of the jurisdictional authorities of the impacted utilities in order for a project to be selected in a regional plan for purposes of cost allocation effectively sidelines states and other governmental authorities with jurisdiction over such approvals, which can only substantially delay transmission development.<sup>613</sup> It further argues that the Commission simply cannot preempt timely application of state law, including a state's authority to accept or approve integrated resource plans, make decisions about generation, demand-side resources, and resource proposals, to site transmission, or modify policy based on cost threshold, under its transmission rate authority or any other. According to NARUC, the Commission has no authority to ignore the express text of FPA section 201's reservation of state authority over such matters.<sup>614</sup>

311. SERTP Sponsors argue that the First Compliance Order fails to account for the Non-Public Utility Sponsors' governance and statutory requirements by rejecting protections included in the compliance filings that allowed such sponsors to first comply with their legal requirements and obtain their requisite governance approvals before being subject to binding cost allocation. SERTP Sponsors contend that, by not respecting the Non-Public Utility Sponsors' statutory and governance requirements, the First Compliance Order makes it difficult, if not impossible, for them to continue to participate fully in the SERTP. Likewise, SERTP Sponsors argue that the First Compliance Order alienates state regulators by unlawfully intruding into state-regulated resource planning, requiring that certain state laws and governance approvals be ignored in transmission planning, and imposing a one-size fits all regional approach to system planning when doing so is not in the best interest of their states' citizens (as determined by the states under established divisions between federal and state jurisdiction with regard to state regulation of resource planning and the use of utility assets).<sup>615</sup>

312. SERTP Sponsors contend that the First Compliance Order arbitrarily, capriciously, and without reasoned decision-making rejected certain SERTP proposals regarding the

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<sup>613</sup> NARUC Request for Rehearing at 5.

<sup>614</sup> *Id.* at 5-6.

<sup>615</sup> SERTP Sponsors Rehearing Request at viii.

selection of projects for selection in a regional transmission plan for purposes of cost allocation which are critical to the Non-Public Utility Sponsors' continued participation in SERTP.<sup>616</sup> SERTP Sponsors explain that the proposed SERTP final regional cost allocation selection process was designed to require that: (1) the detailed financial terms, as they might be modified by the transmission developer and beneficiary, are acceptable to each beneficiary; and (2) approval of the project for selection in a regional transmission plan for purposes of cost allocation is obtained from all the jurisdictional and/or governance authorities of the Impacted Utilities by the date set by the transmission developer, transmission provider, and the Impacted Utility.<sup>617</sup>

313. SERTP Sponsors assert that FPA section 202(a) requires the Commission to *encourage*, not discourage, the coordination of transmission facilities. Further, SERTP Sponsors assert that section 217(b)(4) of the FPA requires the Commission to facilitate transmission planning and expansion to allow load serving entities (which includes the Non-Public Utility Sponsors) to meet their load-service needs. SERTP Sponsors contend that the First Compliance Order runs afoul of these directives by *discouraging* transmission planning coordination by dissuading the Non-Public Utility Sponsors from participating in the process. As a result, SERTP Sponsors argue that the First Compliance Order is arbitrary and capricious and otherwise unlawful.<sup>618</sup>

314. SERTP Sponsors contend that, with the Commission's determinations in the First Compliance Order, state or governance approvals would come after the determination of mandatory cost allocation in the selection process, and that such an outcome is unreasonable on its face. SERTP Sponsors argue that if binding cost allocation decisions are going to be made early in the transmission planning process (at the selection stage), then state or other governing officials must have the right to make any selection-related determinations regarding the project at the same time.<sup>619</sup>

315. SERTP Sponsors argue that requiring a binding cost allocation without any consideration of two critical factors proposed for inclusion in the SERTP evaluation process would mean binding cost allocation would be imposed whenever a transmission

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<sup>616</sup> *Id.* at 29.

<sup>617</sup> *Id.* at 29-30.

<sup>618</sup> *Id.* at 32.

<sup>619</sup> *Id.* at 35.

project satisfies the benefit-to-cost analysis.<sup>620</sup> SERTP Sponsors argue that Order No. 1000 does not dictate such a result or require this as a standard. They contend that the Commission stated that the cost allocation principle pertaining to the benefit-to-cost ratio “does not require the use of a benefit to cost ratio threshold.”<sup>621</sup> SERTP Sponsors argue that the benefit-to-cost ratio was described as a means to potentially “help certain transmission planning regions to determine which transmission facilities have sufficient net benefits to be selected in the regional transmission for purposes of cost allocation.”<sup>622</sup> As a result, SERTP Sponsors contend, requiring binding cost allocation upon satisfying only the benefit-to-cost ratio deviates from Order No. 1000 and would constitute a new standard that would need to be the subject of a notice and comment process before it can take effect.

316. SERTP Sponsors argue that by imposing binding cost allocation obligations in this way, the First Compliance Order impermissibly determines a substantive outcome of the transmission facility proposed for selection in a regional transmission plan for purposes of cost allocation, which is inconsistent with the Commission’s commitment in Order No. 1000 not to dictate substantive outcomes of a regional transmission planning process.

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<sup>620</sup> *Id.* at 40. While not clear, SERTP Sponsors seem to be referring to the following two factors: (1) the detailed financial terms for a proposed transmission project, as modified by agreement of the transmission developer and beneficiaries, are acceptable to each beneficiary and (2) approval is obtained from all of the jurisdictional and/or governance authorities of the impacted utilities. In their first compliance filings, Filing Parties proposed that the detailed financial terms would include the total cost to be allocated to beneficiaries if the proposed transmission project were to be selected in a regional transmission plan for purposes of cost allocation, and components that comprise costs, such as the costs of: (1) engineering, procurement, and construction consistent with Good Utility Practice and standards, and specifications acceptable to the transmission provider, (2) financing costs, required rates of return, and any and all incentive-based (including performance based) rate treatments, (3) ongoing operations and maintenance of the proposed transmission project, (4) provisions for restoration, spare equipment and materials, and emergency repairs, and (5) any applicable local, state, or federal taxes. First Compliance Order, 144 FERC ¶ 61,054 at P 202 n.352.

<sup>621</sup> SERTP Sponsors Rehearing Request at 40 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 647).

<sup>622</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 648 (emphasis added)).

SERTP Sponsors contend that such a binding cost allocation requirement is also inconsistent with section 202(a) of the FPA, and the First Compliance Order fails to articulate its authority for this determination. SERTP Sponsors contend that the Commission may only act within the areas where Congress has conferred upon it authority to act.<sup>623</sup> For all these reasons, SERTP Sponsors assert that that Commission should reverse and eliminate the new standard effectively imposing binding cost allocation upon satisfaction of the benefit-to-cost ratio analysis.<sup>624</sup>

317. SERTP Sponsors argue that in addition to the various approvals that the Non-Public Utility Sponsors highlighted they must comply with in connection with selection in a regional transmission plan for purposes of cost allocation, as referenced in the First Compliance Order,<sup>625</sup> a number of the Non-Public Utility Sponsors are Rural Utilities Service borrowers, and thus may need Rural Utilities Service approval under certain circumstances to assume cost responsibility for a project requiring significant investment.<sup>626</sup> SERTP Sponsors argue that review of, and compliance with, such requirements should be permitted.<sup>627</sup>

318. SERTP Sponsors state that the First Compliance Order asserts that state construction approvals may be relevant for removal of a project already selected for selection in a regional transmission plan for purposes of cost allocation, but may not be examined as part of the selection process.<sup>628</sup> SERTP Sponsors state that for support, the Commission cites language from Order No. 1000-A regarding the establishment of milestones *after* a project is selected for selection in a regional transmission plan for purposes of cost allocation with one of the milestones being the need for state approvals to construct the transmission facility.<sup>629</sup> SERTP Sponsors argue that this language,

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<sup>623</sup> *Id.* at 41 (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002)).

<sup>624</sup> *Id.*

<sup>625</sup> *Id.* at 35 (citing First Compliance Order, 144 FERC ¶ 61,054 at PP 192-193).

<sup>626</sup> *Id.*

<sup>627</sup> *Id.* at 35-36.

<sup>628</sup> *Id.* at 36 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 199 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 442)).

<sup>629</sup> *Id.*

however, says nothing about the legal approvals that the Non-Public Utility Sponsors must satisfy *ab initio* in order to bind themselves to significant expenditures of funds. SERTP Sponsors contend that if the Commission wants cost allocation to be mandatory in the selection process (a time during which the costs are preliminary and subject to unanticipated change over the planning process), then the Commission must allow for jurisdictional and governance approvals regarding those binding commitments to be made in the same time frame.<sup>630</sup>

319. Furthermore, SERTP Sponsors argue that Order No. 1000-A did *not* hold that state approvals were limited to only *after* a project has been selected for selection in the regional transmission plan for purposes of cost allocation. SERTP Sponsors contend, that the First Compliance Order makes that leap by concluding that “the Commission did not permit public utility transmission providers to require that a transmission developer obtain approvals ... from all of the ... governance authorities of the [i]mpacted utilities ... as a *precondition*” of the project being selected for selection in a regional transmission plan for purposes of cost allocation. SERTP Sponsors contend that the First Compliance Order fails to provide any supporting authority for this proposition, thereby impermissibly amending Order No. 1000 without following notice and comment procedures. SERTP Sponsors contend that what Order No. 1000-A actually intended was to encourage public utility transmission providers to establish a formal role for state commissions in the regional planning process.<sup>631</sup> They argue that this is exactly what the “governance and regulatory approvals” proposal does.<sup>632</sup>

320. SERTP Sponsors contend that the First Compliance Order also misreads the SERTP proposal as abdicating the SERTP region’s responsibility on selection of a transmission facility in a regional transmission plan for purposes of cost allocation to the states.<sup>633</sup> SERTP Sponsors argue that they remain the NERC-registered transmission planners and planning authorities for the electric grid in the SERTP region. SERTP Sponsors assert that their proposal simply recognizes the crucial role of approvals from jurisdictional entities and governance authorities to ensure that project’s viability.<sup>634</sup>

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<sup>630</sup> *Id.*

<sup>631</sup> *Id.* at 37 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 290).

<sup>632</sup> *Id.*

<sup>633</sup> *Id.* (citing First Compliance Order, 144 FERC ¶ 61,054 at P 200).

<sup>634</sup> *Id.* at 37-38.

321. SERTP Sponsors argue that accounting for applicable federal, state, and local laws and governance authorities that impact the viability of a project is a fundamental part of the process for selecting transmission projects in a regional transmission plan for purposes of cost allocation, and does not equate to abdication of responsibility for that selection process.<sup>635</sup> SERTP Sponsors state that the Commission also suggested that state commissions such as the Alabama Commission could propose mechanisms for inclusion in the regional compliance filings allowing state commissions to veto projects, providing another indication that state and governance matters could be reflected in regional compliance filings.<sup>636</sup>

322. SERTP Sponsors argue that the Commission should respect the state-endorsed, integrated-resource planning-driven transmission planning processes that the SERTP Sponsors use today and clarify that the First Compliance Order's requirements will not result in the transmission planning processes second-guessing, disrupting, or delaying the implementation of integrated resource planning processes.<sup>637</sup>

## (2) Commission Determination

323. We deny the requests for rehearing. In the First Compliance Order, the Commission rejected Filing Parties' 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 affirm the First Compliance Order's directive 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 the Alabama Commission and NARUC regarding the role of state authorities in the regional transmission planning process. We reiterate

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<sup>635</sup> *Id.* at 38.

<sup>636</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 502 (“We decline, however, to mandate veto rights for state committees, but do not preclude public utility transmission providers from proposing such mechanisms on compliance if they choose to do so.”)); Order No. 1000-A, 139 FERC ¶ 61,132 at P 614; *see also* First Compliance Order, 144 FERC ¶ 61,054 at P 188 (acknowledging the Alabama Commission's comments arguing that the SERTP proposal is consistent with Alabama law and appropriately preserves a role for the state commission with regard to utilities within its jurisdiction).

<sup>637</sup> *Id.* at 44 (citing FPA §§ 201, 217(b)(4)).

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>638</sup> Moreover, we note that selection in the SERTP regional transmission plan for purposes of cost allocation does not confer a right to construct, and such selection does not preempt state laws regarding siting or construction of transmission facilities.<sup>639</sup> 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 transmission facilities.”<sup>640</sup> The Commission reiterated that “nothing in Order No. 1000 creates any new authority for the Commission nor public utility transmission provider acting through a regional transmission planning process to site or authorize construction of transmission projects.”<sup>641</sup>

324. Furthermore, as we explain above in the Affirmative Obligation to Plan section of this order, consideration of potential transmission solutions at the regional level is not inconsistent with state-level integrated resource planning processes. The Commission has found that to be just and reasonable under the FPA, a regional transmission planning process must consider transmission facilities that are driven by transmission needs associated with maintaining reliability, addressing economic considerations, and associated with public policy requirements and provide a means for allocating the costs of each type of transmission facility to beneficiaries.<sup>642</sup> The transmission needs and benefits of multiple transmission providers are considered in the regional transmission planning process and, therefore, Filing Parties and stakeholders may be able to identify needs and benefits not otherwise considered in its integrated resource planning process or associated with long-term firm transmission requests under the OATT, or identify

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<sup>638</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 200; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at PP 293-295.

<sup>639</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 159, n.155.

<sup>640</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 378-382.

<sup>641</sup> *Id.* P 382.

<sup>642</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 689.



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>643</sup>

325. In their rehearing, SERTP Sponsors complain that requiring Filing Parties to remove the provisions that required transmission developers to provide, at the point of selection, detailed financial terms acceptable to each beneficiary and approval of the transmission project from all jurisdictional and/or governance means that binding cost allocation is imposed whenever a transmission project satisfies the benefit-to-cost analysis. We agree that this could be the result if the Commission had not permitted Filing Parties to propose other evaluation criteria in their subsequent compliance filings, because the remaining evaluation criterion is whether a proposed transmission project meets the benefit-to-cost ratio. However, the Commission did permit Filing Parties to propose additional evaluation and selection criteria on compliance, which Filing Parties have provided. Under Filing Parties' proposal, a transmission project will need to meet a benefit-to-cost ratio before it can be selected in the regional transmission plan for purposes of cost allocation, but a transmission project that meets the ratio is not automatically selected.

326. We disagree with SERTP Sponsors' contention that the First Compliance Order discourages transmission planning coordination and, therefore, runs afoul of FPA sections 202 and 217(b) (4) by dissuading the Non-Public Utility Transmission Providers from participating in the process. We note that, notwithstanding their objections to the First Compliance Order, Non-Public Utility Transmission Providers have made the decision to enroll in the SERTP region, subject to our determinations on their compliance filings proposed in response to that order. Furthermore, we agree with SERTP Sponsors that integrated resource planning is important and recognize that SERTP Sponsors must comply with the requirements of that process. We also find that the First Compliance Order, which implements the requirements of Order No. 1000, is consistent with section 217(b)(4) because it supports 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

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<sup>643</sup> Additionally, as discussed above in the Affirmative Obligation to Plan section of this order, we reject Filing Parties' proposed definition of "Transmission Needs," which would limit the transmission 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.

state authority. Furthermore, it appears that state regulators and non-public utility transmission providers played an active role in working with public utility transmission providers and other stakeholders in developing the proposed regional transmission planning processes.<sup>644</sup> Thus, we disagree with SERTP Sponsors' contention that the directives in the First Compliance Order discouraged non-public utility transmission providers' coordination with public utility transmission providers and other industry participants.

(c) **Compliance**

(1) **Summary of Compliance Filings**

327. Filing Parties state that they have removed the requirement that a transmission developer obtain approvals from all of the 'jurisdictional and/or governance authorities of the impacted utilities' as a precondition of its transmission facilities being selected in a regional plan for purposes of regional cost allocation.<sup>645</sup> Filing Parties observe, however, that the First Compliance Order provides that the Commission "encourages state entities ... to consult, collaborate, inform, and even recommend a transmission project."<sup>646</sup> Consistent with this statement, Filing Parties propose to revise their OATTs provide that the state jurisdictional and/or governance authorities of the impacted utilities will be provided an opportunity to review the transmission project proposal and otherwise consult, collaborate, inform, and/or provide recommendations to the transmission provider. The state jurisdictional and/or governance authorities' recommendations will inform the transmission provider's selection decision and such a recommendation and/or the selection of a project in a regional transmission plan for purposes of cost allocation shall not prejudice the state jurisdictional and/or governance authorities' exercise of any and all rights granted to them pursuant to state or Federal law with regard to any project evaluated and/or selected in the regional transmission plan for purposes of cost allocation that falls within such authorities' jurisdiction(s).

328. Filing Parties also propose to consider as one factor in the evaluation process any recommendation provided by state jurisdictional and/or governance authorities, including whether the transmission developer is considered reasonably able to construct the

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<sup>644</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 277, 291.

<sup>645</sup> *E.g.*, Southern Companies Transmittal Letter at 27 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 199); Southern Companies OATT, Attachment K § 17.4.

<sup>646</sup> *Id.* (citing First Compliance Order, 144 FERC ¶ 61,054 at P 200).

transmission project in the proposed jurisdiction(s). However, Filing Parties also state they have proposed OATT revisions to clarify that the transmission provider will make the selection decision.<sup>647</sup>

(2) **Protests/Comments**

329. LS Power argues that although Filing Parties were ordered to remove provisions that made regional project selection conditioned on approval by jurisdictional or governance authorities, Filing Parties revised the provision in the form of the jurisdictional and/or governance authority review provision of their OATTs.<sup>648</sup> LS Power contends that this provision makes the same basic approval process part of the analysis but simply does so in the form of required participation by those jurisdictional or governance entities in Filing Parties' decision-making process. LS Power argues that the wording of this proposed language makes it clear that Filing Parties' selection decision will be based on the jurisdictional and governance entities determination and therefore the provision remains improper.<sup>649</sup>

330. LS Power further argues that stakeholders, including state or other jurisdictional entities, should have the ability to "consult, collaborate, inform and/or provide recommendations to the Transmission Provider" within a pre-defined schedule.<sup>650</sup> LS Power asserts that Filing Parties have no basis to provide a specific right to jurisdictional or governance entities in the form of the jurisdictional and/or governance authority section that acknowledges that regardless of the decision by Filing Parties, any such agency retains the scope of its jurisdictional rights to approve or reject the project in its jurisdictional process. LS Power contends that SERTP analysis, however, is not intended to be a replication of the state or other process but a determination based on federal principles.<sup>651</sup>

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<sup>647</sup> *E.g.*, Southern Companies OATT, Attachment K § 17.5; Southern Companies Transmittal Letter at 27.

<sup>648</sup> LS Power Protest at 27.

<sup>649</sup> *Id.*

<sup>650</sup> *Id.* at 27 - 28.

<sup>651</sup> *Id.* at 28.

**(3) Answer**

331. SERTP Sponsors argue that LS Power’s claim that “[t]here is no basis to provide a specific right to jurisdictional or governance entities” ignores the express language of Order No. 1000, which encourages a “formal role for state commissions.”<sup>652</sup> SERTP Sponsors explain that in the First Compliance Order, the Commission clarified that such role could not extend beyond the ability to “consult, collaborate, inform, and even recommend a transmission project.”<sup>653</sup> SERTP Sponsors contend that in formulating their compliance proposal, Filing Parties incorporated the Commission’s clarification and matched the role for jurisdictional/governance authorities with the words of the First Compliance Order. Therefore, SERTP Sponsors contend LS Power’s argument should be rejected.<sup>654</sup>

**(4) Commission Determination**

332. We find that Filing Parties’ proposed revisions regarding the participation of jurisdictional and governance authorities in the regional transmission planning process comply with the Commission’s directives in the First Compliance Order. First, Filing Parties removed from their respective OATTs the provision stating that a transmission project will not be selected in the regional transmission plan for purposes of cost allocation until the project has obtained approvals from all of the jurisdictional and/or governance authorities of the impacted utilities.<sup>655</sup> Filing Parties’ revised proposal grants to those same authorities “an opportunity to review the transmission project proposal and otherwise consult, collaborate, inform, and/or provide recommendations to the” regional transmission planning process.<sup>656</sup> We interpret this provision to mean that state jurisdictional and/or governance authorities of the impacted utilities will be provided an opportunity to review a transmission project proposal during the course of the then-current regional transmission planning cycle but that such review will not delay timely selection of a more efficient or cost-effective transmission project. Under the timeline in

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<sup>652</sup> SERTP Sponsors Answer at 55 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 290).

<sup>653</sup> *Id.* (citing First Compliance Order, 144 FERC ¶ 61,054 at P 200).

<sup>654</sup> *Id.*

<sup>655</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 199.

<sup>656</sup> *E.g.*, Southern Companies OATT, Attachment K § 17.4.

the OATTs, transmission providers will, among other things, provide an overview of that transmission planning cycle's final Order No. 1000 regional transmission plan at the Annual Transmission Planning Summit and Assumptions Meeting (Annual Summit).<sup>657</sup> Thus, for a state jurisdictional and/or governance authority recommendation to be considered in the selection process, it will have to be provided sufficiently prior to the Annual Summit to allow the transmission providers to consider the recommendation in their evaluation of the transmission project proposals. However, any delay in or lack of a recommendation from a state jurisdictional and/or governance authority must not affect when a transmission project proposal is considered for selection in the regional transmission plan for purposes of cost allocation. We find that given our interpretation of the provision, it is not inconsistent with the Commission's requirements in the First Compliance Order and Order No. 1000. While it confers on state jurisdictional and governmental authorities an explicit right to review transmission projects proposed for potential selection in the regional transmission plan for purposes of cost allocation, such a right is similar to the one that already exists for any stakeholder in the SERTP regional transmission planning process. We disagree with LS Power that Filing Parties' proposed revisions reflect the same approval process rejected by the Commission in the First Compliance Order, especially taken together with Filing Parties' proposal revising their OATTs to clarify that the transmission providers in the region will be responsible for selecting transmission projects in the regional transmission plan for purposes of cost allocation.

**ii. Financial Requirements**

**(a) First Compliance Order**

333. The First Compliance Order rejected Filing Parties' proposal to use avoided costs as the sole metric for evaluating whether a transmission facility proposed for selection in a regional transmission plan for purposes of cost allocation is a more efficient or cost-effective solution to transmission needs.<sup>658</sup> In addition, the Commission found Filing Parties' compliance filings do not make clear that the SERTP regional transmission planning process will identify and evaluate transmission solutions other than those proposed by transmission developers.<sup>659</sup> As a result, the Commission found Filing Parties' OATTs must include detail as to how the SERTP regional transmission planning

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<sup>657</sup> *Id.* § 1.2.4.1. The Annual Summit occurs in the fourth quarter of each year. *Id.*

<sup>658</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 195.

<sup>659</sup> *Id.*

process will determine through analysis potentially more efficient or cost-effective transmission solutions to regional transmission needs.<sup>660</sup> The First Compliance Order required Filing Parties to eliminate proposed revisions that the detailed financial terms associated with a project proposed for purposes of regional cost allocation must be “acceptable to each identified beneficiary.”<sup>661</sup>

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

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

334. SERTP Sponsors argue that the Commission’s decision to require Filing Parties to remove the requirement that a transmission developer provide detailed financial terms for its proposed transmission project that are acceptable to each beneficiary prohibits beneficiaries from reviewing a project’s detailed financial terms as part of final selection in a regional transmission plan for purposes of cost allocation.<sup>662</sup> SERTP Sponsors assert that the requirement to allow beneficiaries to review and approve the financial terms of a transmission project as part of the selection decision accommodated non-public utilities in a way that allowed them to participate in the planning process. SERTP Sponsors argue that the Commission’s decision is contrary to many statements in Order No. 1000 that regional process should be able to accommodate the types of statutory and governance requirements that non-public utilities must comply with.<sup>663</sup>

(2) **Commission Determination**

335. We deny SERTP Sponsors’ request for rehearing and affirm the Commission’s directive that Filing Parties remove from their respective OATTs the proposed condition that a transmission project may be selected in a regional transmission plan for purposes of cost allocation only if each beneficiary finds acceptable the financial terms of the contract required by the regional transmission planning process.<sup>664</sup> A primary purpose of the

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<sup>660</sup> *Id.*

<sup>661</sup> *Id.* P 202.

<sup>662</sup> SERTP Sponsors Rehearing Request at 41-42.

<sup>663</sup> *Id.* at 42-43.

<sup>664</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 202.

regional transmission planning process is to identify those transmission projects that are more efficient or cost-effective transmission solutions to regional transmission needs, and to develop a regional transmission plan that reflects those transmission solutions. However, to achieve that result, the transmission planning process must adhere to open and transparent procedures for identifying and selecting more efficient or cost-effective transmission solutions. We affirm that it would be inappropriate for a transmission project that has already been found to be the more efficient or cost-effective transmission project based on the evaluation criteria to be subject to a separate financial review by all identified beneficiaries. We note that, by rejecting the financial terms requirement, the Commission did not prohibit Filing Parties from considering the particular costs that Filing Parties proposed to include in their financial term review;<sup>665</sup> rather, Filing Parties may, to the extent provided in their OATTs, consider those costs as part of the cost-benefit analysis performed in the regional transmission planning process.

336. We find unpersuasive SERTP Sponsors' argument that the First Compliance Order's findings regarding financial terms are inconsistent with the assurances the Commission made in Order No. 1000-A that non-public utility transmission providers such as MEAG Power could seek to include mechanisms to accommodate their unique status.<sup>666</sup> As discussed in the Transmission Planning Region section, we accept, as compliant with Order No. 1000, Filing Parties' proposal to adopt withdrawal provisions

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<sup>665</sup> Filing Parties proposed that the financial terms include the total cost to be allocated to beneficiaries if the proposed transmission project were to be selected in a regional plan for purposes of cost allocation, and components that comprise costs, such as the costs of: (1) engineering, procurement, and constructions consistent with Good Utility Practice and standards, and specifications acceptable to the transmission provider, (2) financing costs, required rates of return, and any and all incentive-based (including performance based) rate treatments, (3) ongoing operations and maintenance of the proposed transmission project, (4) provisions for restoration, spare equipment and materials, and emergency repairs, and (5) any applicable local, state, or federal taxes. *Id.* n.352.

<sup>666</sup> In Order No. 1000-A, the Commission acknowledged concerns raised by petitioners such as MEAG Power about how non-public utility transmission providers make the choice to join a transmission planning region, and concluded that these concerns are best addressed in the first instance through participation in the development of the regional transmission planning process and cost allocation method that its neighboring public utility transmission provider(s) will rely on to comply with Order No. 1000. Order No. 1000-A, 139 FERC ¶ 61,132 at PP 277, 279.

to facilitate the participation of non-public utility transmission providers in the regional transmission planning process. Accordingly, we disagree that our holdings are inconsistent with assurances made in Order No. 1000-A regarding the accommodation of non-public utility transmission providers.

(c) **Compliance**

(1) **Summary of Compliance Filings**

337. Filing Parties assert that they have removed the revisions that the detailed financial terms associated with a project proposed for purposes of regional cost allocation must be “acceptable to each identified beneficiary.”<sup>667</sup> Filing Parties also explain that they have removed previous references in their OATTs related to the need to have reached an agreement with beneficiaries.<sup>668</sup>

338. Filing Parties state that they have complied with the Commission’s directive “to clarify the methods they will use to determine the transmission project costs of the transmission facilities that they will evaluate ... and to confirm that incumbent and nonincumbent costs will be scrutinized in the same manner.”<sup>669</sup>

(2) **Commission Determination**

339. We find that Filing Parties’ proposed revisions to their OATTs to: (1) remove the words “acceptable to each identified beneficiary;” (2) remove previous references in their OATTs related to the need to have reached an agreement with beneficiaries; and (3) clarifying that incumbents and nonincumbents transmission project costs will be scrutinized in the same manner satisfies the directives in the First Compliance Order.<sup>670</sup> However, we note that Filing Parties’ OATTs contain the heading, “The Transmission Developer to Provide More Detailed Financial Terms *Acceptable to the Beneficiaries* and

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<sup>667</sup> *E.g.*, Southern Companies Transmittal Letter at 27; Southern Companies OATT, Attachment K §§ 17.2. 4, 17.4.

<sup>668</sup> *E.g.*, Southern Companies OATT, Attachment K § 17.2. 4; Southern Companies Transmittal Letter at 27.

<sup>669</sup> *E.g.*, Southern Companies Transmittal Letter at 28 (citing the First Compliance Order, 144 FERC ¶ 61,054 at P 203).

<sup>670</sup> First Compliance Order, 144 FERC ¶ 61,054 at PP 202-203.



the Performance of a Detailed Transmission Benefit-to-Cost Analysis.” As a result, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their respective OATTs to remove the words “Acceptable to the Beneficiaries.”

**iii. Cost Benefit Analysis**

**(1) Summary of Compliance Filings**

340. As part of the proposed evaluation process, Filing Parties propose that, utilizing coordinated models and assumptions, the transmission provider will perform analysis, including power flow, dynamic and short circuit analyses, as necessary, and apply its planning guidelines and criteria to evaluate transmission projects submitted for potential selection in the regional transmission plan for purposes of cost allocation, determine whether, throughout the ten year planning horizon, a proposed transmission project: (1) addresses an underlying Transmission Need(s);<sup>671</sup> (2) addresses a Transmission Need(s) that is being addressed with projects already in the transmission provider’s local transmission plan or the SERTP regional transmission plan;<sup>672</sup> (3) addresses a Transmission Need(s) for which no transmission project is currently included in the transmission provider’s local transmission plan or in the SERTP regional transmission plan and, if so, identify an alternative transmission project(s) which would be required to fully and appropriately address the same Transmission Need(s) (e.g., otherwise considered to be the more efficient or cost-effective transmission alternative);<sup>673</sup> (4) requires any additional projects be implemented;<sup>674</sup> and (5) reduces and/or increases real power transmission losses on the transmission system within the SERTP region.<sup>675</sup> Filing Parties assert that identifying and assessing alternative transmission options for previously unidentified Transmission Needs provides both a basis to fully quantify the benefits of the transmission project proposed for selection in the regional transmission

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<sup>671</sup> *E.g.*, Southern Companies OATT, Attachment K § 17.1(1). Filing Parties’ proposed definition of “Transmission Needs” is addressed above in the Affirmative Obligation to Plan section of this order.

<sup>672</sup> *Id.* § 17.1(2).

<sup>673</sup> *Id.* § 17.1(3).

<sup>674</sup> *Id.* § 17.1(4).

<sup>675</sup> *Id.* § 17.1(5).

plan for purposes of cost allocation and also demonstrate prudence on the part of the transmission provider that potentially more efficient or cost-effective transmission project alternatives have been investigated.<sup>676</sup>

341. Filing Parties' revised OATTs will assess whether the transmission developer's transmission project proposed for potential selection in the regional transmission plan for purposes of cost allocation is considered at that point in time to yield meaningful, net regional benefits. Specifically, the proposed transmission project should yield a regional transmission benefit-to-cost ratio of at least 1.25 and no individual impacted utility should incur increased unmitigated transmission costs.<sup>677</sup> The benefit used in this calculation for purposes of assessing the transmission developer's proposed transmission project will be quantified by the beneficiaries' total cost savings in the SERTP region associated with: (1) all transmission projects in the ten year transmission expansion plan which would be displaced;<sup>678</sup> (2) all regional transmission projects included in the regional transmission plan which would be displaced as identified in the relevant section of their OATTs<sup>679</sup> and to the extent no overlap exists with those transmission projects identified as displaceable in the transmission provider's ten year transmission expansion plan. This includes transmission projects currently selected in the regional transmission plan for purposes of cost allocation;<sup>680</sup> and (3) all alternative transmission project(s), 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 latest ten year expansion plan and/or regional transmission plan.<sup>681</sup>

342. The cost used in this calculation will be quantified by the transmission cost within the SERTP region associated with: (1) the project proposed for selection in a regional transmission plan for purposes of cost allocation;<sup>682</sup> and (2) any additional projects within

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<sup>676</sup> *E.g.*, Southern Companies Transmittal Letter at 32-33.

<sup>677</sup> *E.g.*, Southern Companies OATT, Attachment K § 17.2.

<sup>678</sup> *Id.* § 17.2(A).

<sup>679</sup> *Id.* § 17.1.

<sup>680</sup> *Id.* § 17.2(B).

<sup>681</sup> *Id.* § 17.2.1.

<sup>682</sup> *Id.* § 17.2.1 (2) (A).

the SERTP region on impacted utility transmission systems required to implement the proposal.<sup>683</sup> If the initial benefit-to-cost calculation results in a ratio equal to or greater than 1.0 then the transmission provider will calculate the estimated change in real power transmission losses on the transmission system(s) of impacted utilities located in SERTP. In that circumstance, an updated benefit-to-cost ratio will be calculated;<sup>684</sup> and (A) the cost savings associated with a calculated reduction of real power energy losses on the transmission system(s) will be added to the benefit;<sup>685</sup> and (B) the cost increase associated with a calculated increase of real power energy losses on the transmission system(s) will be added to the cost.<sup>686</sup>

343. The transmission provider will develop planning level cost estimates for use in determining the regional benefit-to-cost ratio and detailed engineering estimates may be used if available.<sup>687</sup>

344. The cost savings and/or increase associated with real power losses on the transmission system(s) within the SERTP region with the implementation of the proposed regional transmission project will be estimated for each impacted utility throughout the ten year transmission planning horizon as follows: (1) the transmission provider will utilize power flow models to determine the change in real power losses on the transmission system at estimated average load levels; (2) the transmission provider will estimate the energy savings associated with the change in real power losses utilizing historical or forecasted data that is publicly available (e.g., FERC Form 714).<sup>688</sup>

345. For potential transmission projects found to satisfy the benefit-to-cost analysis, the impacted utilities will then consult with the transmission developer of that project to establish a schedule for the following activities: (1) the transmission developer providing detailed financial terms for its proposed project and (2) the proposed transmission project to be reviewed by the jurisdictional and/or governance authorities of the impacted utilities

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<sup>683</sup> *Id.* § 17.2.1 (2) (B).

<sup>684</sup> *Id.* § 17.2.1 (3).

<sup>685</sup> *Id.* § 17.2.1 (3) (A).

<sup>686</sup> *Id.* § 17.2.1 (3) (B).

<sup>687</sup> *Id.* § 17.2.2.

<sup>688</sup> *Id.* § 17.2.3

pursuant to the “Jurisdictional and/or Governance Authority Review” section for potential selection in a regional transmission plan for purposes of cost allocation.<sup>689</sup>

346. Under Filing Parties’ OATTs, by the date specified in the schedule, the transmission developer will identify the detailed financial terms for its proposed project, establishing in detail the total cost to be allocated to the beneficiaries if the proposed project were to be selected in a regional transmission plan for purposes of cost allocation and the components that comprise that cost. These components include the costs of: (1) engineering, procurement, and construction consistent with Good Utility Practice and standards and specifications acceptable to the transmission provider; (2) financing costs, required rates of return, and any and all incentive-based (including performance based) rate treatments, (3) ongoing operations and maintenance of the proposed transmission project, (4) provisions for restoration, spare equipment and materials, and emergency repairs, and (5) any applicable local, state, or federal taxes.<sup>690</sup>

347. To determine whether the proposed project is considered at that time to remain a more efficient or cost-effective alternative, the transmission provider will then perform a more detailed 1.25 transmission benefit-to-cost analysis consistent with that performed in the relevant section of the OATTs.<sup>691</sup> This more detailed transmission benefit-to-cost analysis will be based upon the detailed financial terms provided by the transmission developer, as may be modified by agreement of the transmission developer and beneficiary(ies), and any additional, updated, and/or more detailed transmission planning, cost or benefit information/component(s) as provided by the impacted utilities that are applicable to/available for the proposed transmission project, the projects that would be displaced, and any additional projects required to implement the proposal and real power transmission loss impacts.<sup>692</sup>

348. In addition, to provide for an equitable comparison, the costs of the transmission projects that would be displaced and/or required to be implemented in such a detailed benefit-to-cost analysis will include comparable cost components as provided in the proposed project’s detailed financial terms (and vice-versa), as applicable. The cost components of the transmission projects that would be displaced will be provided by the

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<sup>689</sup> *Id.* § 17.2.4.

<sup>690</sup> *Id.* § 17.3.1.

<sup>691</sup> *Id.* § 17.2.1

<sup>692</sup> *Id.* § 17.3.2.

transmission provider and/or other impacted utilities that would own the displaced transmission project. The cost components of the proposed transmission project and of the transmission projects that would be displaced will be reviewed and scrutinized in a comparable manner in performing the detailed benefit-to-cost analysis.<sup>693</sup>

349. Specifically, Filing Parties state that their process for evaluating projects proposed for purposes of regional cost allocation provides for two types of benefits-to-costs analyses to be performed. Filing Parties explain the first evaluation is a high-level analysis that is performed when the proposal is first introduced.<sup>694</sup> Filing Parties state that in keeping with the initial nature of this analysis (along with the assumption that the transmission developer would not have developed the detailed cost components for the proposal at such an initial juncture), the analysis is based upon high-level transmission planning cost estimates.<sup>695</sup>

350. Filing Parties explain that, “the Transmission Provider will develop [the] planning level cost estimates” to ensure that the cost components are calculated on the same basis. According to Filing Parties, if the proposed project passes the initial benefit-to-cost analysis and otherwise remains a valid proposal for purposes of regional cost allocation, then they would perform a detailed benefit-to-cost analysis. Given the competitive nature of the Commission’s Order No. 1000,<sup>696</sup> Filing Parties state that the detailed cost components for a transmission project proposed for purposes of regional cost allocation are to be provided by the transmission developer.<sup>697</sup> Filing Parties note that Filing Parties’ OATTs specify the type of cost components that should be detailed, and state that those total costs are compared against the projects that the proposed project would displace.<sup>698</sup> Filing Parties state they have revised their OATTs to further confirm that the

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<sup>693</sup> *Id.* § 17.3.3.

<sup>694</sup> *Id.* § 17.2.

<sup>695</sup> *Id.*

<sup>696</sup> *E.g.*, Southern Companies Transmittal Letter at 28 (citing Order No. 1000-A 139 FERC ¶ 61,132 at P 87 (stating that Order No. 1000 allows “nonincumbent transmission developers to compete in the proposal of more efficient or cost-effective transmission solution)).

<sup>697</sup> *Id.*

<sup>698</sup> *E.g.*, Southern Companies OATT, Attachment K § 17.3.1.

costs components will be comparable and that the costs will be scrutinized in a fair manner.

(2) **Protests/Comments**

351. LS Power argues although Filing Parties propose to require the submission of cost estimates, in making an initial cost benefit analysis, Filing Parties propose to substitute “planning level cost estimates,”<sup>699</sup> which appears to allow individual transmission providers to substitute their own estimate of a proposed project’s cost for that of the project sponsor. LS Power contends that this provision has the potential to significantly influence the cost benefit analysis, particularly because the entity substituting the “planning level costs” is the entity whose project would be replaced. LS Power argues that the provision is thus improper. LS Power contends that to the extent a project sponsor provides a cost estimate, the evaluation of cost benefits should use that cost estimate in the screening unless Filing Parties can establish that the cost estimate is inaccurate.<sup>700</sup>

352. LS Power explains that Filing Parties’ proposed OATT revisions state that if a project meets the initial cost benefit tests, the impacted utilities will consult with the transmission project developer to establish a schedule to provide detailed financial terms for its project and for review by jurisdictional or governance authorities. LS Power argues to the extent that such detailed financial information is necessary, it should be required as part of the initial information submission, and should also be prepared for all projects in the transmission plan, including local projects. More important, LS Power argues that the schedule for all portions of the regional transmission planning process should be established in the OATT rather than scheduled on an ad hoc basis at the whim of the impacted utilities. As a result, LS Power contends that the transmission benefit-to-cost analysis based upon the planning level cost estimates section of Filing Parties’ OATTs should be struck and an affirmative transmission planning schedule should be set for all aspects of the planning process.<sup>701</sup>

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<sup>699</sup> LS Power Protest at 26 (referencing Southern Companies OATT, Attachment K § 17.2.2).

<sup>700</sup> *Id.* at 26-27.

<sup>701</sup> *Id.* at 27.

**(3) Answer**

353. SERTP Sponsors assert that the specific language to which LS Power objects – the concept that the developer and the impacted utilities will develop a schedule to provide detailed terms and a schedule for review – remains materially unchanged from Filing Parties’ first compliance filings.<sup>702</sup> SERTP Sponsors argue that the proposed process is designed to ensure the cost-effectiveness of a project selected in the regional plan for cost allocation because such determination will be made with increasingly recent (and, thus, increasingly more accurate) assumptions both regarding transmission needs and cost estimates.<sup>703</sup> SERTP Sponsors argue that LS Power provides no justification for removing the flexibility to address a range of potential projects. SERTP Sponsors explain that different projects may reasonably call for different evaluation schedules. For example, SERTP Sponsors assert a transmission facility whose costs will be allocated solely to the non-public utility transmission providers (whose regulatory and governance processes are much different than the public utility transmission providers) and whose in-service date is estimated to be nine years out would require a very different evaluation schedule than a transmission facility whose costs will be allocated to public utility transmission providers and or both public and non-public utility transmission providers and whose in-service date is estimated to be four years out.<sup>704</sup> SERTP Sponsors contend that LS Power can provide no justification why a single, rigid evaluation schedule should be employed for these two very different projects. Accordingly, SERTP Sponsors contend that the Commission should approve the language as proposed in Filing Parties’ OATTs.<sup>705</sup>

**(4) Commission Determination**

354. We find that Filing Parties have partially complied with the First Compliance Order’s directives regarding the cost-benefit analysis used in the evaluation process. We also find, as discussed below, that Filing Parties have clarified the methods they will use to determine the costs of the transmission facilities that they will evaluate and confirmed that they will scrutinize cost estimates from incumbent and nonincumbent transmission

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<sup>702</sup> SERTP Sponsors Answer at 53.

<sup>703</sup> *Id.* at 54.

<sup>704</sup> *Id.*

<sup>705</sup> *Id.*

developers in the same manner as part of the cost-benefit analysis.<sup>706</sup> However, we require Filing Parties to modify their proposal to address certain concerns regarding the number of days between the Transmission Provider's decisions in both the cost-benefit analyses and the Transmission Provider's notification to the transmission developer. We also require Filing Parties to modify their proposal to address certain concerns regarding the number of days between the time that the transmission developer is notified that it has passed each cost-benefit test and the time that the transmission developer must provide detailed financial data.

355. Specifically, we accept Filing Parties' proposal to use planning-level cost estimates determined by Filing Parties to perform an initial high-level analysis to evaluate competing transmission proposals. We find that Filing Parties' proposal to ensure that cost components for such projects are calculated on the same basis is reasonable, provided that it is performed in a transparent and not unduly discriminatory manner. To ensure that transmission developers are fully apprised of any changes to their cost estimates used to perform this initial analysis, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to amend their OATTs to provide transmission developers with a detailed explanation of any adjustments made to the transmission developer's cost estimates to perform this analysis. Providing that information to transmission developers will allow them to challenge any revisions using the region's dispute resolution procedures and, if necessary, at the Commission.

356. Filing Parties also propose to require the transmission developer of a transmission project that has satisfied the initial benefit-to-cost analysis to consult with the impacted utilities to establish a schedule for (1) the transmission developer providing detailed financial terms for its proposed transmission project and (2) the proposed transmission project to be reviewed by the jurisdictional and/or governance authorities of the impacted utilities.<sup>707</sup> The OATT specifies certain deadlines by which transmission developers must submit information to the Transmission Provider, such as the deadline of August 1 of the current planning cycle to submit pre-qualification information.<sup>708</sup> However, for the remaining information requirements, we agree with LS Power that these existing provisions of the OATT do not indicate the time period within which either of the

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<sup>706</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 203.

<sup>707</sup> *E.g.*, Southern Companies OATT, Attachment K § 17.2.4.

<sup>708</sup> *Id.* § 14.



two cost-benefit analyses will be performed within the regional planning cycle, nor when the Transmission Provider will notify the developer whether or not the developer has satisfied the first cost-benefit analysis, or the second cost-benefit analysis in order for the developer to cure any deficiencies. Also, the OATT does not specify the amount of time the developer has from when it is notified to when the developer must provide the detailed financial data.<sup>709</sup> This timeline must be sufficiently detailed for the developer to understand how it can fulfill the information requirements within the planning cycle timeline for its project to be eligible for selection in the regional transmission plan. We therefore direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to provide this additional clarity regarding the number of days between the Transmission Provider's decisions in both cost-benefit analyses and the Transmission Provider's notification to the developer, and the number of days between the time that the developer is notified that it has passed each cost-benefit test and the time that the developer must provide detailed financial data.

357. We deny LS Power's request that, to the extent such detailed financial information is necessary, it should be required as part of the initial information submission and should also be required for all other transmission projects in the regional transmission plan, including any local transmission project. We find it is appropriate that, under Filing Parties' proposal, the detailed financial information is required from a transmission developer—whether incumbent or nonincumbent—only if the transmission project it proposed for potential selection in the regional transmission plan for purposes of cost allocation satisfies the initial benefit-to-cost analysis. That same information is not required for a local transmission project because a local project has not been proposed for selection in the regional transmission plan for purposes of cost allocation and is not eligible to receive regional cost allocation.<sup>710</sup> We also find that given that schedules will differ among transmission projects, it is reasonable to allow impacted utilities the flexibility to work with transmission developers to create a schedule for when the detailed financial information is due for each transmission project that satisfies the initial benefit-to-cost analysis. However, we are concerned that, without a set deadline establishing when the parties must reach agreement on the schedule to provide detailed financial information, there is an opportunity for discriminatory treatment. For instance,

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<sup>709</sup> *Id.* §§ 17.2, 17.3.

<sup>710</sup> A qualified incumbent transmission developer may propose a transmission project from its local transmission plan for potential selection in the regional transmission plan for purposes of cost allocation, in which case it would have to provide the detailed financial information.

the flexibility to create a schedule without a deadline for when the schedule must be complete could create an opportunity to prevent or stall the evaluation process for a particular transmission project. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that set a deadline for the impacted utilities and a transmission developer to have an agreed upon schedule.

**iv. Evaluation Process and Standards**

**(a) First Compliance Order**

358. In the First Compliance Order, the Commission required Filing Parties to: (1) include detail as to how the SERTP regional transmission planning process will determine through analysis potentially more efficient or cost-effective transmission solutions to regional transmission needs; and (2) clarify which transmission projects in a regional transmission plan are deemed “planned transmission projects” such that they may be replaced by a more efficient or cost-effective regional transmission project.<sup>711</sup> The Commission specified that additional OATT clarifications are necessary to ensure that the selection provisions pertaining to projects submitted for purposes of regional cost allocation apply “to projects developed by both incumbent and nonincumbent transmission developers.”<sup>712</sup> Additionally, the Commission required Filing Parties to revise their OATTs to use the phrase “more efficient *or* cost-effective” rather than “more efficient *and* cost-effective.”<sup>713</sup>

359. The Commission further found 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, such evaluation must consider “the relative efficiency and cost-effectiveness of each [proposed transmission] solution.”<sup>714</sup> Thus, the Commission directed Filing Parties, in further compliance filings, to propose OATT revisions explaining how the region will consider the relative efficiency and cost-effectiveness of proposed transmission solutions, as part of its evaluation of transmission solutions proposed in the regional transmission planning process; and (2) explain how the region will ensure its evaluation of transmission

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<sup>711</sup> First Compliance Order, 144 FERC ¶ 61,054 at PP 195-196.

<sup>712</sup> *Id.* P 197.

<sup>713</sup> *Id.* P 198.

<sup>714</sup> *Id.*

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>715</sup>

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

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

360. SERTP Sponsors argue that Filing Parties' OATT revisions already explain how projects proposed for selection in a regional transmission plan for purposes of cost allocation will be evaluated, and the Commission has already found the SERTP Sponsors provide an "open, transparent, and coordinated" process. SERTP Sponsors assert that they have proposed an avoided cost methodology to consider the efficiency and cost-effectiveness of a proposed project as compared to projects included in their existing planning processes. SERTP Sponsors explain that of all cost methodologies, the avoided cost methodology is most consistent with Order No. 1000's "more efficient/cost-effective than projects included in the local plans" directives because it is squarely focused on identifying potentially superior projects than those included in the SERTP Sponsors' existing transmission planning processes, as opposed to other methodologies that analyze other considerations.<sup>716</sup> SERTP Sponsors explain that Filing Parties' proposed language in the OATT implementing their avoided cost methodology details how that methodology would make these efficiency and cost-effective determinations. SERTP Sponsors argue to the extent that the First Compliance Order requires additional explanations, clarification and rehearing is sought because Filing Parties' OATTs already provides such descriptions.<sup>717</sup>

361. Moreover, SERTP Sponsors state that these new OATT provisions are incorporated into the existing regional transmission planning provisions in their respective OATT provisions that the Commission has, again in this proceeding, found to generally "comply with Order No. 890 transmission planning principles."<sup>718</sup>

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<sup>715</sup> *Id.*

<sup>716</sup> SERTP Sponsors Rehearing Request at 79.

<sup>717</sup> *Id.*

<sup>718</sup> *Id.* at 80 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 42).

Accordingly, any transmission planning evaluation of a project proposed for selection in a regional transmission plan for purposes of cost allocation will be shared with stakeholders through the SERTP region's existing "open, transparent, and coordinated" procedures.<sup>719</sup>

362. SERTP Sponsors assert that the existing OATT provisions further explain how coordination and transparency will be provided through the four annual transmission planning meetings that the SERTP Sponsors conduct with stakeholders. SERTP Sponsors state that Southern Companies' Attachment K<sup>720</sup> describes those four meetings and how the SERTP Sponsors "will explain and discuss"<sup>721</sup> with stakeholders the creation of that year's transmission expansion plan. SERTP Sponsors argue because the consideration of whether a project will be selected in a regional plan for purposes of cost allocation would be part of the development of the transmission expansion plan for a given cycle, its analyses would be addressed with stakeholders during the course of the four annual meetings. Therefore, SERTP Sponsors seek clarification that their Attachment Ks already satisfy these requirements. If clarification is denied, then the SERTP Sponsors seek rehearing because the First Compliance Order would, thus, be unreasonable (since the prescribed standard is already satisfied) and the First Compliance Order would be internally inconsistent since it recognizes that the SERTP already satisfies Order No. 890's open, transparent, and coordinated transmission planning principles. SERTP Sponsors argue that any other determination would constitute an amendment to its Order Nos. 890 and 1000 requirements by adding to the openness and transparency requirements without going through a rulemaking process.<sup>722</sup>

363. SERTP Sponsors observe that the First Compliance Order requires that Filing Parties revise their OATTs to specify that the standard for evaluation of transmission projects proposed for selection in a regional transmission plan for purposes of cost allocation is to be "more efficient *or* cost-effective" rather than "more efficient *and* cost-effective."<sup>723</sup> SERTP Sponsors request clarification that this requirement is intended to

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<sup>719</sup> *Id.*

<sup>720</sup> *E.g.*, Southern Companies OATT, Attachment K § 1.2.

<sup>721</sup> SERTP Sponsors Rehearing Request at 80 (citing, *e.g.*, Southern Companies OATT, Attachment K § 1.2.2).

<sup>722</sup> *Id.* at 81.

<sup>723</sup> *Id.* at 77 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 198).

generally provide more flexibility in the evaluation process than might be construed under the “and” standard and is not intended to otherwise require substantive additions or revisions to the SERTP transmission planning process. SERTP Sponsors argue that if clarification is denied and this requirement is intended to impose substantive changes to the transmission planning process or more stringent requirements upon the SERTP Sponsors, then rehearing is sought as the Commission also repeatedly uses the phrase “more efficient *and* cost-effective.”<sup>724</sup>

364. Furthermore, SERTP Sponsors argue that regardless if the standard is held to include “or” or “and,” the First Compliance Order does not articulate the full standard adopted in Order No. 1000. SERTP Sponsors also argue that “[m]ore efficient or cost-effective” only makes sense in the context of a comparison, and in fact, Order No. 1000 is clear that the comparison to be made to projects is included in the local planning processes.<sup>725</sup> SERTP Sponsors contend that it is abundantly clear that the standard adopted in Order No. 1000 provides for a comparison of the proposed solution to those identified in local transmission planning processes. Otherwise, SERTP Sponsors contend that the First Compliance Order is inconsistent with Order No. 1000 and therefore arbitrary and capricious.<sup>726</sup>

## (2) Commission Determination

365. We deny SERTP Sponsors’ requests for rehearing.<sup>727</sup> We affirm the finding rejecting Filing Parties’ proposal to use a single avoided cost method for evaluating whether transmission facilities proposed for selection in a regional transmission plan for purposes of cost allocation are more efficient or cost-effective solutions to for all types of regional transmission needs (reliability, economic, and public policy). We note that a single avoided cost method may be used to identify the beneficiaries of reliability transmission projects when separate cost allocation methods are used for reliability,

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<sup>724</sup> *Id.* at 77-78 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 21, 44, 46, 52, 59, 60, 83, 146, 321, and 435, *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 at PP 5, 10, 52, 179, 239, 263, 585, 586, and 592).

<sup>725</sup> *Id.* at 78 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148 (emphasis added)).

<sup>726</sup> *Id.*

<sup>727</sup> We address SERTP Sponsors’ specific rehearing arguments regarding Filing Parties’ proposed avoided cost metric below in the Cost Allocation section.

economic, and public policy-related transmission projects.<sup>728</sup> Our review of Filing Parties' proposed cost allocation method submitted in their compliance filings, with modifications, once implemented by Filing Parties, no longer uses the avoided cost metric as the sole benefit metric for economic transmission projects and transmission projects that address transmission needs driven by public policy requirements. Filing Parties' proposed OATT revisions include a reduced transmission loss metric to evaluate potential savings/additional costs in system transmission energy losses associated with implementing a transmission project for purposes of cost allocation.<sup>729</sup>

366. In response to SERTP Sponsors' clarification request with respect to the Order No. 890 principles, we affirm the Commission's finding in the First Compliance Order that, in general, the SERTP process continues to comply with Order No. 890's openness, transparency, and coordination planning principles, subject to the limited Order No. 890 compliance directives in the First Compliance Order. The Commission's determinations regarding Filing Parties' proposed evaluation process were not intended to call into question Filing Parties' compliance with those principles, but rather to ensure that the SERTP process satisfies additional requirements of Order No. 1000.

367. We also affirm our finding in the First Compliance Order that Order No. 1000 requires that the regional transmission planning process employ the "more efficient *or* cost-effective" standard when evaluating potential transmission solutions.<sup>730</sup> We grant limited clarification regarding this standard, and agree with SERTP Sponsors that the "more efficient *or* cost-effective" standard is generally more flexible than a "more efficient *and* cost-effective" standard, as, under the former standard, a transmission project would not be required to satisfy both prongs to be eligible for selection in the regional transmission plan for purposes of cost allocation. Similarly, our directive to adopt the correct standard under Order No. 1000 was not intended to require other substantive additions or revisions to the SERTP process.

368. Finally, we disagree with Filing Parties' claim that, because Order No. 1000, and the "more efficient or cost-effective" standard ordered therein, contemplates a comparison between local transmission projects and proposed regional transmission solutions, the decision to reject the proposal to rely solely on avoided costs for all types

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<sup>728</sup> See, e.g., *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206, at P 312 (2013).

<sup>729</sup> E.g., Southern Companies Transmittal Letter at 33; Southern Companies OATT, Attachment K §§ 17.1 and 17.2.

<sup>730</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 198.

of transmission projects is arbitrary and capricious. 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, Filing Parties may compare a proposed regional transmission project to transmission facilities in their local transmission plans.<sup>731</sup> However, the Commission found that Filing Parties' proposal to use a single cost allocation method that relies *solely* on a comparison to transmission facilities in their local transmission plans 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>732</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>733</sup> (2) the reserve sharing requirement an entity would have to maintain with and without a proposed regional transmission project;<sup>734</sup> (3) the level of energy losses with and without a proposed regional transmission project;<sup>735</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>736</sup>

(c) **Compliance**

(1) **Summary of Compliance Filings**

369. Filing Parties proposed OATT provisions to specifically provide that Filing Parties will post on the SERTP website its determination of whether a proposed transmission project will be selected for inclusion in the regional transmission plan for regional cost allocation purposes as well as to document its determination in sufficient detail regarding why a particular transmission project was selected or not selected for regional cost

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<sup>731</sup> *Id.* P 255.

<sup>732</sup> *Id.* P 254.

<sup>733</sup> *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 314.

<sup>734</sup> *PacifiCorp*, 143 FERC ¶ 61,151 at P 240.

<sup>735</sup> *Id.*

<sup>736</sup> *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 317.

allocation purposes. Further, Filing Parties will make this supporting documentation available to the transmission developer or stakeholders, subject to any applicable confidentiality requirements.<sup>737</sup> Filing Parties' proposed OATT provisions provide that the transmission provider will select a transmission project (proposed for purposes of cost allocation) for inclusion in the regional transmission plan for purposes of cost allocation for the then-current planning cycle if the transmission provider determines that the project is a more efficient or cost-effective transmission project as compared to other alternatives to reliably address transmission needs.<sup>738</sup> The factors considered in this determination include: (1) whether the project meets or exceeds the detailed benefit-to-cost analysis performed pursuant to the relevant section of the OATTs;<sup>739</sup> (2) any recommendation provided by state jurisdictional and/or governance authorities in accordance with the OATTs<sup>740</sup> including whether the transmission developer is considered reasonably able to construct the transmission project in the proposed jurisdiction(s); (3) whether, based on the stages of project development provided by the transmission developer in accordance with the OATTs<sup>741</sup> and as otherwise may be updated, the transmission developer should be considered reasonably able to acquire the necessary rights-of-way;<sup>742</sup> (4) whether, based on the timing for the identified transmission need(s) and the stages of project development provided by the transmission developer in accordance with the OATTs<sup>743</sup> and as otherwise may be updated, the

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<sup>737</sup> *E.g.*, Southern Companies OATT, Attachment K §§ 17.5.

<sup>738</sup> *Id.* § 17.5.

<sup>739</sup> *Id.* § 17.3. The OATT provisions explain that such detailed benefit-to-cost analysis may be reassessed, as appropriate, based upon the then-current beneficiaries and to otherwise reflect additional, updated, and/or more detailed transmission planning, cost or benefit information/components that are applicable to/available for proposed transmission projects, the projects that would be displaced, or any additional projects required to implement the proposal and real power transmission loss impacts.

<sup>740</sup> *Id.* § 17.4.

<sup>741</sup> *Id.* § 16.1.

<sup>742</sup> As discussed above in the Federal Rights of First Refusal section of this order, Filing Parties must remove this provision from their OATTs because it was proposed in response to a directive in the First Compliance Order for which we are now granting rehearing.



transmission developer is considered to be reasonably able to construct and tie the proposed transmission project into the transmission system by the required in-service date; (5) whether it is reasonably expected that the impacted utilities will be able to construct and tie-in any additional facilities on their systems located within the SERTP region that are necessary to reliably implement the proposed transmission project; and (6) any updated qualification information regarding the transmission developer's finances or technical expertise, as detailed in the OATTs.<sup>744</sup>

370. Filing Parties state that they have revised their OATTs to ensure that the selection provisions pertaining to projects submitted for purposes of regional cost allocation apply "to projects developed by both incumbent and nonincumbent transmission developers" and to appropriately use the phrase "more efficient *or* cost-effective."<sup>745</sup>

371. Filing Parties propose OATT revisions detailing the proposed regional analyses of potentially more efficient or cost-effective transmission solutions,<sup>746</sup> particularly the identification and evaluation of more efficient or cost-effective transmission project alternatives. These provisions provide that the potential transmission projects seeking regional cost allocation will be evaluated in the normal course of the transmission planning process section,<sup>747</sup> and that the same evaluative process will apply to projects submitted for purposes of potential selection in the regional transmission plan for purposes of cost allocation, as that section provides that the evaluation of such projects will be consistent with the regional evaluations process described in the regional analyses of potentially more efficient or cost-effective transmission solutions section.<sup>748</sup> Filing Parties' revised OATTs state that, in assessing whether a transmission alternative is a more efficient or cost-effective transmission solution, Filing Parties "may consider factors such as, but not limited to, a transmission project's: (1) impact on reliability; (2) feasibility, including the viability of acquiring the necessary rights-of-way and constructing and tying in the proposed project by the required in-service; (3) relative

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<sup>743</sup> *E.g.*, Southern Companies OATT, Attachment K § 16.1.

<sup>744</sup> *Id.* §§ 14, 17.5.

<sup>745</sup> *Id.* §§ 14.1, 15.1, and 16.1; Southern Companies Transmittal Letter at 26.

<sup>746</sup> *E.g.*, Southern Companies OATT, Attachment K § 11.

<sup>747</sup> *Id.* § 17.1.

<sup>748</sup> *Id.* § 11.

transmission costs, as compared to other transmission project alternatives to reliably address transmission needs; and (4) ability to reduce real power transmission losses on the transmission systems within the SERTP region, as compared to other transmission project alternatives to reliably address transmission needs.”<sup>749</sup> Filing Parties’ revised OATTs also state that this analysis “will be in accordance with, and subject to (among other things), state law pertaining to transmission ownership, siting, and construction.”<sup>750</sup>

372. Filing Parties also revise their OATTs to state that the transmission provider will select a transmission project in the regional transmission plan for purposes of cost allocation for the then-current planning cycle if the transmission provider determines that the project is a more efficient or cost-effective transmission project as compared to other alternatives to reliability address transmission needs. To determine whether to select a transmission project as a more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation, Filing Parties propose that a transmission provider will consider the following factors: (1) whether the project meets or exceeds the detailed benefit-to-cost analysis in the regional transmission planning process;<sup>751</sup> (2) any recommendation provided by state jurisdictional and/or governance authorities, including whether the transmission developer is considered reasonably able to construct the transmission project in the proposed jurisdiction; (3) whether, based on the stages of project development provided by the transmission developer, and as otherwise may be updated, the transmission developer should be considered reasonably able to acquire the necessary rights-of-way; (4) whether, based on the timing for the identified transmission need(s) and the stages of project development provided by the transmission developer, and as otherwise may be updated, the transmission developer is considered to be reasonably able to construct and tie the proposed transmission project into the transmission system by the required in-service date; (5) whether it is reasonably expected that the impacted utilities will be able to construct and tie-in any additional facilities on their systems located within the SERTP region that are necessary to reliably implement

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<sup>749</sup> *Id.* § 11.2.1.

<sup>750</sup> *Id.* §§ 11.2.1 & 17.1.

<sup>751</sup> *Id.* § 17.5. The detailed benefit-to-cost analysis may be reassessed, as appropriate, based upon the then-current beneficiaries and to otherwise reflect additional, updated, and/or more detailed transmission planning, cost or benefit information/component(s) that are applicable to/available for the proposed transmission project, the projects that would be displaced, any additional projects required to implement the proposal and real power transmission loss impacts. *Id.*

the proposed transmission project; and (6) any updated qualification information regarding the transmission developer's finances or technical expertise.<sup>752</sup>

(2) **Protests/Comments**

373. LS Power argues that Filing Parties' proposed OATT revisions to the evaluation process continue to fail to meet the requirements of Order No. 1000. As an initial matter, LS Power contends that Filing Parties fail to identify an actual evaluation process. They argue that Filing Parties' OATTs simply state that "[d]uring the course of each transmission planning cycle, the Transmission Provider will conduct regional transmission analysis. . . ."<sup>753</sup> LS Power contends that Filing Parties fail to establish an actual 'process' for such evaluation, particularly the timing thereof.<sup>754</sup>

374. LS Power contends that the proposed evaluation criteria also fail to meet the requirements of either Order No. 1000 or the First Compliance Order. LS Power notes that Filing Parties add a provision to their OATTs stating that the projects will be evaluated pursuant to "state law pertaining to transmission ownership, siting and construction."<sup>755</sup> LS Power argues, however, that this provision is improperly vague because Filing Parties fail to identify the nature of their evaluation.<sup>756</sup>

375. Public Interest Organizations assert that, while they recognize that relative transmission cost should be a key factor in the consideration of alternatives, the revised OATT lists relative transmission cost as a separate factor that *may* be considered when evaluating overall effectiveness.<sup>757</sup> Public Interest Organizations therefore request that the Commission require Filing Parties to change the "may" to "shall" so that all of the

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<sup>752</sup> *Id.*

<sup>753</sup> *Id.* § 11.1.

<sup>754</sup> LS Power Protest at 26.

<sup>755</sup> *E.g.*, Southern Companies OATT, Attachment K § 11.2.

<sup>756</sup> LS Power Protest at 26.

<sup>757</sup> Public Interest Organizations Protest at 5-6 (citing, *e.g.*, Southern Companies OATT, Attachment K § 11.2.1).

relevant factors will be considered.<sup>758</sup> Public Interest Organizations assert that since Filing Parties have already stated that relative cost is captured within the effectiveness test, they should be amenable to making the proposed change to clarify the intended result.<sup>759</sup>

**(3) Answer**

376. SERTP Sponsors contend that LS Power's complaint that Filing Parties' OATTs "fail to identify an actual evaluation process"<sup>760</sup> is misplaced. SERTP Sponsors argue that the types of evaluations LS Power seeks after can be found in the regional planning analyses section<sup>761</sup> of Filing Parties' OATTs.<sup>762</sup> SERTP Sponsors explain that the stakeholder input section further explains that stakeholders will be able to provide input into this affirmative regional planning. SERTP Sponsors contend that the Commission should approve the proposed evaluation process.<sup>763</sup>

**(4) Commission Determination**

377. We find that Filing Parties' proposed revisions to their OATTs to address their proposed evaluation process partially comply with the directives of the First Compliance Order. Specifically, we find that Filing Parties' revised OATTs provide that: (1) incumbent transmission providers will be required to comply with provisions in the OATT applicable to transmission developers when proposing a transmission project for selection in a regional transmission plan for purposes of cost allocation;<sup>764</sup> (2) Filing Parties will use the "more efficient *or* cost-effective" standard, rather than the "more

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<sup>758</sup> We note that evaluation factors are located in the Identification and Evaluation of More Efficient or Cost-Effective Transmission Project Alternatives and the Selection of a Proposed Transmission Project for regional cost allocation purposes of Filing Parties' respective OATTs.

<sup>759</sup> Public Interest Organizations Protest at 5-6.

<sup>760</sup> SERTP Sponsors Answer at 51.

<sup>761</sup> *E.g.*, Southern Companies OATT, Attachment K § 11.1.2.

<sup>762</sup> SERTP Sponsors Answer at 51.

<sup>763</sup> *Id.* at 52.

<sup>764</sup> *E.g.*, Southern Companies OATT, Attachment K §§ 14.1, 15.1, 16.1.

efficient *and* cost-effective” standard, to evaluate potential transmission projects for selection in the regional transmission plan for purposes of cost allocation;<sup>765</sup> (3) Filing Parties will post on the regional planning website a determination regarding whether a proposed project will be selected for inclusion in the regional transmission plan for purposes of cost allocation for that transmission planning cycle;<sup>766</sup> and (4) Filing Parties will document this determination in sufficient detail for stakeholders to understand why a particular project was selected or not selected for purposes of cost allocation and will make this supporting documentation available to the transmission developer or stakeholders, subject to any applicable confidentiality requirements.<sup>767</sup>

378. With regard to the requirement to describe a transparent and not unduly discriminatory evaluation process, and to explain how the region will consider the relative efficiency and cost-effectiveness of proposed transmission solutions, we find that Filing Parties’ proposed revisions largely satisfy these requirements. Filing Parties have added significant detail to their OATTs to describe the process and factors that the regional transmission planning process will use to evaluate transmission projects for potential selection in the regional transmission plan for purposes of cost allocation. For instance, Filing Parties’ revised OATTs provide that transmission providers will look for potential regional transmission projects that may be more efficient or cost-effective solutions to address transmission needs than transmission projects included in the latest regional transmission plan or otherwise under consideration in the then-current transmission planning process for the 10 year planning horizon. Filing Parties’ OATTs also describe the factors that they propose to use to assess whether a transmission project is a more efficient or cost-effective solution to regional transmission needs.<sup>768</sup> Filing Parties also propose to consider in the evaluation process any recommendation provided by state jurisdictional and/or governance authorities.<sup>769</sup> This is consistent with the Commission’s finding in the First Compliance Order that, if it so chooses, a state

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<sup>765</sup> *Id.* §§ 11.1.1, 11.2.1, 15.3, 16.1(6), 17.1(3), 17.5, 19.1, 19.2 and 20.2.

<sup>766</sup> *Id.* § 17.5.

<sup>767</sup> *Id.*

<sup>768</sup> *Id.* § 11.2.1. We address Filing Parties’ proposal to consider a transmission project’s ability to reduce real power transmission losses in more detail below in the Cost Allocation section.

<sup>769</sup> *Id.* § 17.5.

commission may take an active role in the transmission planning 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>770</sup>

379. However, while we accept the individual factors as reasonable considerations in the evaluation process, we agree with Public Interest Organizations' concern about language in the OATT stating that Filing Parties "may" (rather than "shall") consider the evaluation factors.<sup>771</sup> These factors include, for example, impacts on reliability and the relative costs of the transmission project and, thus, should always be considered in the evaluation process. To ensure that the listed evaluation factors are not applied in an unduly discriminatory manner, Filing Parties must revise their OATTs to eliminate the discretion to decide whether or not the listed evaluation factors will be considered. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to change the word "may" to "shall" so that the evaluation factors listed in the OATT are always considered in the evaluation process.

380. We disagree with LS Power's argument that Filing Parties' proposed OATT revisions fail to identify an evaluation process. Filing Parties' revised OATTs provide that the transmission providers will perform power flow, dynamic, and short circuit analyses, as necessary, to assess whether the then-current regional transmission plan would provide for the physical transmission capacity required to address the transmission provider's transmission needs, including those transmission needs of its transmission customers and those driven by public policy requirements. Filing Parties also describe the factors they will consider in evaluating whether a proposed transmission project is a more efficient or cost-effective solution to the region's transmission needs.<sup>772</sup> We find that this detail sufficiently describes the region's evaluation process and will not require additional revisions, other than those described above.

381. With regard to LS Power's concerns with the provision that states that transmission projects identified as part of the regional assessment will be evaluated pursuant to "state law pertaining to transmission ownership, siting and construction", we note that Filing Parties proposed a similar provision as part of their first compliance

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<sup>770</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 200; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at PP 293-295.

<sup>771</sup> *E.g.*, Southern Companies OATT, Attachment K § 11.2.1.

<sup>772</sup> *Id.*

filing. The Commission interpreted this provision to mean that nothing herein “is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities . . . .”<sup>773</sup> Therefore, we find that the same interpretation applies to this provision, and is thus consistent with Order No. 1000.<sup>774</sup>

382. However, it is not clear how the transmission providers will identify the alternative local or regional transmission projects that would be required in lieu of the proposed regional transmission project when calculating the benefits of the proposed project. Such information is necessary to ensure that the process for evaluating whether to select the 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 benefits will be analyzed, given that those benefits are tied to the costs of alternative projects. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs 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.

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

383. 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>775</sup> If an evaluation of

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<sup>773</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 204 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 253 n.231).

<sup>774</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 253 n.231; see also *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059, at P 171 (2013).

<sup>775</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 263, 329, *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.<sup>776</sup>

**i. First Compliance Order**

384. In the First Compliance Order, the Commission found that Filing Parties' proposal dealing with the reevaluation of proposed transmission projects partially complied with the requirements of Order No. 1000. The Commission noted that Order No. 1000 specifically requires public utility transmission providers to reevaluate the regional transmission *plan* and directed Filing Parties to clarify in their OATTs that they would undertake a reevaluation of the regional transmission plan, rather than only transmission projects. Moreover, the Commission stated that Filing Parties' revisions must, consistent with the requirements of Order No. 1000 regarding reevaluation of the regional transmission plan due to delay of a transmission project selected in the regional transmission plan for purposes of cost allocation: (1) allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint if an evaluation of alternatives is needed; and (2) if the proposed solution is a transmission facility, provide for the facility's evaluation for possible selection in the regional transmission plan for purposes of cost allocation.<sup>777</sup>

385. The Commission was also concerned that the lack of description regarding how Filing Parties decide whether to retain a transmission project, remove a transmission project, or select an alternative transmission solution following such reevaluation may allow Filing Parties too much discretion in making this determination, particularly with respect to a determination that a transmission project is no longer more efficient or cost-effective than alternative transmission solutions. The Commission directed Filing Parties to revise their OATTs to explain the basis upon which Filing Parties will retain or remove a transmission project (whether being developed by an incumbent or nonincumbent transmission developer) selected in a regional transmission plan for purposes of cost allocation, or select an alternative transmission solution.<sup>778</sup>

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<sup>776</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

<sup>777</sup> First Compliance Order, 144 FERC ¶ 61,054 at PP 216-217.

<sup>778</sup> *Id.* P 218.



386. Additionally, the Commission was concerned that the lack of clarity in Filing Parties' OATTs with respect to the delay or abandonment of a project selected in the regional transmission plan for purposes of cost allocation, particularly regarding what costs may be included in the impacted utilities' increased costs or how those costs would be calculated, could create uncertainty regarding a transmission developer's exposure to future costs and could be a barrier to entry for transmission developers. Thus, the Commission directed Filing Parties to either remove, or provide further justification for, this provision. If Filing Parties chose to provide further justification, they must also revise their OATTs to provide additional detail to explain what costs may be included in the impacted utilities' increased costs, how such costs would be calculated, and how Filing Parties would implement the proposal.<sup>779</sup>

387. In the First Compliance Order, Filing Parties' proposal provided that the transmission provider and impacted utilities would determine the security/collateral arrangements for the proposed transmission project and the deadlines by which they must be provided. Filing Parties' OATTs stated that if such critical steps are not met by the specified milestones and then afterwards maintained, then the transmission provider may remove the project from the selected category in a regional transmission plan for purposes of cost allocation. The Commission was concerned about the lack of detail regarding the level of security/collateral that would be required by the transmission provider and impacted utilities in order for a transmission project selected in the regional transmission plan for purposes of cost allocation to remain in the regional transmission plan for purposes of cost allocation. Therefore, the Commission directed Filing Parties to revise their OATTs to clarify the security/collateral arrangements that a developer of a transmission project (whether incumbent or nonincumbent) selected in a regional transmission plan for purposes of cost allocation must provide to transmission providers for its transmission project to remain in a regional transmission plan.<sup>780</sup>

**ii. Requests for Rehearing or Clarification**

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

388. SERTP Sponsors state that the First Compliance Order directs public utility transmission providers to reevaluate the regional transmission plan rather than only

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<sup>779</sup> *Id.* P 219.

<sup>780</sup> *Id.* P 220.

regional transmission projects.<sup>781</sup> SERTP Sponsors agree with the general sentiment that transmission planning is to be performed holistically, and the reevaluation of transmission projects is an on-going process that is performed in the context of building the transmission expansion plan in any given cycle. SERTP Sponsors assert that they are concerned, however, that this statement in the First Compliance Order might be construed to imply more rigidity in the development of transmission expansion plans in any given cycle than is appropriate, as if modifications to the results from a prior regional transmission plan are expected to be the exception rather than the norm.<sup>782</sup> SERTP Sponsors assert that, of course, any transmission plan is just a “snapshot” of forecasted conditions based upon available information at the time that it is completed and can become almost immediately stale depending upon subsequent developments. SERTP Sponsors assert that, stated differently, transmission planning is an on-going, iterative process, not the maintenance of a single transmission plan that happens to be reevaluated from time-to-time. As a result, SERTP Sponsors argue clarification, or in the alternative, rehearing is sought that this directive is not intended to make it more difficult to reevaluate an individual transmission project or the results contained in a prior transmission plan.<sup>783</sup>

**(b) Commission Determination**

389. We grant limited clarification of the Commission’s holding in the First Compliance Order that public utility transmission providers must, when performing a reevaluation, reevaluate the regional transmission plan rather than simply transmission projects. The Commission’s holding was intended to affirm that, for example, when a transmission project included in the regional transmission plan is delayed, the regional transmission planning process should not reevaluate that transmission project in isolation, but rather should review the regional transmission plan, evaluate the general impacts on the plan, and determine whether the delay will cause adverse consequences elsewhere in the region. We confirm that, in so holding, the Commission did not intend to make it more difficult to reevaluate an individual transmission project or the results contained in a prior transmission plan, but rather intended to ensure that the region’s reevaluation procedures are sufficiently robust. Reevaluation of the plan, as opposed to the project, ensures the regional system needs are being addressed holistically, and that consideration

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<sup>781</sup> SERTP Sponsors Rehearing Request at 81 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 216).

<sup>782</sup> *Id.* at 82.

<sup>783</sup> *Id.* (citing 16 U.S.C. §§ 824, 824q(b)(4) (2012)).

is given to load forecasts, generation retirements and additions, or other independent variables which can obviate the need for a transmission solution. As part of the regional system planning process, transmission solutions can change repeatedly or be removed from the regional transmission plan as a result of a variety of independent variables including decreased customer load growth, increased participation in demand response, market-based solutions, or generation retirements.

**iii. Compliance**

**(a) Reevaluation Standards and Procedures**

**(1) Summary of Compliance Filings**

390. Filing Parties propose to revise their OATTs to provide further details regarding 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. Filing Parties revised their OATTs to state that to ensure that the proposed transmission project remains the more efficient or cost-effective alternative, the transmission provider will continue to reevaluate the regional transmission *plan* throughout the then-current planning cycle and in subsequent cycles. Filing Parties largely retained their originally proposed OATT language that states this continued reevaluation will assess in subsequent expansion planning processes that reflect ongoing changes in actual and forecasted conditions, the then-current transmission needs and determine whether transmission projects included in the regional transmission plan (i) continue to be needed and (ii) are more efficient and cost-effective compared to alternatives. Further, Filing Parties' OATTs state that these on-going assessments will include reassessing transmission projects that have been selected in the regional transmission plan for purposes of cost allocation and any projects that are being considered for potential selection in a regional transmission plan for purposes of cost allocation.<sup>784</sup>

391. Filing Parties revised their OATTs to state that the cost allocation of a regional transmission project selected in a regional transmission plan for purposes of cost allocation that remains selected may be modified in subsequent planning cycles based upon: (1) the then-current determination of benefits; (2) cost allocation modification as mutually agreed upon by the beneficiaries; or (3) cost modifications, as found acceptable

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<sup>784</sup> *E.g.*, Southern Companies OATT, Attachment K § 19.1.

by both the transmission developer and the beneficiaries.<sup>785</sup> Additionally, Filing Parties revised their OATTs to state that the reevaluation of the regional transmission plan will include the reevaluation of a particular transmission project included in the regional transmission plan until it is no longer reasonably feasible to replace the proposed project as a result of the advanced stage of construction or if it no longer feasible for an alternative project to be placed in service in time to meet the transmission need.<sup>786</sup>

392. Filing Parties also revise their OATTs to state that the transmission provider will assess whether alternative transmission solutions may be required in addition to, or in place of, a potential transmission project selected in a regional transmission plan for purposes of cost allocation due to the delay in its development or abandonment of the project. In response to the Commission directives to allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory and provide for evaluation of such transmission projects in the regional transmission plan, Filing Parties propose to revise their OATTs to state that the identification and evaluation of potential transmission project alternative solutions may include transmission project alternatives identified by the transmission provider to include in the 10 year transmission expansion plan. Furthermore, Filing Parties state nothing precludes the transmission provider from proposing such alternatives for potential selection in a regional transmission plan.<sup>787</sup>

393. Filing Parties propose revisions to their OATTs to state that based upon the alternative transmission projects identified in such on-going transmission planning efforts, the transmission provider will evaluate the transmission project alternatives consistent with the regional planning process. Filing Parties propose that the transmission provider will remove a delayed project from being selected in a regional transmission plan for purposes of cost allocation if the project no longer: (1) adequately addresses underlying transmission needs by the required transmission need dates; and/ or (2) remains more efficient or cost-effective based upon a reevaluation of the detailed benefit-to-cost calculation. The benefit-to-cost calculation will factor in any additional transmission solutions required to implement the proposal (e.g., temporary fixes) and will also compare the project to identified transmission project alternatives.<sup>788</sup>

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<sup>785</sup> *Id.* § 19.3.

<sup>786</sup> *Id.* § 19.4.

<sup>787</sup> *Id.* § 20.1.

<sup>788</sup> *Id.* § 20.2.

394. Lastly, Filing Parties also propose to revise their OATTs to state that the development schedule a transmission developer submits after its project is selected in the regional transmission plan for purposes of cost allocation must include the milestones by which the necessary steps to develop and construct the transmission project must occur, including (to the extent not already accomplished) obtaining all necessary rights-of-way and requisite environmental, state, and other government approvals. Filing Parties propose that a development schedule will also need to be established for any additional projects by impacted utilities that are necessary to integrate the transmission projects selected in the regional transmission plan for purposes of cost allocation.<sup>789</sup>

395. Finally, Filing Parties revise their OATTs to state that the beneficiaries will also determine and establish deadline(s) by which the transmission developer must provide security/ collateral for the proposed project that has been selected in a regional transmission plan to the beneficiaries or otherwise satisfy the requisite creditworthiness requirements. Filing Parties state the security, collateral, and creditworthiness requirements are described in a new section of the OATT.<sup>790</sup>

## (2) **Commission Determination**

396. We find that Filing Parties' proposal concerning the procedures and standards by which the regional transmission planning process will reevaluate the regional transmission plan complies with the directives in the First Compliance Order. Filing Parties revised their reevaluation provisions to clarify that they will undertake a reevaluation of the regional transmission plan, rather than only transmission projects. Filing Parties also clarified the basis upon which regional transmission projects will be retained or removed from the regional transmission plan, while also including provisions that provide incumbent transmission providers the opportunity to propose solutions that it would implement within its retail distribution service territory or footprint if an evaluation of alternatives is needed and, if the proposed solution is a transmission facility, allow for the facility's evaluation for possible selection in the regional transmission plan for purposes of cost allocation. As such, we find that Filing Parties have adequately explained the reevaluation process of the regional transmission plan and the basis upon which the transmission providers in the SERTP region will retain or

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<sup>789</sup> *Id.* § 21.1.

<sup>790</sup> *Id.* § 21.2. These security and collateral requirements are addressed below in section Qualification Criteria section.

remove a regional transmission project that has been selected in the regional transmission plan for purposes of cost allocation.

(b) **Financial, Collateral, and Damage Provisions**

(1) **Summary of Compliance Filings**

397. The Commission directed Filing Parties to explain in detail the additional financial and technical criteria that apply to a transmission project selected in a regional transmission plan for purposes of cost allocation.<sup>791</sup> Filing Parties propose a new OATT section regarding credit and security requirements to protect against delay or abandonment of a project selected in the regional transmission plan for purposes of cost allocation.<sup>792</sup> Filing Parties state this section was created in response to the Commission's confusion as to whether the additional financial and technical criteria that may be required would be part of the qualification or evaluation process.<sup>793</sup> As stated above, Filing Parties removed the clause regarding the potential requirement for additional financial and technical information from the pre-qualification process, and made the provision of demonstrating project-specific collateral and creditworthiness as described in the new section a milestone for being selected for regional cost allocation.<sup>794</sup>

398. Additionally, Filing Parties propose to modify their OATTs to require that, once a transmission developer's transmission project has been selected in the regional transmission plan for purposes of cost allocation, a transmission developer must either have and maintain a credit rating or equivalent rating of BBB+ or better (and not have or obtain less than any such credit rating by any of the rating agencies), or provide to and maintain with the beneficiaries eligible collateral equal to the total cost of the developer's transmission projects that have been selected in the regional transmission plan for purposes of cost allocation.<sup>795</sup> Although transmission developers with a credit rating or

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<sup>791</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 156.

<sup>792</sup> *E.g.* Southern Companies OATT, Attachment K § 22.

<sup>793</sup> *E.g.*, Southern Companies Transmittal Letter at 24.

<sup>794</sup> *E.g.*, Southern Companies OATT, Attachment K § 21.2; Southern Companies Transmittal Letter at 24.

<sup>795</sup> *Id.* § 22.1.2; Southern Companies Transmittal Letter at 25. As outlined above in the Qualification Requirements section of this order, a transmission developer must have and maintain BBB- credit rating or credit rating equivalent and may not have or

(continued...)

rating equivalent of BBB+ or better will not automatically have to maintain collateral, Filing Parties propose that beneficiaries may limit their exposure with respect to such a transmission developer's transmission projects selected in the regional transmission plan if the aggregate costs of such projects are at any time in excess of the "cap", which is the lesser of (a) ten percent of the transmission developer's tangible net worth if the transmission developer or its affiliates have a tangible net worth<sup>796</sup> of less than one billion dollars, or (b) \$250 million. In such event, the transmission developer must provide to and maintain with the beneficiaries eligible developer collateral not less than the amount by which the aggregate costs of such projects exceed the cap.<sup>797</sup> Also, with respect to any transmission developer (regardless of credit rating) that provides a parent guaranty as collateral, beneficiaries may further limit their exposure with respect to the transmission developer's transmission projects that have been selected in the regional transmission plan for purposes of cost allocation. In this instance, the cap is the lesser of (a) ten percent of the parent guarantor's tangible net worth if such parent guarantor has a tangible net worth of less than one billion dollars or (b) \$250 million. In such event, the transmission developer must provide and maintain an irrevocable letter of credit of not less than the amount by which the aggregate costs of the project exceed the cap.<sup>798</sup>

399. Filing Parties further propose that the transmission developer will provide beneficiaries on at least an annual basis with an updated, completed application as required by the pre-qualification process.<sup>799</sup> On at least an annual basis, beneficiaries may review the credit rating, and review and update the credit rating equivalent, cap, guarantor cap, and eligible developer collateral requirements to determine if the collateral requirements need to be adjusted.<sup>800</sup> If the transmission developer is required to provide additional collateral as a result of the beneficiaries' review and/or update, the

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obtain less than a BBB- credit ratings from any of the three rating agencies to meet the pre-qualification criteria.

<sup>796</sup> Tangible net worth is defined as "the relevant entity's total equity minus its intangible assets and also minus its goodwill." *E.g.*, Southern Companies OATT, Attachment K § 22.2.1.

<sup>797</sup> *Id.*

<sup>798</sup> *Id.* § 22.2.2.

<sup>799</sup> *Id.* § 22.3.1.

<sup>800</sup> *Id.* § 22.3.2.

beneficiaries will notify the transmission developer and such additional collateral must be provided within five business days of such notice, all in amount and form approved by the beneficiaries. Filing Parties propose that eligible developer collateral can be in the form of an irrevocable letter of credit or a developer parent guaranty.<sup>801</sup> The proposed OATT revisions state that acceptable forms of eligible developer collateral and associated requirements will be posted on the SERTP website.<sup>802</sup> Each project beneficiary may require an irrevocable letter of credit or developer parent guaranty to be issued to it in a dollar amount equal to the percentage of costs that it will be allocated multiplied by the aggregate dollar amount of irrevocable letters of credit constituting or to constitute eligible developer collateral for such transmission projects. Additionally, each beneficiary may require a developer parent guaranty to be issued in a dollar amount equal to its percentage multiplied by the aggregate dollar amount of all developer parent guaranties constituting or to constitute eligible developer collateral for such transmission projects.<sup>803</sup> Filing Parties propose that a transmission developer supplying a developer parent guaranty must provide and continue to provide the same information regarding the parent guarantor as is required of a transmission developer, including rating information, financial statements and related information, references, litigation information and other disclosures, as applicable.<sup>804</sup> Filing Parties also propose that costs associated with obtaining and maintaining irrevocable letters of credit and/or developer parent guaranties are the responsibility of the transmission developer.<sup>805</sup> Lastly, Filing Parties note that beneficiaries reserve the right to deny, reject, or terminate acceptance and acceptability of any irrevocable letter of credit or any developer parent guaranty as eligible developer collateral at any time for reasonable cause, including the occurrence of a material adverse change or other change in circumstances.<sup>806</sup>

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<sup>801</sup> *Id.* § 22.3.1. Beneficiaries may perform this review more often if there is a Material Adverse Change in the financial conditions and/or relevant change in the tangible net worth of the transmission developer or its parent guarantor or if there are issues or changes regarding a transmission project. *Id.*

<sup>802</sup> *Id.* § 22.4.

<sup>803</sup> *Id.* §§ 22.4.1, 22.4.2.

<sup>804</sup> *Id.* § 22.4.2.1.

<sup>805</sup> *Id.* § 22.4.2.2.

<sup>806</sup> *Id.* § 22.4.2.3.



400. If any transmission developer fails to comply with the proposed post-selection credit and security requirements and fails to cure any deficiencies within ten business days after the occurrence, Filing Parties propose that the beneficiaries may declare the transmission developer in default and/or, without limiting other rights or remedies, revise the cap, guarantor cap, and eligible developer collateral requirements. If the compliance failure is not cured within another ten business days, Filing Parties propose that the beneficiaries may immediately remove any or all of the transmission developer's projects from consideration for potential selection in the regional transmission plan for purposes of cost allocation and, if previously selected, from remaining in the regional transmission plan for purposes of cost allocation.<sup>807</sup>

401. Similarly, if the developer of a transmission project selected in the regional transmission plan for purposes of cost allocation no longer satisfies the region's qualification criteria, then Filing Parties will notify the transmission developer of the deficiency and provide 15 calendar days to cure. If the transmission developer fails to cure or otherwise continues to no longer satisfy those requirements, Filing Parties may immediately remove the transmission developer's project(s) from being selected in the regional transmission plan.<sup>808</sup>

402. Filing Parties have retained their provision stating that a transmission developer would be responsible to the impacted utilities for any increased costs due to delay or abandonment of a transmission project included in the regional transmission plan and to explain what costs may be included in the impacted utilities' increased costs. Filing Parties state that this provision is fundamentally necessary to protect ratepayers.<sup>809</sup> Citing Commissioner Moeller's separate statement to Order No. 1000, Filing Parties state that should a transmission developer delay or abandon such a "long transmission line," as contemplated by Order No. 1000, significant costs could and likely would be incurred to cover that abandonment or delay by the developer so as to allow the electric grid to satisfy transmission needs, particularly once the development reaches a more advanced stage that impacted utilities rely upon it becoming operational, and otherwise plan and build their systems such that the project would be operational.<sup>810</sup>

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<sup>807</sup> *Id.* § 22.5; Southern Companies Transmittal Letter at 25.

<sup>808</sup> *E.g.*, Southern Companies OATT, Attachment K § 16.5.3.

<sup>809</sup> *E.g.*, Southern Companies Transmittal Letter at 30.

<sup>810</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (Commissioner Moeller, dissenting in part at 1)).

403. Moreover, Filing Parties state that holding the transmission developer responsible for the increased costs caused by its delay or abandonment is also necessary to provide Order No. 1000's financial/qualification provisions meaning and to also effectuate Order No. 1000's commitments to product reliability.<sup>811</sup> Filing Parties note that Order No. 1000-A explains that the purpose of its qualification criteria is to ensure that the developer "has the necessary financial resources ... to develop, construct, own, operate, and maintain facilities."<sup>812</sup> Apparently based largely upon these qualification criteria, Filing Parties contend that Order No. 1000-A explains that there should not be additional costs associated with reliability problems due to Order No. 1000's nonincumbent requirements because "the selection criteria for project developers are an appropriate means of providing assurances that all project developers will be in a position to fulfill their commitments."<sup>813</sup> Filing Parties assert that in the context of transmission developers, "fulfill[ing] their commitments" necessarily includes the commitment to not delay development or abandon the project. Likewise, Filing Parties assert establishing minimum financial requirements is largely meaningless unless such financial/creditworthiness requirements serve to protect against potential "default," with again the potential "default" obviously being the possibility that the developer will delay or abandon its project. Therefore, Filing Parties conclude that holding the transmission developer responsible for the increased costs that would result from its delay or abandonment is appropriate in terms of equity and to protect ratepayers since the developer's delay or abandonment caused the increased costs to be incurred, and holding the developer responsible for such costs is not only consistent with Order No. 1000, but is needed to provide meaning to Order No. 1000's qualification criteria and to effectuate the Commission's assurances to protect reliability.<sup>814</sup>

404. Additionally, Filing Parties propose to provide more detail to the requirement with additional language stating that if a transmission developer's delay or abandonment of a project leads to damages or increased costs to the impacted utilities or their customers, and if that delay or abandonment is not otherwise excused by the impacted utilities, then the transmission developer shall be responsible for and pay to the impacted utilities, upon demand, all damages, costs, and/ or expenses incurred or reasonably expected to be

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<sup>811</sup> *Id.*

<sup>812</sup> *Id.* (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 439).

<sup>813</sup> *Id.* (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 95).

<sup>814</sup> *Id.* at 30-31.

incurred by the impacted utilities or their customers due or attributable to any such delay or abandonment. These expenses include, without limitation: (1) damages, increased costs, and/or expenses to the Impacted Utilities incurred or reasonably expected to be incurred by having someone other than the transmission developer complete the transmission project; (2) damages, increased costs, and/or expenses to the Impacted Utilities incurred or reasonably expected to be incurred in order to pursue, and/or complete, alternative solutions to address the underlying transmission need(s); (3) damages, costs, and/or expenses to the Impacted Utilities for abandoned plant costs that the Impacted Utilities incurred or reasonably expected to be incurred due to the transmission developer's delay or abandonment; (4) damages, increased costs, and/or expenses to the Impacted Utilities incurred or reasonably expected to be incurred due to the implementation of operational remedies and measures attributable to the transmission developer's delay or abandonment; (5) financing, labor, equipment and capital costs incurred or reasonably expected to be incurred to implement interim and alternative solutions; and (6) any other documentable damages, increased costs, expenses, penalties, and/or fines to the Impacted Utilities incurred or reasonably expected to be incurred attributable to the transmission developer's delay or abandonment.<sup>815</sup> Further, Filing Parties state that eligible developer collateral provided as part of the qualification criteria will, among other things, secure and support the transmission developer's payment obligations to the beneficiaries.<sup>816</sup>

## (2) Protest

405. LS Power states that Filing Parties provide no basis for the requirement that collateral be posted for the entire estimated cost of a project if the developer or its parent guarantor has below a specified credit rating. LS Power asserts that in no instance will the SERTP Sponsors, impacted utilities, or beneficiaries be at risk for the full value of the project, and that at most the risk to ratepayers is the risk of increased costs if a project is abandoned or delayed due to material breach by the transmission developer. LS Power notes that the Southwest Power Pool proposed, and the Commission accepted, a requirement for collateral equaling two percent of the estimated cost of the project, and that PJM, after stakeholder discussion regarding its designated entity agreement, settled on three percent collateral. LS Power similarly states that NYISO, after similar

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<sup>815</sup> *E.g.*, Southern Companies OATT, Attachment K § 20.3.

<sup>816</sup> *Id.*

stakeholder discussion, determined that no collateral was required at all. LS Power therefore argues that Filing Parties' proposed collateral provision should be struck.<sup>817</sup>

406. LS Power argues, however, that to the extent the proposed collateral provision is not struck, and if, as it appears in the OATT, this section is suggesting that such costs are not recoverable as part of the project, the provision is inappropriate and should be stricken.<sup>818</sup> LS Power states that if the costs are incurred in good faith and provide a benefit, they should be recoverable, but not be considered in the cost benefit analysis of projects, as they are costs created by SERTP.<sup>819</sup>

407. LS Power asserts that the new section that details the cost responsibility of the transmission developer to the impacted utility for a delayed or abandoned project was not required by the Commission and should be struck. LS Power states that the provisions seek to create legal requirements for the payment of "damages" without addressing fault or other aspects upon which "damages" are normally based.<sup>820</sup>

408. LS Power states that the provision that includes six categories for damages as a result of a delayed or abandoned project provides no mechanism to address the reason for delay or abandonment. As an example, LS Power states that a nonincumbent transmission developer could be assigned a regional transmission project only to have its permit applications challenged by the impacted utilities in the state permitting process, resulting in a delay in obtaining the permit. LS Power concludes that despite the fact that the impacted utilities caused the delay, under the new provision, the transmission developer would be responsible for payment of damages to the impacted utilities.<sup>821</sup> LS Power asserts that the Commission should not permit a federal OATT to either create categories of damages or establish when they are due. Further, LS Power states that the

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<sup>817</sup> LS Power Protest at 25.

<sup>818</sup> *Id.*

<sup>819</sup> *Id.*

<sup>820</sup> *Id.* at 23.

<sup>821</sup> *Id.*

Commission has routinely left the issue of damages, even damages arising out of Commission-jurisdictional activities to the courts.<sup>822</sup>

(3) **Answer**

409. With respect to collateral, SERTP Sponsors refer to the extensive security positions that lenders maintain over the transmission developer, therefore leaving SERTP Sponsors with few transmission developer assets upon which to rely in case of default. Thus, SERTP Sponsors argue that it would be particularly unreasonable to not allow them to protect themselves since, by LS Power's own admission, transmission developers may be expected to be highly leveraged. SERTP Sponsors further state they must be able to address financial risks just as the lenders are able to and that their compliance filing does so, consistent with the Commission's directives and guidance.<sup>823</sup>

410. SERTP Sponsors state that the security and damages provisions which LS Power objects to were crafted to help protect the customers in the SERTP. They state that special purpose entities, as permitted by Order No. 1000, are likely to be thinly capitalized and highly leveraged with assets mortgaged to the project finance lenders. Moreover, if one of these entities abandons or delays its project, the SERTP Sponsors state they would nevertheless remain responsible to reliably and economically serve the underlying transmission needs commensurate with their firm transmission and duty to serve obligations.<sup>824</sup> SERTP Sponsors insist they need reasonable assurance that they can recover damages and increased costs from default which would arise from undertaking rushed alternative projects and various interim measures, including operational measures to maintain reliability. SERTP Sponsors state that LS Power does not appreciate the magnitude of such costs, which would include, without limitation: (i) all amounts already paid to the transmission developer prior to the abandonment or delay for which the customers are delayed in receiving or never receive a corresponding benefit; (ii) the full cost of the additional facilities built and improvements made to meet the transmission needs that would otherwise be unmet due to the transmission developer's default; (iii) the costs associated with any interim or operational solutions; and (iv) the costs and ramifications of congestion and potential reliability problems (such as load

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<sup>822</sup> *Id.* at 24 (citing, *e.g.*, *Nevada Power Co.* 111 FERC ¶ 61,111, at 61,616 (2005)).

<sup>823</sup> SERTP Sponsors Answer at 43.

<sup>824</sup> *Id.* at 48 (citing *e.g.*, *Southern Companies OATT*, Attachment K § 20.3).

shedding/local blackouts).<sup>825</sup> SERTP Sponsors maintain that they and their customers would have to bear these costs absent the liability being recoverable from a creditworthy developer and/or from posted collateral security.<sup>826</sup>

411. Additionally, SERTP Sponsors state that if a major construction project is delayed or abandoned after construction has begun, materials and labor to satisfy the related pressing need would have to be quickly obtained, further inflating the project costs. SERTP Sponsors therefore state that wasted costs associated with the original delayed or abandoned project combined with the costs of interim and long-term remedial solutions (including future costs) and other costs described above could easily equal, if not significantly exceed, the total cost of the original project.<sup>827</sup> Hence, requiring collateral for the total project cost from transmission developers who do not meet the stated creditworthiness requirements is appropriate to establish a reliable funding source for the costs and damages associated with potential default, and therefore prevent SERTP and its customers, from bearing such costs.<sup>828</sup>

412. Regarding LS Power's reference to SPP's qualification criteria, SERTP Sponsors state that LS Power failed to cite some of the preliminary financial criteria necessary to participate in the request for proposals process, including that a participant or its guarantor is investment grade rated or that the participant provide significant collateral in the form of a performance bond or letter of credit worth the total cost of the project, plus financing, plus a 30% contingency.<sup>829</sup> Thus, SERTP Sponsors state that instead of calling the SERTP Sponsors' financial criteria and collateral requirements into question, these SPP provisions reinforce the reasonableness of the SERTP Sponsors' proposed criteria and collateral requirements.<sup>830</sup>

413. SERTP Sponsors also disagree with LS Power that collateral costs should not be considered in determining whether a project is more cost-effective than alternatives.

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<sup>825</sup> *Id.* at 49.

<sup>826</sup> *Id.* at 48-49.

<sup>827</sup> *Id.* at 49.

<sup>828</sup> *Id.* at 50.

<sup>829</sup> *Id.* at 45-46 (citing SPP OATT, Attachment Y § III.2(c)(vi)).

<sup>830</sup> *Id.* at 46.

They state that any costs a transmission developer recovers from customers are real costs and that the Commission should not adopt a regime that would benefit LS Power at the expense of customers. Therefore, SERTP Sponsors state that in accordance with the FPA, the Commission should reject LS Power's comments to ensure that customers are protected from excessive costs resulting from the Order No. 1000 planning process.<sup>831</sup>

#### (4) Commission Determination

414. We reject Filing Parties' proposal to retain the provision stating that a transmission developer would be responsible to the impacted utilities for any increased costs due to delay or abandonment of a transmission project included in the regional transmission plan. While we recognize that Filing Parties have provided additional detail regarding this proposal in this second compliance filing, including the types of costs for which transmission developers would be responsible, the information Filing Parties have provided does not assuage the Commission's concerns. As a general matter, it may be appropriate for transmission providers in a region to require a transmission developer to pay some costs associated with a transmission project's delay or abandonment; however, we are concerned that the provisions proposed by Filing Parties are overbroad. For example, it is not clear to us that the proposal is limited to the costs directly associated with the delay or abandonment. Specifically, the provisions reference (1) damages, which suggest recovery from breach of an agreement, (2) increased costs, which may or may not mean the costs directly attributable to the delay or abandonment, and (3) other expenses. None of these three categories is defined in Filing Parties' OATTs. Given this lack of precision and the potential for making developers liable for costs beyond those directly attributable to the delay or abandonment, Filing Parties have not adequately justified their proposal. In addition, even if a transmission project is delayed, customers in the region would still benefit from that project—regardless of who ultimately develops it—because it addresses a regional transmission need identified through the regional transmission planning process.

415. Moreover, it appears that Filing Parties' proposal would subject a transmission developer to costs even for acts beyond the developer's control. While the delay or abandonment of a transmission project could result from a transmission developer's gross negligence or intentional action, we note that it could also result from other actions, including actions by Impacted Utilities or regulatory bodies. The failure to distinguish between gross negligence and intentional acts, on the one hand, and other actions that may be outside the transmission developer's control, on the other hand, renders Filing

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<sup>831</sup> *Id.* at 51 (citing 16 U.S.C. § 824e (2012)).

Parties' proposal unreasonable. Any such proposal must take into account these distinctions before requiring the transmission developer to pay significant costs. In addition, distinguishing between gross negligence and intentional acts with other types of actions is consistent with the Commission's findings in other Order No. 1000 compliance orders concerning the relationship between transmission providers and nonincumbent transmission developers.<sup>832</sup> Further, we find that these revisions are inconsistent with the Commission's *pro forma* OATT provisions and Filing Parties' OATT provisions indemnifying parties against force majeure events beyond their control in holding developers responsible for force majeure events.<sup>833</sup>

416. Additionally, the provision requiring the developer to pay for any abandoned plant of the incumbent utility is inconsistent with the Commission's rules on abandoned plant costs. In Order No. 1000, the Commission stated that a public utility transmission provider must file on a case-by-case basis under section 205 of the FPA to recover any abandoned plant costs.<sup>834</sup> Although an impacted utility may pass on costs to ratepayers

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<sup>832</sup> See, e.g., *ISO-New England Inc.*, 143 FERC ¶ 61,150 at P 278 (finding that the hold harmless provision in ISO-NE's proposed Non-Incumbent Transmission Developer Operating Agreement was unreasonable because it failed to distinguish between gross negligence and intentional actions with ordinary negligence); *S.C. Elec. & Gas Co.*, 147 FERC ¶ 61,126 at P 224 (making similar finding with respect to proposed Coordination Agreement's indemnity provision).

<sup>833</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036, Appendix D- Pro Forma Open Access Transmission Tariff, Section 10.1 (defining "Force Majeure" as, "An event of Force Majeure means [...] breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. Neither the Transmission Provider nor the Transmission Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff") (Subsequent history omitted).

<sup>834</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 267, *order on reh'g*, see also Order No. 1000-A, 139 FERC ¶ 61,132 at P 489; *ISO New England, Inc.* 143 FERC ¶ 61,150 at P 399, n.720 (noting that Commission policy requires that the utility demonstrate that the costs were prudently-incurred and are not permitted to be passed through without initial Commission review of the particular costs through a FPA section 205 filing).



that are prudently incurred, we do not believe that all costs resulting from a project's delay or abandonment should necessarily be passed on to a transmission developer. Where a public utility transmission provider proposes to recover a portion of a project before the project goes into service, Commission regulations require that such utilities make these requests on a case-by-case/project-specific basis so that the Commission can make factual determinations based on the evidence of each case, and transmission customers can raise issues of material fact associated with the project recovery.<sup>835</sup> Accordingly, we reject, as overly broad and unreasonable, Filing Parties' proposal to preemptively and categorically assign any such delayed or abandonment costs to the transmission developer. We direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that remove this section<sup>836</sup> from their OATTs.

417. Filing Parties provide greater detail regarding the level of security/collateral that would be required by the transmission provider and impacted utilities in order for a transmission project selected in the regional transmission plan to remain in the plan. We accept Filing Parties' proposal to raise the minimum credit rating or credit rating equivalent a transmission developer must maintain after its project is selected in the regional transmission plan for purposes of cost allocation from BBB- to BBB+. However, we reject Filing Parties' proposal to require a transmission developer with less than a BBB+ credit rating to provide and maintain collateral equal to the total cost of the transmission project. It may be appropriate to require additional collateral once a project has been selected in a regional transmission plan for purposes of cost allocation to ensure that the transmission developer has adequate resources to construct the transmission project, but requiring collateral equal to the total cost of the transmission project is unreasonable and places an unreasonable barrier on a transmission developer whose project has already been selected in the regional transmission plan. Therefore we find that Filing Parties have failed to sufficiently justify this requirement and direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance

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<sup>835</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at PP 164-167 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007) (limiting abandoned plant recovery to a case by case FPA section 205 filing to adequately discipline investment decisions, ensure the decision to cancel the plant was truly beyond the utility's control, and ensure there was no double-recovery between abandoned plant and survey/study expenses).

<sup>836</sup> *E.g.*, Southern Companies OATT, Attachment K § 20.3.

filings to remove these provisions or revise these provisions to provide more reasonable collateral requirements.

418. Finally, we also reject Filing Parties' proposal that gives the beneficiaries of a transmission project selected in the regional transmission plan for purposes of cost allocation discretion to decide whether the collateral requirements apply. Allowing the beneficiaries to determine whether a transmission developer must provide the collateral could result in undue discrimination, given that the beneficiaries with the discretion are likely to be the incumbent transmission providers, who may choose to require nonincumbent transmission developers to provide collateral but not apply the requirements to themselves. Thus, the Commission directs Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise their OATTs to eliminate this discretion and to apply the collateral requirements to all transmission developers both incumbent and nonincumbent.

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

419. 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>837</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>838</sup>

**i. First Compliance Order**

420. In the First Compliance Order, the Commission found that Filing Parties lacked a mechanism to grant a transmission developer the right to use the regional cost allocation method for unsponsored transmission projects. The Commission found that Filing Parties must participate in a transmission planning region that conducts a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to

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<sup>837</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

<sup>838</sup> *Id.* P 336.

regional transmission needs. As a result, the Commission directed Filing Parties to revise their OATTs to include 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 to the extent that the regional transmission planning process develops an unsponsored transmission facility that is selected in the regional transmission plan for purposes of cost allocation.<sup>839</sup>

421. The Commission further stated that Filing Parties proposed to require that a transmission developer whose proposed transmission project has been selected in the regional transmission plan for purposes of cost allocation must submit a development schedule to the transmission provider and the impacted utilities that establishes an obligation to enter into a mutually-agreed upon contract with the beneficiaries. Filing Parties define impacted utilities as “i) the Beneficiaries identified in the evaluation of the proposed transmission project and ii) any entity identified in the OATTs<sup>840</sup> to potentially have increased costs on its transmission system located in the SERTP region in order to implement the proposal.”<sup>841</sup> The Commission found that the executed, mutually-agreed-upon contract between the transmission developer, transmission provider, and impacted utilities does not appear to be transparent and no *pro forma* contract has been provided for this arrangement, which will significantly impact whether a transmission project selected in a regional transmission plan for purposes of cost allocation remains selected in a regional transmission plan for purposes of cost allocation. As a result, the Commission directed Filing Parties to submit any such *pro forma* agreement for review by the Commission in its compliance filing.<sup>842</sup>

**ii. Requests for Rehearing or Clarification**

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

422. SERTP Sponsors argue that as an initial matter, the contract between beneficiaries and a developer of a transmission facility selected in the regional transmission plan for

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<sup>839</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 228.

<sup>840</sup> *E.g.*, Southern Companies OATT, Attachment K § 17.2.1

<sup>841</sup> *Id.*

<sup>842</sup> *E.g.*, Southern Companies Transmittal Letter at 31 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 229).

purposes of cost allocation is a post-selection, *implementation* provision that is beyond the scope of Order No. 1000.<sup>843</sup> SERTP Sponsors argue that Order No. 1000 did not address implementation matters other than to allow for the creation of milestones and reevaluation processes. SERTP Sponsors contend that by adding this substantive and burdensome requirement, the Commission has significantly expanded Order No. 1000 without having gone through notice and comment procedures.<sup>844</sup> SERTP Sponsors contend that such a contract would address cost recovery issues, which Order No. 1000 repeatedly held was beyond its scope, and merely acknowledges that, in transmission planning regions with no regional OATT, written agreements are required for money to exchange hands.<sup>845</sup>

423. Moreover, as addressed in Filing Parties' OATTs, SERTP Sponsors argue that such a contract would address construction, maintenance and operation, and emergency restoration and repair issues that are beyond the scope of Order No. 1000 and concern many issues (such as construction) over which the Commission does not have jurisdiction.<sup>846</sup> SERTP Sponsors contend that requiring the filing of a *pro forma* contract would thus not only be an amendment to Order No. 1000 in violation of the Administrative Procedure Act, but would be arbitrary and capricious for being inconsistent with Order No. 1000.<sup>847</sup>

424. SERTP Sponsors argue that requiring the inclusion of such a *pro forma* agreement in Filing Parties' OATTs is also inappropriate because it may not (and presumably would not) even be the transmission developer/provider of service in any particular instance in such an agreement and may not be a party to the agreement.<sup>848</sup> They further reinforce this point by arguing that a Non-Public Utility Sponsor could be the transmission developer and, hence, the service provider in any particular instance. In that circumstance, SERTP Sponsors contend that the agreement between the nonjurisdictional developer/service provider and beneficiaries would not even be Commission-

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<sup>843</sup> SERTP Sponsors Rehearing Request at 84.

<sup>844</sup> *Id.* at 84-85.

<sup>845</sup> *Id.* at 85 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 563).

<sup>846</sup> *Id.*

<sup>847</sup> *Id.*

<sup>848</sup> *Id.* at 86.

jurisdictional. SERTP Sponsors argue that this *pro forma* agreement requirement is, therefore, also beyond the scope of the Commission's authority, as it is not authorized to require Non-Public Utility Sponsors to submit to the Commission their agreements under which they render service.<sup>849</sup>

425. SERTP Sponsors observe that the First Compliance Order stated that public utility transmission providers “have proposed a sponsorship model, which would permit a qualified transmission developer, whether an incumbent or a nonincumbent, to submit a transmission project, and if that project is selected in the SERTP regional transmission plan for purposes of cost allocation, then the developer is eligible to use the regional cost allocation method.”<sup>850</sup> SERTP Sponsors emphasize that their transmission planning and expansion, in accordance with their duty to serve, is performed on a least-cost, reliable basis. They explain that to the extent a proposal for selection in a regional transmission plan for purposes of cost allocation represents the least-cost, reliable option and otherwise satisfies the requirements for selection in a regional transmission plan for purposes of cost allocation, the SERTP Sponsors would generally support implementing the projects achieving cost savings for transmission customers.<sup>851</sup> SERTP Sponsors assert that, to the extent that the costs of the transmission developer's proposal are no longer the least-cost and reliable option, the transmission developer's proposal would be supplanted by more economical/reliable options.<sup>852</sup> SERTP Sponsors argue to the extent that the First Compliance Order's characterization of the “sponsorship” model is inconsistent with the foregoing, then clarification and rehearing is sought, as the Commission would be establishing requirements inconsistent with the SERTP Sponsors' duty to serve requirements and would thereby violate FPA sections 201 and 217(b)(4) and conflict with Order No. 1000 by being counter to its commitments not to conflict with state siting and construction laws.<sup>853</sup>

426. SERTP Sponsors observe that the First Compliance Order directs Filing Parties to include a mechanism “to grant an incumbent or nonincumbent the right to use regional cost allocation method to the extent it develops an unsponsored transmission facility that

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<sup>849</sup> *Id.*

<sup>850</sup> *Id.* at 82 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 227).

<sup>851</sup> *Id.*

<sup>852</sup> *Id.*

<sup>853</sup> *Id.* at 83 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 228).

is selected in regional transmission plan for purposes of cost allocation.”<sup>854</sup> SERTP Sponsors argue that the First Compliance Order reflects confusion as to the order of events that constitute the selection process. SERTP Sponsors explain that to be selected in the regional transmission plan for purposes of cost allocation, a transmission project must first be submitted for cost allocation; such submissions may be sponsored by incumbents or nonincumbent transmission developers, or unsponsored transmission projects proposed by stakeholders. SERTP Sponsors explain that, on compliance, they will propose a mechanism to address unsponsored projects and comply with the requirements of the First Compliance Order.<sup>855</sup> SERTP Sponsors assert that such mechanism will make clear that before the transmission project is actually selected in the regional transmission plan for purposes of cost allocation, a transmission developer must be identified that will step into the sponsor role, i.e., even a project submitted by a stakeholder will be sponsored *before* being selected. Thus, SERTP Sponsors argue contrary to the assumption in the First Compliance Order, no unsponsored transmission projects could possibly be selected for cost allocation.<sup>856</sup> SERTP Sponsors seek rehearing to the extent that the Commission intended that a mechanism be created such that the SERTP Sponsors would be required to allow a nonincumbent transmission developer to develop a transmission project submitted for cost allocation by one or more SERTP Sponsors, or some other mechanism related to “unsponsored” projects.<sup>857</sup>

**(b) Commission Determination**

427. We deny SERTP Sponsors’ request for rehearing regarding the proposed mutually-agreed upon contract between the transmission developer of a transmission project selected in the regional transmission plan for purposes of cost allocation and the beneficiaries. We disagree that Filing Parties’ proposal is beyond the scope of Order No. 1000, as Filing Parties expressly proposed to require that a transmission developer execute such a contract as a condition of its transmission project remaining selected in the regional transmission plan for purposes of cost allocation. This requirement therefore directly implicates a transmission developer’s access to, and ability to use, the regional cost allocation method, regardless of whether the transmission developer is an incumbent

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<sup>854</sup> *Id.* (citing First Compliance Order, 144 FERC ¶ 61,054 at P 228).

<sup>855</sup> *Id.*

<sup>856</sup> *Id.* at 84.

<sup>857</sup> *Id.*

or nonincumbent. The Commission directed Filing Parties to file a *pro forma* contract to ensure that the terms and conditions of the agreement are just and reasonable and not unduly discriminatory or preferential. Simply because such a contract generally contains matters related to construction, cost recovery, or other matters that may be beyond the scope of Order No. 1000 does not mean that Filing Parties' proposal to condition project selection on execution of such a contract is outside the scope of Order No. 1000. Further, we disagree with Filing Parties' expansive arguments on rehearing that these contracts do not involve issues within the Commission's jurisdiction.<sup>858</sup> We clarify that, to the extent the terms and conditions in the contract "in any manner affect or relate to"<sup>859</sup> jurisdictional "charges... made, demanded or received by a public utility for or in connection with the transmission or sale of electric energy", it is subject to filing with the Commission.<sup>860</sup> This includes agreements covering financial contributions in aid of construction, transmission and interconnection issues.<sup>861</sup> Accordingly, we affirm our finding in the First Compliance Order that, should Filing Parties wish to require a contract between beneficiaries and a transmission developer as a condition of the developer's transmission project remaining selected in the regional transmission plan for purposes of cost allocation, Filing Parties must submit a *pro forma* agreement for Commission review.

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<sup>858</sup> *Id.* at 85.

<sup>859</sup> 16 U.S.C. § 824d(c) (2012).

<sup>860</sup> 16 U.S.C. § 824d(a) (2012).

<sup>861</sup> *See, e.g., Am. Mun. Power-Ohio, Inc. et al v. Ohio Edison Co.* 57 FERC 61,358 (1991) (clarifying that contributions in aid of construction are Commission jurisdictional and must be filed); *Tennessee Power Co.*, 90 FERC ¶ 61,238 (2000) (clarifying that interconnection is a component of transmission service and interconnection must be offered under the terms of the *pro-forma* tariff); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (clarifying what activities are within the scope of the Commission's jurisdiction under section 205 of the FPA and must be filed, including contributions in aid of construction, exchange arrangements, pole attachment agreements, joint ownership agreements and operating and maintenance agreements, and "borderline agreements"). However, if an otherwise non-public utility allows its facilities to be used by a jurisdictional utility (such as an independent system operator or regional transmission organization), that would not make the non-public utility now jurisdictional. *Bonneville Power Admin.*, 112 FERC ¶ 61,012, at P 28 (2005).

428. With respect to Filing Parties' clarification requests, we clarify that the Commission's use of the phrase "sponsorship model" is not inconsistent with SERTP Sponsors' description of their transmission planning process in their rehearing request. The Commission intended only to describe Filing Parties' proposal to allow transmission developers to propose transmission projects for selection in the regional transmission plan for purposes of cost allocation, and, provided that the transmission developer and transmission project otherwise satisfy the requirements of the regional transmission planning process, to use the regional cost allocation method for those transmission projects if selected. We provide clarification, and confirm SERTP Sponsors' argument that under the SERTP Sponsor's sponsorship proposal, no unsponsored transmission project could be selected in the regional transmission plan for the purposes of regional cost allocation without first having a developer sponsor the transmission project. However, consistent with our determination in the First Compliance Order,<sup>862</sup> SERTP Sponsors must have a mechanism in place to address unsponsored projects. Further, consistent with Order No. 1000, once those unsponsored projects are identified through the regional transmission planning process, "the regional transmission planning process would also need to have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional transmission plan for the purposes of cost allocation."<sup>863</sup>

### iii. Compliance

#### (a) Summary of Compliance Filings

429. Filing Parties explain that the First Compliance Order directed Filing Parties to establish a mechanism for "unsponsored projects."<sup>864</sup> Filing Parties revise their OATTs to provide that should an entity propose, but not intend to develop, a transmission project for potential selection in a regional transmission plan for purposes of cost allocation, the entity must submit: (1) sufficient information for the regional transmission planning process to determine that the transmission project satisfies the region's minimum threshold requirements; (2) documentation of the specific transmission need(s) that the

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<sup>862</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 228.

<sup>863</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

<sup>864</sup> *E.g.*, Southern Companies Transmittal Letter at 31 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 228).



proposed transmission project is intended to address; and (3) a description of why the proposed transmission project is expected to be more efficient or cost-effective than other transmission projects included in the then-current regional transmission plan.<sup>865</sup> If the proposal satisfies these requirements, Filing Parties will post information describing the proposal to the SERTP regional transmission planning website. Under the proposal, the entity that proposes the transmission project should then coordinate with a transmission developer (either incumbent or nonincumbent) to have the developer submit the remaining information and materials required for a transmission project being proposed for selection in the regional transmission plan for purposes of cost allocation. A pre-qualified transmission developer must submit the required materials within a 60-day window after the SERTP Annual Transmission Planning Summit and Input Assumptions Meeting. If the required information is not submitted in that timeframe, then Filing Parties may treat the proposed transmission project as a stakeholder-proposed transmission project alternative.<sup>866</sup>

430. Filing Parties explain their original proposal included as a milestone that the transmission developer and the beneficiaries would need to enter into a contractual agreement. They state the First Compliance Order held that a *pro forma* agreement would need to be filed to cover this milestone.<sup>867</sup> Filing Parties explain they have removed the post-selection, implementation milestone, thereby removing the predicate for including such a *pro forma* agreement. Filing Parties assert that, because they have no experience with nonincumbent transmission developers developing a regional transmission project, preparing such a *pro forma* agreement in a vacuum would be problematic.

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<sup>865</sup> These information requirements, which also apply to a transmission developer that seeks to develop a transmission project that it proposes for selection in the regional transmission plan for purposes of cost allocation, are addressed above in section Information Requirements section.

<sup>866</sup> *E.g.*, Southern Companies OATT, Attachment K § 16.6. Pursuant to Filing Parties' OATTs, stakeholder-proposed transmission project alternatives are considered by Filing Parties for possible inclusion in the regional transmission plan and evaluated as part of the regional transmission planning process. *E.g.*, Southern Companies OATT, Attachment K § 3.5.3.

<sup>867</sup> *E.g.*, Southern Companies Transmittal Letter at 31 (citing First Compliance Order, 144 FERC ¶ 61,054 at P 229).

**(b) Commission Determination**

431. We find that the provisions in Filing Parties' filings addressing the Commission's directives regarding a mechanism to grant a transmission developer the right to use the regional cost allocation method for unsponsored transmission projects partially comply with the directives in the First Compliance Order. Filing Parties propose that stakeholders who propose transmission projects for selection in the regional transmission plan for purposes of cost allocation, but do not intend to develop the transmission project themselves, will be responsible for selecting a transmission developer to sponsor their proposed transmission project in the regional transmission planning process. We find this proposal reasonable and consistent with the Commission's directives in the First Compliance Order<sup>868</sup> and Order No. 1000.

432. However, we find Filing Parties' response fails to fully address the Commission's compliance directive. Specifically, we find that it remains unclear whether or how a transmission developer (whether incumbent or nonincumbent) would be granted the right to use the regional cost allocation method for an unsponsored transmission project that is identified *through the regional transmission planning process*, rather than simply proposed by a stakeholder, and selected as a more efficient or cost-effective transmission solution in the regional transmission plan for purposes of cost allocation. We note that, as required by Order No. 1000's affirmative obligation to plan, transmission solutions that were not proposed by stakeholders or transmission developers may be identified as more efficient or cost-effective transmission solutions through regional analysis.<sup>869</sup> Order No. 1000 established that regions using a sponsorship model must "have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional plan for purposes of cost allocation."<sup>870</sup> The Commission further noted that other mechanisms, or combination of mechanisms, may comply with the requirement.<sup>871</sup>

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<sup>868</sup> First Compliance Order, 144 FERC ¶ 61,054 at 230.

<sup>869</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

<sup>870</sup> *Id.* P 336.

<sup>871</sup> For example, this mechanism could include a solicitation of interest for potential transmission developers or a non-discriminatory competitive bidding process. *See, e.g., Tampa Elec. Co.*, 143 FERC ¶ 61,254, at P 217 (2013); *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 at PP 272-273.

433. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings that revise their respective OATTs to provide a fair and not unduly discriminatory mechanism that the SERTP process will use to grant a transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities identified through the regional transmission planning process.

434. In response to the directive in the First Compliance Order to submit for review by the Commission any *pro forma* agreement that a transmission developer would need to sign, Filing Parties propose to delete the requirement for a transmission developer to execute a mutually-agreed to contract, thus obviating the need for a *pro forma* agreement. Filing Parties explain that they have no experience with nonincumbent transmission developers and do not want to prepare a *pro forma* agreement in a vacuum. They also note that a post-selection implementation contract could include issues that are beyond the scope of Order No. 1000. We accept Filing Parties' proposal to not include a *pro forma* agreement in their OATTs. However, any post-selection contract that includes Commission-jurisdictional terms, conditions, or rates must be filed with the Commission for review.

#### 4. Cost Allocation

435. 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>872</sup> Each public utility transmission provider must demonstrate that its cost allocation method satisfies six regional cost allocation principles.<sup>873</sup> In addition, while Order No. 1000 permitted participant funding, participant funding cannot be the regional cost allocation method.

436. 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

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<sup>872</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 558, 690.

<sup>873</sup> *Id.* P 603.

and the class of beneficiaries, and the transmission facility costs allocated must be roughly commensurate with that benefit.<sup>874</sup>

437. 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>875</sup>

438. Regional Cost Allocation Principle 3 specifies that, if a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, the threshold must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. Such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.<sup>876</sup>

439. 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>877</sup>

440. 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>878</sup>

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<sup>874</sup> *Id.* PP 625, 678.

<sup>875</sup> *Id.* P 637.

<sup>876</sup> *Id.* P 646.

<sup>877</sup> *Id.* P 657.

<sup>878</sup> *Id.* P 668.

441. 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>879</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>880</sup> A regional cost allocation method may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.<sup>881</sup>

**a. First Compliance Order**

442. In the First Compliance Order, the Commission found that Filing Parties' 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 Filing Parties' cost allocation proposal as a whole did not comply with Regional Cost Allocation Principle 1 and directed Filing Parties 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.

443. 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

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<sup>879</sup> *Id.* PP 685-686.

<sup>880</sup> *Id.* P 560.

<sup>881</sup> *Id.* P 689.

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>882</sup>

444. 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>883</sup> Given that the Commission found that Filing Parties' proposed avoided cost method did not comply with Regional Cost Allocation Principle 1, the Commission did not make a finding on whether Filing Parties' proposed regional cost allocation method complied with Regional Cost Allocation Principles 2 through 6.

**b. Requests for Rehearing or Clarification**

**i. Summary of Requests for Rehearing or Clarification**

445. SERTP Sponsors argue that the Commission should grant rehearing and allow the SERTP region's sole use of its proposed avoided cost allocation method because it does in fact address public policy and economic transmission needs.<sup>884</sup> SERTP Sponsors

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<sup>882</sup> First Compliance Order, 144 FERC ¶ 61,054 at P 249 (*See* Order No. 1000-A, 139 FERC ¶ 61,132 at P 678).

<sup>883</sup> *Id.* P 255.

<sup>884</sup> SERTP Sponsors Rehearing Request at 27.

argue that the Commission's rejection of an avoided cost method as the sole metric may be a reasonable determination for transmission planning within an RTO market. SERTP Sponsors contend, however, that in the Southeast, the avoided cost method is, to the best of their knowledge, the only regional cost allocation method that is generally consistent with their bottom-up integrated resource planning and transmission planning processes.<sup>885</sup> They assert this is because this cost allocation method respects the determinations of transmission needs and benefits made in those processes rather than second-guessing or supplanting those determinations.<sup>886</sup> SERTP Sponsors argue that the avoided cost approach is directed at determining whether there are more efficient/cost-effective transmission solutions to address those transmission needs and is consistent with Order No. 1000. SERTP Sponsors contend that given the market structure in the Southeast, the avoided cost method "assures that the regional transmission planning process will stay focused on identifying more efficient or cost effective solutions – rather than divert to an inefficient and counter-productive exercise of regional level integrated resource planning."<sup>887</sup> SERTP Sponsors conclude that the avoided-cost approach is, thus, needed to account for the SERTP region's regional differences and market structure (as compared to RTO markets).<sup>888</sup>

446. SERTP Sponsors further argue that the avoided cost allocation method should be accepted because it satisfies Order No. 1000's regional cost allocation principles. SERTP Sponsors argue that the First Compliance Order held that its use violated Cost Allocation Principle 1 on the purported grounds that it fails to "account for other benefits associated with addressing economic and public policy-related transmission needs."<sup>889</sup> They argue that the avoided cost method satisfies Order No. 1000's cost allocation principles, among other things, because the costs that would be allocated would be commensurate with the benefits (Cost Allocation Principle 1) because the benefits are the quantifiable benefits of avoided/displaced transmission.<sup>890</sup> Moreover, SERTP Sponsors argue that the First Compliance Order's holding that the SERTP Sponsors' avoided cost method does not

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<sup>885</sup> *Id.*

<sup>886</sup> *Id.* at 28.

<sup>887</sup> *Id.* (quoting Second Rozier Aff. at P 17).

<sup>888</sup> *Id.*.

<sup>889</sup> *Id.*

<sup>890</sup> *Id.* at 28-29.

“adequately assess[] the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs on a regional basis and ... [may] not account for transmission needs not identified or identified in isolation” is incorrect. SERTP Sponsors contend because the existing transmission plans address all long-term firm transmission commitments to provide reliable service with minimal congestion or constraint, and because those long-term firm commitments include the results of integrated resource planning that address economic and public policy needs, the full array of transmission needs and benefits are addressed by the transmission projects included in those existing transmission plans.<sup>891</sup> SERTP Sponsors assert that the avoided cost method likewise incorporates that full array of transmission needs and benefits. According to SERTP Sponsors, by concluding that the avoided cost method (which builds upon the bottom-up integrated resource planning processes) fails to account for economic and public policy needs, the First Compliance Order denounces integrated resource planning and assumes that it fails in its core purpose of identifying load-serving entities’ transmission needs.<sup>892</sup>

447. SERTP Sponsors argue that the only valid basis upon which an alternative regional transmission project actually could be identified in the SERTP region would be on the basis of improved cost-effectiveness, displacing facilities already in the local and regional plans to meet transmission needs and benefits identified by transmission customers (on their own or through the transmission providers’ integrated resource planning). SERTP Sponsors argue that unless a failure of integrated resource planning is assumed, the “benefit” of an alternative regional transmission project can only be the savings (quantified by the transmission facilities in the plan that would be displaced) versus the costs of alternative regional transmission projects. They argue that when the examples in the First Compliance Order are considered in the context of the integrated resource planning-driven industry structure in the SERTP region, it becomes apparent the presumptive “additional benefits” all ultimately relate to resource options and choices (hence the First Compliance Order’s references to production cost modeling) or a very different market structure. SERTP Sponsors contend that the additional benefits can only be realized if there is, among other things: (1) adoption of region-wide security constrained economic dispatch for the entire SERTP region; (2) combined resource planning processes within each balancing authority area and across balancing authority areas in the region; and (3) a decision by the states with current jurisdiction over the integrated resource planning processes of the SERTP members to accept and include in

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<sup>891</sup> *Id.* at 15-16.

<sup>892</sup> *Id.* at 16.



the resource plans of utilities in the region the putative “benefits” of future economic opportunities determined based on modeling and forecasts that are based on a regional transmission planning process. SERTP Sponsors state in that this approach would take a radical shift in the market structure in the Southeast, this outcome was not expected. Moreover, SERTP Sponsors contend that this would deviate from the Commission’s repeated statements in Order No. 1000 that state jurisdiction and integrated resource planning processes would be protected.<sup>893</sup>

448. Finally, SERTP Sponsors argue that the result of the Commission’s First Compliance Order is unreasonable and unlawful. SERTP Sponsors contend that a *de novo* determination of economic and public policy resource benefits of alternative transmission solutions is inconsistent with the SERTP region’s market structure, imposing an unworkable process that will not lead to transmission expansion in the Southeast. SERTP Sponsors argue that adopting alternative market structures, such as region-wide dispatch or interregional resource planning, imposes requirements that go far beyond Order No. 1000.<sup>894</sup> Moreover, SERTP Sponsors contend that any federal requirement effectively forcing such resources into integrated resource plans to justify binding cost allocations for transmission facilities not otherwise needed or justified imposes a resource planning outcome that is contrary to state law and precedent and could easily serve to only drive-up embedded transmission costs.<sup>895</sup> Further, SERTP Sponsors argue that transmission projects included in a regional transmission plan due to the type of top-down, speculative/non-firm planning imposed by the First Compliance Order face a materially increased risk of not being approved for siting and construction.<sup>896</sup>

**ii. Commission Determination**

449. With respect to Filing Parties’ proposed regional cost allocation method, SERTP Sponsors argue that: (1) their proposed avoided cost method addresses all economic and public policy-related transmission needs and satisfies Regional Cost Allocation Principle 1; (2) the Commission’s rejection of Filing Parties’ proposed cost allocation method is inconsistent with the market structure in the SERTP region; and (3)

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<sup>893</sup> *Id.* at 24-25.

<sup>894</sup> *Id.* at 25.

<sup>895</sup> *Id.* at 26.

<sup>896</sup> *Id.*

consideration of benefits other than those accounted for through the avoided cost method would require the SERTP region to adopt an alternative market structure (e.g., region-wide security constrained economic dispatch or regional integrated resource planning) and would infringe on state jurisdiction and state-level integrated resource planning.

450. As a threshold matter, SERTP Sponsors have not persuaded us that their 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, SERTP Sponsors have not demonstrated that the concerns that the Commission expressed in the First Compliance Order<sup>897</sup> are unwarranted. In the First Compliance Order, the Commission provided examples describing situations in which using one regional cost allocation method that relies solely on avoided costs to capture the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs would not adequately assess these benefits and therefore would not allocate the costs of a transmission facility that is selected in the regional transmission plan for purposes of cost allocation in a manner that is at least roughly commensurate with estimated benefits.<sup>898</sup> While an avoided cost metric may be used to identify the beneficiaries of reliability transmission projects when separate cost allocation methods are used for reliability, economic, and public policy-related transmission projects,<sup>899</sup>

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<sup>897</sup> The Commission stated that the single avoided cost regional cost allocation method that Filing Parties proposed in their first compliance filing fails to account for benefits that were not identified in the local transmission planning processes but that could be recognized at the regional level, fails to account for benefits associated with addressing economic and public policy-related transmission needs that a regional transmission facility provides, limits the consideration by stakeholders on a more aggregated basis of whether a particular transmission facility may represent the more efficient or cost-effective means of fulfilling a given transmission need, and does not allow for the possibility of resolving transmission needs or realizing benefits at the regional level where, in an individual local transmission planning process, the value of resolving the identified transmission need or the value of the additional benefits does not outweigh the costs, even though the value could outweigh the costs when considered on a regional basis. First Compliance Order, 144 FERC ¶ 61,054 at PP 249-254.

<sup>898</sup> *Id.* PP 250-252.

<sup>899</sup> We note that a single avoided cost method may be used to identify the beneficiaries of reliability transmission projects when separate cost allocation methods

(continued...)

SERTP Sponsors have not persuaded us here that the proposed regional cost allocation method, which relies on a single avoided cost metric to allocate costs for all types of transmission projects, would adequately capture regional reliability, economic, and public policy-related benefits. Accordingly, we reiterate the finding in the First Compliance Order that Filing Parties' proposed regional cost allocation method does not adequately assess the potential regional benefits provided by a transmission facility and thus deny rehearing.

451. Contrary to SERTP Sponsors' claims, regional cost allocation methods besides Filing Parties' proposed avoided cost method can be reasonably applied in transmission planning regions that have not adopted region-wide security constrained economic dispatch. In fact, the Commission has largely accepted the regional cost allocation methods proposed in several other transmission planning regions with similar market structures (i.e., that rely on physical transmission rights to govern the use of each public utility transmission provider's transmission system). For example, the Commission has accepted, in part, regional cost allocation methods for the ColumbiaGrid, Northern Tier Transmission Group, and WestConnect transmission planning regions that consider benefits besides those measured using the avoided cost metric.<sup>900</sup> The Commission's

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are used for reliability, economic, and public policy-related transmission projects. *See, e.g., Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 312.

<sup>900</sup> *See, e.g., Avista Corp.* 143 FERC ¶ 61,255 at P 300 (finding that the two categories of benefits considered pursuant to the proposed regional cost allocation method (i.e., the displacement or deferral of transmission facilities by a transmission project selected in the regional transmission plan for purposes of cost allocation and the value of increased capacity on a beneficiary's transmission system) together represent a reasonable approximation of some of the identifiable benefits that a transmission facility selected in the regional transmission plan for purposes of cost allocation may provide); *PacifiCorp*, 143 FERC ¶ 61,151 at P 240 (finding that the proposal to use the change in energy losses and the change in reserves as benefit metrics will allocate the costs of a transmission facility selected in the regional transmission plan for purposes of cost allocation in a manner that is at least roughly commensurate with the benefits it provides); *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at PP 312, 314, 317 (finding that the avoided cost approach to identifying the beneficiaries of reliability transmission projects reasonably captures the benefits of such transmission projects, that the assessment of production cost savings and reductions in reserve sharing requirements reasonably identifies beneficiaries and accounts for economic benefits, and that identifying beneficiaries, defining benefits, and allocating costs based on the number of

(continued...)

analysis in the First Compliance Order was not conditioned on the use of region-wide security constrained economic dispatch, but rather considered benefits, such as savings from the ability to access less expensive resources through a regional transmission project, that could be measured using a number of different metrics, as evidenced by the regional cost allocation methods that the Commission has accepted for other transmission planning regions. Therefore, the Commission's directives in the First Compliance Order do not require that Filing Parties adopt region-wide security constrained economic dispatch.

452. Finally, we disagree with SERTP Sponsors' argument that the First Compliance Order required regional integrated resource planning or otherwise infringed on state jurisdiction or state-level integrated resource planning. Like Order No. 1000, the First Compliance Order does not mandate planning of resources beyond transmission.<sup>901</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>902</sup> The Commission has found that to be just and reasonable under the FPA, a regional transmission planning process must consider transmission facilities that are driven by transmission needs associated with maintaining reliability, addressing economic considerations, and associated with public policy requirements and provide a means for allocating the costs of each type of transmission facility to beneficiaries.<sup>903</sup> The

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megawatts of public policy resources enabled allocates costs in a manner that is at least roughly commensurate with estimated benefits).

<sup>901</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 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 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>902</sup> *Id.* PP 168-179.

<sup>903</sup> *Id.* P 689.

transmission needs and benefits of multiple transmission providers are considered in the regional transmission planning process and, therefore, Filing Parties may be able to identify transmission needs and benefits not otherwise considered in their integrated resource planning processes or associated with long-term firm transmission requests under the OATT or identify transmission solutions to regional transmission needs and benefits that are more efficient and cost-effective than those identified in an individual local transmission planning process.<sup>904</sup> The Commission's rejection of Filing Parties' proposed avoided cost method and the requirement that Filing Parties develop a regional cost allocation method that complies with Order No. 1000 will not result in Filing Parties having to modify any state integrated resource planning decisions. We therefore deny SERTP Sponsors' rehearing request.

**c. Compliance**

**i. Summary of Compliance Filings**

453. After a regional transmission project is selected in a regional transmission plan for purposes of regional cost allocation purposes and is constructed and placed into service, Filing Parties propose allocating the regional transmission project's costs to beneficiaries based on their cost savings. Filing Parties state that they will determine cost savings based on, amongst other things, whether the selected project displaces one or more of the transmission projects previously included in the 10 year transmission expansion plan or the regional transmission plan. Filing Parties further propose considering what transmission project(s) would be required in lieu of the regional transmission project if the proposed regional transmission project addresses a transmission need for which no transmission project is included in the latest 10 year expansion plan and/or regional transmission plan. Filing Parties assert that identifying and assessing alternative transmission options for previously unidentified transmission needs provides both a basis to fully quantify the benefits of the proposed project for regional cost allocation and also demonstrates prudence on the part of the transmission provider that potentially more efficient or cost-effective transmission project alternatives have been investigated.

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<sup>904</sup> Additionally, as discussed above in the Affirmative Obligation to Plan section of this order, we reject Filing Parties' proposed definition of "Transmission Needs," which would limit the transmission 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.

Finally, Filing Parties propose considering the reduction of real power transmission losses on their transmission system.<sup>905</sup>

454. Filing Parties propose that, after a cost allocation determination has been made for a transmission project selected in the regional transmission plan for the purposes of regional cost allocation, this cost allocation determination could be changed in future planning cycles based on the then-current determination of benefits (calculated consistent with the relevant section of the OATTs<sup>906</sup>), cost allocation modifications as mutually agreed by the beneficiaries, or cost modifications found acceptable by both the transmission developer and the beneficiary(ies).<sup>907</sup>

455. Filing Parties state that their regional cost allocation method satisfies Regional Cost Allocation Principle 1 by allocating the cost of transmission facilities to those that benefit from the facilities in a manner roughly commensurate with estimated benefits. Under the proposal, transmission needs driven by a public policy requirement will be addressed in the transmission planning process and will thereby be potentially displaced by an alternative transmission project proposed for selection in the regional transmission plan for purposes of cost allocation. Filing Parties assert that the Commission specifically approved the use of a real power transmission losses metric and states that the avoided cost method addresses reliability, economic, and public policy benefits.<sup>908</sup> Further, Filing Parties state that the Commission approved Northern Tier Transmission Group's use of a single avoided cost metric to address the allocation to beneficiaries of both reliability and public policy benefits.<sup>909</sup>

456. Filing Parties assert that the proposed regional cost allocation method satisfies Regional Cost Allocation Principle 2 because only those who receive benefits in the form of displaced transmission costs and reduced transmission losses would be allocated the costs of a transmission project selected in the regional transmission plan for purposes of

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<sup>905</sup> *E.g.*, Southern Companies OATT, Attachment K § 18.

<sup>906</sup> *Id.* § 17.3.

<sup>907</sup> *Id.* § 19.3.

<sup>908</sup> *E.g.*, Southern Companies Transmittal Letter at 33-34 (referencing First Compliance Order, 144 FERC ¶ 61,054 at P 55; Order No. 1000-A, 139 FERC ¶ 61,132 at P 562).

<sup>909</sup> *Id.* (referencing *PacifiCorp*, 143 FERC ¶ 61,151 at P 239).

cost allocation.<sup>910</sup> Filing Parties similarly assert that their proposed regional cost allocation method satisfies Regional Cost Allocation Principles 3 and 4 because the SERTP Sponsors have adopted a 1.25 benefit-to-cost threshold and only allocate the costs of a transmission project selected in a regional transmission plan for purposes of cost allocation within SERTP.<sup>911</sup>

457. Filing Parties further assert that their regional cost allocation method satisfies Regional Cost Allocation Principle 5 because the First Compliance Order reaffirmed that the SERTP transmission planning process complies with Order No. 890's transmission planning principles, meaning that the SERTP Sponsors' new proposals to satisfy Order No. 1000's requirements will be vetted with stakeholders in accordance with the SERTP Sponsors' existing open, transparent, and coordinated transmission planning processes.<sup>912</sup> Filing Parties state that their OATTs have been revised to specifically provide that the SERTP Sponsors will post on the SERTP website the determination of whether a proposed transmission project will be selected for inclusion in a regional transmission plan for purposes of cost allocation, and that they will document their "determination in sufficient detail for Stakeholders to understand why a particular project was selected or not selected [in the regional transmission plan for purposes of cost allocation]."<sup>913</sup> Finally, Filing Parties state that Regional Cost Allocation Principle 6 is not a mandatory provision and therefore their regional cost allocation method satisfies this principle.<sup>914</sup>

## ii. Protests/Comments

458. LS Power argues that Filing Parties' proposed analysis still fails to account for other benefits associated with addressing economic and public policy-related transmission needs.<sup>915</sup> LS Power claims that Filing Parties' only change to the avoided

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<sup>910</sup> *Id.* at 34 (referencing Southern Companies OATT, Attachment K § 18).

<sup>911</sup> *E.g.*, Southern Companies OATT, Attachment K § 17.2.1; Southern Companies Transmittal Letter at 34.

<sup>912</sup> Southern Companies Transmittal Letter at 34 (referencing First Compliance Order, 144 FERC ¶ 61,054 at PP 41-46).

<sup>913</sup> Southern Companies OATT, Attachment K § 17.5; Southern Companies Transmittal Letter at 34.

<sup>914</sup> Southern Companies Transmittal Letter at 34-35.

<sup>915</sup> LS Power Protest at 28.

cost method was to add a review of line loss savings. According to LS Power, this additional metric does not address the issues raised in the First Compliance Order.<sup>916</sup>

**iii. Answer**

459. SERTP Sponsors assert that the deficiencies identified in the First Compliance Order were that “a regional transmission facility that results in a more efficient or cost-effective transmission solution than what is included in the roll-up of local transmission plans would not be eligible for regional cost allocation if there is no transmission facility in the local transmission plans that it would displace.” In response, SERTP Sponsors state that they have created a mechanism whereby benefits will still be captured even if the underlying transmission need is not addressed by transmission projects in the local transmission plans and which ensures that the transmission facilities eligible for displacement include both local and regional planned facilities.<sup>917</sup> Thus, SERTP Sponsors assert, the Commission should approve their proposed regional cost allocation method.

**iv. Commission Determination**

460. We find that Filing Parties’ proposed regional 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 Filing Parties’ 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) includes a benefit to cost threshold that does not exceed 1.25; (4) allocates costs solely within the affected transmission planning region; (5) provides for methods for determining benefits and identifying beneficiaries that are transparent; (6) provides for adequate documentation to allow a stakeholder to determine how the methods for determining benefits and beneficiaries were applied to a proposed transmission facility; and (7) represents a single cost allocation method for all types of transmission facilities that is set out clearly and explained in detail. However, Filing Parties’ proposed regional cost allocation method does not provide for identification of the consequences for other transmission planning regions, such as upgrades that may be required, associated with a transmission facility selected in the regional transmission plan for purposes of cost

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<sup>916</sup> *Id.*

<sup>917</sup> SERTP Sponsors Answer at 55-57 (citing, *e.g.*, Southern Companies Transmittal Letter at 32-33).



allocation. Accordingly, Filing Parties must make a further compliance filing to revise their OATTs, as discussed below.

461. We find that Filing Parties' proposed regional cost allocation method partially complies with Regional Cost Allocation Principle 1. Filing Parties' 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 Filing Parties' 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 to beneficiaries based on the cost savings associated with the following: (1) the displacement of one or more transmission projects previously included in the beneficiaries' 10 year expansion plans; (2) the displacement of one or more regional transmission projects previously included in the regional transmission plan; (3) if the proposed regional transmission project addresses a transmission need for which no transmission project is included in those plans, any alternative transmission projects that would be required in lieu of the proposed regional transmission project; and (4) the reduction of real power transmission losses on the beneficiaries' transmission systems. 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. Filing Parties' proposed definition of beneficiaries, however, fails to take all of these metrics into consideration. Filing Parties define beneficiaries only as those enrolled transmission providers for which one or more of their planned transmission projects may be displaced by a transmission project proposed for potential selection in the regional transmission plan for purposes of cost allocation, based on their cost savings. We therefore direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings revising the definition of beneficiaries to include all of the metrics discussed in this paragraph.

462. In addition, we note that Filing Parties' proposed definition of beneficiaries would make an entity a beneficiary if one or more of its local or regional transmission projects is displaced by a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>918</sup> While we find that Filing Parties' proposed definition is reasonable with respect to the displacement of local transmission projects, this definition,

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<sup>918</sup> *E.g.*, Southern Companies OATT, Attachment K at n.4.

as it applies to the displacement of regional transmission projects, appears to be inconsistent with Filing Parties' avoided cost benefit metric. Under Filing Parties' proposal, in the event that a regional transmission project that was previously selected in the regional transmission plan for purposes of cost allocation is also (or subsequently) displaced as part of the regional transmission planning process, the beneficiaries of the newly proposed more efficient or cost-effective regional transmission project would include, or potentially be limited to, the transmission provider whose regional transmission project is being displaced. We therefore direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to clarify and revise their OATTs to address the above. One way to address the matter may be for Filing Parties to specify that, if a regional transmission project displaces a different regional transmission project that was previously selected in the regional transmission plan for purposes of cost allocation, the portion of the costs of the newly proposed more efficient or cost-effective regional transmission project associated with the benefits calculated using the costs of the displaced regional project will be allocated to the beneficiaries that were allocated costs for the displaced regional transmission project in accordance with the regional cost allocation method.

463. We further find that Filing Parties' 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 Filing Parties proposed in their initial compliance filings: a) failed to account for benefits that were not identified in the local transmission planning processes but that could be recognized at the regional level; b) failed to account for benefits associated with addressing economic and public policy-related transmission needs that the regional transmission facility provides; c) limited the consideration by stakeholders on a more aggregated basis of whether a particular transmission facility may represent the more efficient or cost-effective means of fulfilling a given transmission need, and d) did not allow for the possibility of resolving transmission needs or realizing benefits at the regional level where, in an individual local transmission planning process, the value of resolving the identified transmission need or the value of the additional benefits does not outweigh the costs, even though the value could outweigh the costs when considered on a regional basis.<sup>919</sup> Filing Parties' revised regional cost allocation method addresses these concerns because it accounts for the benefits associated with both the cost of any alternative transmission projects that would be required in lieu of the

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<sup>919</sup> First Compliance Order, 144 FERC ¶ 61,054 at PP 249-254.

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 reduction of real power transmission losses on the beneficiaries' transmission systems. As a result of Filing Parties' proposal to continue using a single cost allocation method for all types of projects but adding these additional metrics for measuring benefits, Filing Parties' revised 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 the local or regional transmission plans. We therefore find that Filing Parties' 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.

464. Similarly, Filing Parties' 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 their compliance filings, Filing Parties propose to allocate the costs of a regional transmission project selected in the regional transmission plan for purposes of cost allocation to the beneficiaries based on their cost savings. We find that Filing Parties' 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, Filing Parties' proposal allocates costs in a manner that is at least roughly commensurate with estimated benefits. Thus, Filing Parties' proposed regional cost allocation method does not involuntarily allocate the costs of transmission facilities to those that receive no benefit from those transmission facilities.

465. We find that Filing Parties' proposed benefit to cost ratio complies with Regional Cost Allocation Principle 3. 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>920</sup> Filing Parties propose 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 of 1.25. Thus, Filing Parties' proposed benefit to cost

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<sup>920</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

threshold is not so high that transmission facilities with significant positive net benefits are excluded from cost allocation.

466. As discussed above, Filing Parties propose to allocate the costs of a regional transmission project selected in the regional transmission plan for purposes of cost allocation to the beneficiaries based on their cost savings.<sup>921</sup> Thus, we find that Filing Parties' 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, Filing Parties' 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. Filing Parties also do not address whether the SERTP 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 SERTP region. Accordingly, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to address these requirements.

467. We find that Filing Parties' 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). Filing Parties' proposed regional cost allocation method and data requirements for determining benefits and identifying beneficiaries are transparent and described in Filing Parties' OATTs. Specifically, Filing Parties' revised OATTs describe which entities can be identified as beneficiaries and how both benefits and costs will be quantified. With respect to real power losses, Filing Parties' revised OATTs state that Filing Parties will use power flow models to determine the change in real power losses on the transmission system at estimated average load levels, and that Filing Parties will estimate the energy

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<sup>921</sup> *E.g.*, Southern Companies OATT, Attachment K § 18.

savings associated with the change in real power losses utilizing historical or forecasted data that is publicly available.<sup>922</sup>

468. However, Filing Parties propose OATT provisions that allow a cost allocation determination to be changed in future planning cycles based on the then-current determination of benefits (calculated consistent with the relevant section of the OATTs<sup>923</sup>), cost allocation modifications as mutually agreed by the beneficiaries, or cost modifications found acceptable by both the transmission developer and the beneficiary(ies).<sup>924</sup> As discussed in the Evaluation Process for Transmission Proposals Selection in the Regional Transmission Plan for Purposes of Cost Allocation section, Order No. 1000 requires that “every cost allocation method or methods provide for allocation of the entire prudently incurred cost.”<sup>925</sup> Although we interpret Filing Parties’ proposed OATT provisions as permitting costs to be redistributed amongst beneficiaries in subsequent planning cycles, the proposed language does not make clear that, in accordance with Order No. 1000, the entire prudently incurred cost will be fully allocated in subsequent planning cycles. We therefore direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings revising this section of their OATTs to state that all prudently incurred costs will be fully allocated in subsequent planning cycles.

469. In addition, Filing Parties’ revised OATTs provide that the Transmission Provider’s determination of whether to select a transmission facility in the regional transmission 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. However, Filing Parties’ revised OATTs do not require the Transmission Provider to 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>926</sup> Thus, we direct Filing Parties to submit, within 60 days of the date of issuance of this order, further compliance filings to revise its OATT to provide that the Transmission Provider will provide adequate documentation to

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<sup>922</sup> *Id.* § 17.2.3.

<sup>923</sup> *Id.* § 17.3.

<sup>924</sup> *Id.* § 19.3.

<sup>925</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 640.

<sup>926</sup> *See, e.g., Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 325.

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.

470. Finally, we find that Filing Parties' proposed regional cost allocation method complies with Regional Cost Allocation Principle 6. Consistent with Regional Cost Allocation Principle 6, Filing Parties propose 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, Filing Parties have not proposed to designate a type of transmission facility that has no regional cost allocation method applied to it.

The Commission orders:

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

(B) Filing Parties' respective compliance filings are hereby accepted, effective June 1, 2014, subject to further compliance filings, as discussed in the body of this order.

(C) Filing Parties are hereby directed to submit further compliance filings, within 60 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Norris is dissenting in part with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## **Appendix A: Abbreviated Names of Interveners and Commenters**

The following tables contain the abbreviated names of interveners, including commenters and protestors, and answers in each docket.

### **Duke Energy Carolinas, LLC and Duke Energy Progress, Inc. (collectively, Duke Energy)**

**Docket Nos. ER13-83-004, ER13-83-005**

#### **Commenters/Protestors**

LS Power Transmission, LLC and LSP Holdings, LLC (collectively, LS Power)

Natural Resources Defense Council, Sierra Club, Southern Alliance for Clean Energy, Southern Environmental Law Center, and Sustainable FERC Project (collectively, Public Interest Organizations)

#### **Answers**

Associated Electric Cooperative Inc. (ACEI), Dalton Utilities, Duke Energy Carolinas, LLC; Duke Energy Progress Inc. (Duke Companies), Georgia Transmission Corporation, Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E-KU), the Municipal Electric Authority of Georgia (MEAG Power), Ohio Valley Electric Corporation (OVEC) , PowerSouth Energy Cooperative (PowerSouth), Southern Company Services, Inc., (Southern Companies), and the Tennessee Valley Authority (TVA) (collectively, SERTP Sponsors).

#### **Rehearing Requests**

Duke Energy

SERTP Sponsors

**Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, LG&E-KU)**

**Docket Nos. ER13-897-001 and ER13-897-002**

#### **Interveners**

North Carolina Electric Membership Corporation (NCEMC)

South Carolina Office of Regulatory Staff (South Carolina Staff)

Georgia Public Service Commission (Georgia Commission)

National Association of Regulatory Commissioners (NARUC)

**Commenters/Protestors**

Public Interest Organizations

LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively, LSP Transmission)

Kentucky Public Service Commission (Kentucky Commission)

**Answers**

SERTP Sponsors

**Rehearing Requests**

Alabama Public Service Commission (Alabama Commission)

Georgia Public Service Commission (Georgia Commission)

National Association of Regulatory Commissioners (NARUC)

North Carolina Utilities Commission (North Carolina Commission)

LSP Transmission

SERTP Sponsors

**Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Company)**

**Docket Nos. ER13-908-001 and ER13-908-002**

**Interveners**

North Carolina Electric Membership Corporation (NCEMC)

South Carolina Office of Regulatory Staff (South Carolina Staff)



Georgia Public Service Commission (Georgia Commission)

National Association of Regulatory Commissioners (NARUC)

**Commenters/Protestors**

Public Interest Organizations

LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively, LSP Transmission)

Kentucky Public Service Commission (Kentucky Commission)

**Answers**

SERTP Sponsors

**Rehearing Requests**

Alabama Public Service Commission (Alabama Commission)

Georgia Public Service Commission (Georgia Commission)

National Association of Regulatory Commissioners (NARUC)

North Carolina Utilities Commission (North Carolina Commission)

LSP Transmission

SERTP Sponsors

**Ohio Valley Electric Corporation (OVEC)**

**Docket Nos. ER13-913-001 and ER13-913-002**

**Interveners**

North Carolina Electric Membership Corporation (NCEMC)

South Carolina Office of Regulatory Staff (South Carolina Staff)

Georgia Public Service Commission (Georgia Commission)

National Association of Regulatory Commissioners (NARUC)

**Commenters/Protestors**

Public Interest Organizations

LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively, LSP Transmission)

Kentucky Public Service Commission (Kentucky Commission)

**Answers**

SERTP Sponsors

**Rehearing Requests**

Alabama Public Service Commission (Alabama Commission)

Georgia Public Service Commission (Georgia Commission)

National Association of Regulatory Commissioners (NARUC)

North Carolina Utilities Commission (North Carolina Commission)

LSP Transmission

SERTP Sponsors

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Carolinas, LLC and Duke Energy Progress, Inc.	Docket Nos. ER13-83-003 ER13-83-004 ER13-83-005
Louisville Gas and Electric Company and Kentucky Utilities Company	ER13-897-001 ER13-897-002
Alabama Power Company	ER13-908-001 ER13-908-002
Ohio Valley Electric Corporation	ER13-913-001 ER13-913-002

(Issued June 19, 2014)

NORRIS, Commissioner, *dissenting in part*:

I dissent, in part, from today's order because it represents another step backward from the Commission's efforts under Order No. 1000 to increase competition for transmission development. As I stated in my separate statements in the MISO, PJM, and South Carolina Order No. 1000 compliance orders last month, I believed 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. Yet, today's order grants rehearing to allow the SERTP regional transmission planning process to effectively exclude non-incumbents from participating due to a consideration of state law. This determination serves only to reduce competition, by protecting the interests of the traditional incumbent transmission developers, and limiting opportunities for non-incumbents to compete in the regional planning process for projects that meet regional transmission needs. It also follows the path of the MISO, PJM, and South Carolina Order No. 1000 compliance orders issued last month. Thus, for the same reasons I articulated in my separate statements in the MISO, PJM, and South Carolina Order No. 1000 compliance orders, I cannot support this determination.

For these reasons, I respectfully dissent in part.

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John R. Norris, Commissioner