

124 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Carolinas, LLC
Progress Energy Carolinas, Inc.

Docket Nos. OA08-50-000
OA08-51-000

ORDER ON COMPLIANCE FILING

(Issued September 18, 2008)

1. On December 7, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ Duke Energy Carolinas, LLC (Duke) and Progress Energy Carolinas, Inc. (Progress) submitted their joint transmission planning process as a proposed attachment to their respective Open Access Transmission Tariffs (OATT), as required by Order No. 890.² In this order, we accept Duke and Progress' compliance filings, as modified, as in compliance with Order No. 890, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process.³ To remedy the

¹ 16 U.S.C. § 824e (2000 & Supp. V 2006).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008)

³ The Commission, among other things, also amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability (ATC) and standardization of charges for generator and energy imbalance
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potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles (discussed below) and to describe that process clearly in a new attachment (Attachment K) to their OATTs.

3. As discussed more fully below, the nine planning principles each transmission provider was directed by Order No. 890 to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. However, the Commission also explained that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process, and that all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.⁴

II. Compliance Filing

4. Duke and Progress state that since 2005 they have coordinated the planning of their transmission facilities, located in North Carolina and South Carolina, through the North Carolina Transmission Planning Collaborative Process (NCTPC Process). Duke and Progress state that the NCTPC was formed by Duke, Progress, Electricities of North Carolina (Electricities), and the North Carolina Electric Membership Corporation

services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity. These reforms have been or will be addressed in other orders.

⁴ As the Commission explained in Order No. 890, not all rules and practices related to transmission service, or planning activities in particular, need to be codified in the transmission provider's OATT. Rules, standards and practices that relate to, but do not significantly affect, transmission service may be placed on the transmission provider's website, provided there is a link to those business practices on its Open Access Same-Time Information System (OASIS). *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55. Transmission providers could therefore use a combination of tariff language in Attachment K and a reference to planning manuals on their website, to satisfy their planning obligations under Order No. 890.

(NCEMC) (collectively, NCTPC Participants). Duke and Progress state that the NCTPC Process meets their obligations under Order No. 890 with regard to transmission planning. As discussed more fully below, the NCTPC Process provides for coordinated reliability and economic planning within the Carolina region. Duke and Progress also provide a process for inter-regional economic studies through the Southeast Inter-Regional Participation Process (SIRPP). Duke and Progress explain that Entergy Operating Companies (Entergy), E.ON U.S., LLC (E.ON U.S.), South Carolina Public Service Authority (Santee Cooper), South Carolina Electric & Gas Company (SCE&G) and the Tennessee Valley Authority (TVA) and Southern Company Services, Inc. (Southern) (collectively, SIRPP Participants) also participate in the SIRPP.

5. Duke and Progress described their transmission planning process in identical attachments to their OATTs, labeled Attachment N for Duke and Attachment K for Progress.⁵

III. Notice of Filing and Responsive Pleadings

6. Notice of Duke and Progress' compliance filings was published in the *Federal Register*, 72 Fed. Reg. 73,017 (2007), with interventions and protests due on or before December 28, 2007. The Commission subsequently extended this deadline to January 7, 2008.

7. Central Electric Power Cooperative, Inc. and the Electric Power Supply Association filed timely motions to intervene. Energy Consulting Group, LLC (Energy Consulting) filed a timely motion to intervene and comments.⁶ Electricities and NCEMC (collectively, NC Customers) filed a timely joint motion to intervene and comments. The North Carolina Utilities Commission, the Public Staff of the North Carolina Utilities Commission, and the Attorney General of the State of North Carolina filed a joint motion to intervene out of time. Duke, Progress, and SCE&G filed answers to NC Customers and to Energy Consulting.

⁵ This was permitted by the Commission in Order No. 890. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at n. 246.

⁶ Energy Consulting filed a joint intervention and protest in several of the Order No. 890 Attachment K proceedings, with most of its comments directed toward Southern Company. In this order, we only address Energy Consulting's comments that are directed toward the transmission providers generally or Duke and Progress individually.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), the Commission will grant the North Carolina Utilities Commission, the Public Staff of the North Carolina Utilities Commission, and the Attorney General of the State of North Carolina's late-filed motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers of Duke and Progress and of SCE&G because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

10. We find that the transmission planning process proposed by Duke and Progress, with certain modifications, adequately complies with each of the nine planning principles adopted in Order No. 890. Accordingly, we will accept Duke and Progress' proposed Attachment N and Attachment K, respectively, to be effective December 7, 2007, subject to a further compliance filing as discussed below. We therefore direct Duke and Progress to file, within 90 days of issuance of this order, a further compliance filing as discussed below.

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

V. Compliance with Order No. 890's Planning Principles**1. Coordination**

12. In order to satisfy the coordination principle, transmission providers must provide customers and other stakeholders the opportunity to participate fully in the planning process. The purpose of the coordination requirement, as stated in Order No. 890, is to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. The planning process must provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans, allowing customers and other stakeholders to participate in the early stages of development. In its Attachment K planning process, each transmission provider must clearly identify the details of how its planning process will be coordinated with interested parties.⁷

a. Duke and Progress' Filing

13. Duke and Progress state that the NCTPC is a collaboration of both the transmission providers and the load-serving entities (LSEs) that serve load in the relevant region. The NCTPC Process was formed with backing from the State of North Carolina as a collaboration of transmission/power delivery personnel, not those personnel engaged in the merchant function. Duke and Progress state that, although certain LSEs that are NCTPC Participants own no integrated transmission facilities, they nonetheless participate in the NCTPC in a manner that treats them as if they were subject to the Commission's Standards of Conduct and, therefore, they are not permitted to relay information obtained through the NCTPC Process to their merchant personnel.

14. NCTPC Participants coordinate their activities through an Oversight/Steering Committee (Oversight Committee) and Planning Working Group. The Oversight Committee directs the activities associated with the NCTPC Process and is comprised of representatives of the NCTPC Participants, including Duke and Progress. The Planning Working Group is responsible for developing and performing transmission studies and also is comprised of representatives of the NCTPC Participants.⁸ Each year, Duke and

⁷ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 451-454.

⁸ Duke and Progress explain that, in effect, the NCTPC Participants are jointly acting in a transmission provider-like role for planning purposes, with transmission customers and potential customers acting as stakeholders. Accordingly, certain committees are limited to NCTPC Participants. Duke and Progress assert that this approach is not discriminatory because all similarly-situated transmission customers are treated alike, whether the customers are the merchant functions of investor-owned

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Progress will prepare base case and alternative case models subject to review and approval by the Planning Working Group and Oversight Committee. The Planning Working Group also will identify assumptions and criteria, develop study methodologies, perform studies, identify problems and develop solutions.

15. The public is invited to participate in the NCTPC Process through attendance at meetings of the Transmission Advisory Group (TAG). The purpose of the TAG is to provide advice and recommendations to aid in the development of the annual NCTPC transmission plan. The criteria, assumptions and data that underlie the annual transmission planning process will be disclosed to the TAG through meetings and presentations, although stakeholders may question and discuss the assumptions used in planning either at TAG meetings or through written communications. The TAG will also have the opportunity to review the methodologies used by the Planning Working Group, as well as results of transmission studies.

16. TAG participants have the opportunity to suggest alternative solutions, and the Planning Working Group will test the effectiveness of the potential solutions using the planning criteria previously developed. The Planning Working Group will select a preferred set of transmission improvements that provide the most reliable and cost effective transmission solution while prudently managing association risks, although Duke and Progress state that all options that satisfactorily resolve an identified reliability problem will be given consideration. After the draft plan is written, a TAG meeting will be held to brief the participants and receive input before the Oversight Committee evaluates and finalizes the plan.

17. Duke and Progress state that they do not govern or control the TAG. An Independent Third-Party, selected by the Oversight Committee, will serve as the chair of the TAG and will facilitate the overall NCTPC Process. All TAG participants may request to be placed on the TAG e-mail distribution list to receive meeting notices and other announcements. While TAG meetings normally are conducted in person, participation by telephone is also permitted. E-mail addresses for points of contact and questions, and a calendar of noticed meetings and other significant events, are provided on the NCTPC website.

utilities, the merchant functions of municipal or cooperatively-owned utilities, independent power producers, or others. Duke and Progress state that under this approach, all stakeholders (i.e., the non-NCTPC Participants, which include the merchant functions of the NCTPC Participants) are treated comparably.

b. Commission Determination

18. We find that the transmission planning process proposed by Duke and Progress partially complies with the requirements of the coordination principle stated in Order No. 890. Through the NCTPC Process, members of the TAG can provide advice and recommendations to the NCTPC Participants to aid in the development of the annual collaborative transmission plan. TAG participants will be able to review the criteria, assumptions and data used to develop transmission plans and propose alternative solutions for consideration by the Planning Working Group. However, the NCTPC process provides that Duke and Progress will develop base case and alternative case models with review by the Planning Working Group and Oversight Committee, but does not provide for review or comment by TAG participants. In Order No. 890, the Commission found that customers must be given the opportunity to participate in the early stages of development of a transmission plan and not merely given an opportunity to comment on transmission plans that are developed without their input.⁹ We direct Duke and Progress modify their Attachment N and Attachment K, respectively, in a compliance filing to be made within 90 days of issuance of this order, to provide an opportunity for input of stakeholders in the development of the base case and alternative case models used in the transmission planning process.

2. Openness

19. The openness principle requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders. Although the Commission recognized in Order No. 890 that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties, such as a particular meeting of a subregional group, the Commission emphasized that the overall development of the transmission plan and the planning process must remain open.¹⁰ Transmission providers, in consultation with affected parties, must also develop mechanisms to manage confidentiality and CEII concerns, such as confidentiality agreements and password protected access to information.¹¹

⁹ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 454.

¹⁰ The Commission made clear in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's Attachment K planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. See Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

¹¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

a. **Duke and Progress' Filing**

20. While TAG membership is open to the public,¹² only valid stakeholders may be a voting member of the TAG. Duke and Progress define valid stakeholders to include: any eligible customer, generation owner/generation development company, any organization capable of providing ancillary services under the Duke or Progress OATTs, as well as any transmission owner, operator, or planner, other than an NCTPC Participant.¹³ Duke and Progress contend that a two-tiered (voting and non-voting) TAG membership ensures a smooth planning process that cannot be gamed by entities with interests other than a reliable, efficient electric system.¹⁴ Duke and Progress also state that restricting voting to certain TAG participants ensures that those voting have some experience and knowledge related to the electric industry. Duke and Progress assert that limiting TAG voting members to one vote each prevents gaming that could occur through a voting member bringing as many persons as it can muster to vote at a TAG meeting. Duke and Progress state that the goal for the TAG is to reach consensus on all issues, but that decisions of the group will be made by majority vote in the event consensus cannot be reached.¹⁵

21. Duke and Progress will post on their respective OASIS sites a notice for the commencement of each annual transmission planning process, as well as planning-related documents and information. However, Duke and Progress propose to restrict access to confidential information and CEII only to voting members of the TAG that have sought access from the Commission to the CEII information contained in Duke and Progress' Form 715s and that have entered into both a Southeast Reliability Corporation (SERC) and TAG voting member confidentiality agreement. Duke and Progress contend that permitting only voting members of the TAG to access confidential data and CEII is appropriate to ensure that information does not fall into the hands of persons who would

¹² Duke and Progress note there may be TAG meetings where confidential information will be discussed or presented, in which case the meetings will be open to representatives of TAG voting members that are eligible to obtain such information. We discuss this limitation below in the context of the transparency principle.

¹³ Duke and Progress state that it is only the transmission function of an NCTPC Participant that may not be a TAG voting member and that the merchant function of an NCTPC Participant may be a TAG voting member.

¹⁴ Duke and Progress state that such entities could include, for example, those that have an interest in preventing the development of new transmission projects in a particular region.

¹⁵ Voting would be used, for example, to identify the high priority economic planning studies to be performed by Duke and Progress, discussed in further detail below.

be difficult to monitor, as well as to limit the number of persons that have to turn to FERC for clearance as eligible to receive CEII.

b. Commission Determination

22. We find that the transmission planning process proposed by Duke and Progress partially complies with the requirements of the openness principle stated in Order No. 890. Through the TAG, all affected parties are permitted to participate in the transmission planning process and, with the modification directed above, have an adequate opportunity to review and comment on study criteria, methodologies, and results. Additionally, the proposal identifies how parties may obtain access to confidential information and CEII. However, we find Duke and Progress' two-tiered (voting and non-voting) TAG membership that allows only valid stakeholders to vote in the absence of a consensus among all stakeholders is unreasonable. We also find it unreasonable to restrict access to confidential information and CEII only to voting TAG members. By limiting voting rights only to certain specified groups, Duke and Progress appear to exclude other classes of stakeholders, such as developers of alternative resources, from participation in voting and review of planning-related information. Accordingly, in a compliance filing to be made within 90 days of issuance of this order, Duke and Progress are directed to provide the opportunity for all stakeholders to participate in TAG voting and obtain access to planning-related information.

23. We also find that it is unreasonable to limit access to confidential information and CEII only to those that have obtained authorization from the Commission to access CEII contained in Form 715 reports. This requires stakeholders to obtain authorization from the Commission to access CEII contained in Form 715 reports, even if the CEII data they seek is not contained in the Form 715 reports. It also requires stakeholders to meet the criteria for accessing CEII even if the data they seek is confidential, but not CEII. These limitations unreasonably restrict the ability of affected stakeholders to participate fully in transmission planning meetings. As the Commission explained in Order No. 890, transmission providers may develop mechanisms, such as confidentiality agreements and password-protected access to information, in order to manage confidentiality and CEII concerns.¹⁶ Duke and Progress do not adequately explain why such restrictions are insufficient to protect sensitive information. Accordingly, in a compliance filing to be made within 90 days of issuance of this order, Duke and Progress are directed to modify their Attachment N and Attachment K, respectively, to remove the requirement that stakeholders obtain authorization from the Commission to access CEII contained in Form 715 reports before they are permitted access to confidential information and CEII related to the planning process.

¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

3. Transparency

24. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. To that end, each transmission provider must describe in Attachment K the method(s) it will use to disclose the criteria, assumptions and data that underlie its transmission system plans.¹⁷ The Commission specifically found that simple reliance on Form Nos. 714 and 715 failed to provide sufficient information to provide transparency in planning because those forms were designed for different purposes. Transmission providers were also directed to provide information regarding the status of upgrades identified in the transmission plan.

25. The Commission explained that sufficient information should be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained in Order No. 890 that simultaneous disclosure of transmission planning information should alleviate Standards of Conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand resources in transmission planning. Where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis.¹⁸

a. Duke and Progress' Filing

26. Duke and Progress state that they will disclose the criteria, assumptions, and data that underlie their transmission system plan by posting such information on their websites and/or the NCTPC website. Duke and Progress describe the process for developing their planning criteria, but do not include the actual criteria in their tariff attachments. Duke and Progress explain that the planning criteria used are quite extensive and that their tariffs instead direct readers to their websites for that information. Duke and Progress further explain that the software and analytical tools used in the planning process are described in the study scope provided to the TAG annually. Data and information

¹⁷ In Order No. 890-A, the Commission made clear that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to adequately understand the results reached in a transmission plan. *See* Order No. 890-A, 121 FERC Stats. & Regs. ¶ 31,261 at P 199.

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-479.

necessary to replicate the results of planning studies will be made available to any voting TAG members that requests such information from the facilitating Independent Third Party, who will verify that confidentiality restrictions have been satisfied. Duke and Progress also will periodically provide the TAG participants a report on the status of transmission upgrades presented in the NCTPC transmission plan.

b. Commission Determination

27. We find that the transmission planning process proposed by Duke and Progress partially complies with the requirements of the transparency principle stated in Order No. 890. Through the TAG, Duke and Progress will disclose the criteria, assumptions, and data used in transmission planning to interested stakeholders.¹⁹ Planning criteria and the software and analytical tools used in developing the plan are available on the companies' websites or are otherwise provided to the TAG. However, Duke and Progress propose to restrict access to data and information necessary to replicate planning studies only to voting members of the TAG. Duke and Progress fail to explain why only some participants in the TAG should be able to replicate the studies relied upon in the planning process. Accordingly, in a compliance filing to be made within 90 days of issuance of this order, Duke and Progress are directed to provide the opportunity for all stakeholders to obtain access to planning-related information necessary to replicate the results of transmission studies.

4. Information Exchange

28. The information exchange principle requires network customers to submit information on their projected loads and resources on a comparable basis (e.g., planning horizon and format) as used by transmission providers in planning for their native load. Point-to-point customers are required to submit any projections they have for service over the planning horizon and anticipated receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as a proxy for actual reservations.²⁰ Transmission providers, in consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

29. The Commission also provided that, to the extent applicable, transmission customers should provide information on existing and planned demand resources and

¹⁹ See, e.g., section 5 (Criteria, Assumptions, And Data Underlying The Plan And Method Of Disclosure Of Transmission Plans and Studies) of Duke's Attachment N.

²⁰ Order No. 890-A, FERC Stats. & Regs ¶ 31,261 at P 207.

their impacts on demand and peak demand. Stakeholders, in turn, should provide proposed demand resources if they wish to have them considered in the development of the transmission plan. The Commission stressed that information collected by transmission providers to provide transmission service to their native load customers must be transparent and equivalent information must be provided by transmission customers to ensure effective planning and comparability. In Order No. 890-A, the Commission made clear that customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer, and that the transmission provider must maintain the confidentiality of this information. To this end, transmission providers must clearly define in their Attachment K the information sharing obligations placed on customers in the context of economic planning.²¹

30. The Commission emphasized that transmission planning is not intended to be limited to the mere exchange of information and after the fact review of transmission provider plans. The planning process is instead intended to provide a meaningful opportunity for customers and stakeholders to engage in planning along with their transmission providers. To that end, the Commission clarified that information exchange relates to planning, not other studies performed in response to interconnection or transmission service requests.²²

a. Duke and Progress' Filing

31. Duke and Progress state that their respective OATTs set forth the obligations of network customers to submit data to them, i.e., a description of network load at each delivery point including a load forecast for 10 years. They state that point-to-point customers and other TAG participants that are not seeking any particular service and have no comparable tariff obligations are nonetheless free under the transmission planning process to submit any data they desire to the NCTPC Participants to consider that is relevant to the transmission planning process. Duke and Progress explain that eligible customers seeking new transmission and interconnection service also submit data with their service requests that is relevant to the planning process.

32. Duke and Progress state that, at this time, there is no formal schedule and procedures for submission of information by transmission customers, just as there are no such formal procedures for native load. Any guidelines, data formats, and schedules for any data information exchanges will be established by the Planning Working Group. The timing of this data collection process is established as part of the development of the

²¹ *Id.* P 206.

²² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 486-88.

annual study work plan that is prepared by the Planning Working Group, reviewed with TAG participants, and approved by the Oversight Committee. Duke and Progress further state that transmission customers are expected to provide timely written notice of material changes in any information previously provided relating to their load, resources, or other aspects of their facilities or operations affecting Duke and Progress' ability to provide service.

b. Commission Determination

33. We find that the transmission planning process proposed by Duke and Progress complies with the requirements of the information exchange principle stated in Order No. 890. In consultation with the TAG, the Planning Working Group will establish guidelines, data formats, and schedules for the submission of data it identifies as necessary for the planning process. TAG participants may also provide additional input to the data collection process even if not otherwise required under the schedules adopted by the Planning Working Group.

5. Comparability

34. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop a transmission system plan that meets the specific service requests of their transmission customers and otherwise treats similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. In Order No. 890, the Commission expressed concern that transmission providers historically have planned their transmission systems to address their own interests without regard to, or ahead of, the interests of their customers. Through the comparability principle, the Commission required that the interests of transmission providers and their similarly-situated customers be treated on a comparable basis during the planning process. The Commission also explained that demand resources should be considered on a comparable basis to the service provided by comparable generation resources where appropriate.²³ Lastly, in Order No. 890-A, the Commission clarified that, as part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.²⁴

²³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 494-95.

²⁴ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

a. Duke and Progress' Filing

35. Duke and Progress state that they have a single transmission planning process for native load and OATT customers (i.e., the NCTPC Process) and, therefore, the planning process applicable to native load and OATT customers is not only comparable, but identical. Duke and Progress state that the non-jurisdictional NCTPC Participants that take service under the OATT subject to Commission jurisdiction also play a valuable and important role in ensuring that the NCTPC Process meets the comparability principle, as it is in their interest that OATT customers, like themselves, are treated comparably to the native load of Duke and Progress. After considering data and comments supplied by other stakeholders, the NCTPC Participants develop a transmission system plan that meets the specific service requests of their transmission customers, treats similarly-situated customers comparably in transmission system planning, and appropriately balances the costs, benefits and risks associated with the use of transmission, generation, and demand resources. Duke and Progress state that all resources are considered in all planning steps and, therefore, there are no special timelines or rules regarding the participation of specific entities.

b. Commission Determination

36. We find that the transmission planning process proposed by Duke and Progress complies with the requirements of the comparability principle stated in Order No. 890. After considering data and comments supplied by stakeholders, Duke and Progress will develop a transmission system plan that meets the specific service requests of their transmission customers and otherwise treats similarly-situated customers comparably in transmission system planning. However, we note that Order No. 890-A was issued on December 27, 2007, after Duke and Progress submitted their Order No. 890 Attachment K compliance filings. In Order No. 890-A, the Commission provided additional guidance, among other things, as to how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process “how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.”²⁵ Here, Duke and Progress have submitted tariff language providing that, as a general matter, demand resources will be treated comparably. Since Order No. 890-A was issued subsequent to the filing before us, Duke and Progress did not have an opportunity to demonstrate that they comply with this requirement of Order No. 890-A. Therefore, we direct Duke and

²⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 61,261 at P 216; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, 487, 494 and 549.

Progress to file within 90 days of issuance of this order, a compliance filing providing the necessary demonstration required by Order No. 890-A.²⁶

6. Dispute Resolution

37. The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise from the planning process. The Commission explained that an existing dispute resolution process may be utilized, but that transmission providers seeking to rely on an existing dispute resolution process must specifically address how its procedures will address matters related to transmission planning. The Commission encouraged transmission providers, customers, and other stakeholders to utilize the Commission's Dispute Resolution Service (DRS) to help develop a three step dispute resolution process, consisting of negotiation, mediation, and arbitration. In order to facilitate resolution of all disputes related to planning activities, a transmission provider's dispute resolution process must be available to address both procedural and substantive planning issues. The Commission made clear, however, that all affected parties retain any rights they may have under FPA section 206 to file complaints with the Commission.²⁷

a. Duke and Progress' Filing

38. Duke and Progress state that they propose to resolve disputes based on the nature of the dispute and jurisdiction over the dispute, although they expect that the need to resort to dispute resolution will be rare based on the experience of the NCTPC to date. Duke and Progress explain that the Oversight Committee voting structure allows the Independent Third Party to cast a tie-breaking vote if necessary to decide on a particular issue for the Oversight Committee, although a transmission provider has the right to reject an Oversight Committee decision if it believes that it would harm reliability. TAG voting members similarly use votes to resolve disputes amongst themselves. Duke and Progress state that any NCTPC Participant or TAG voting member has the right to seek assistance from the NCUC staff to mediate any unresolved issues and render a non-binding opinion on any disputed decision made by the NCTPC Participants, subject to review by any judicial or regulatory body with jurisdiction. Duke and Progress explain that the existing dispute resolution provisions included in their OATTs will apply to disputes involving compliance with the Commission's transmission planning obligations set forth in Order No. 890. Duke and Progress state that the Commission's Dispute

²⁶ For example, tariff language should provide for participation throughout the transmission planning process by sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources.

²⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-03.

Resolution Service would be used to settle any issues arising from the cost allocation related to regional reliability projects that involve transmission providers outside the NCTPC.

b. Commission Determination

39. We find that the transmission planning process proposed by Duke and Progress partially complies with the requirements of the dispute resolution principle stated in Order No. 890. Duke and Progress will resolve planning-related disputes with transmission customers pursuant to the existing dispute resolution provisions included in their OATTs. We note that those provisions apply only to disputes between Duke and Progress, respectively, and their transmission customers. Duke and Progress also provide another dispute resolution process, which includes the option of mediation, for disputes regarding the NCTPC process that involve NCTPC Participants or voting members of the TAG. In neither case, however, do Duke and Progress identify dispute resolution procedures to be used by other parties involved in planning-related activities, such as stakeholders and other entities with which Duke and Progress interact in the transmission planning process. Accordingly, we direct Duke and Progress to revise its transmission planning process, in a compliance filing to be made within 90 days of issuance of this order, to provide dispute resolution procedures for all parties involved in all NCTPC and non-NCTPC transmission planning activities.²⁸

7. Regional Participation

40. The regional participation principle provides that, in addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider is required to coordinate with interconnected systems to: (i) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and (ii) identify system enhancements that could relieve congestion or integrate new resources. The Commission stated that the specific features of the regional planning effort should take account of and accommodate, where appropriate, existing institutions, as well as physical characteristics of the region and historical

²⁸ We also note that the Duke and Progress existing dispute resolution provisions included in their OATTs omit the second step, mediation, of a three step dispute resolution process consisting of negotiation, mediation and arbitration. While we are not directing Duke and Progress to include mediation, we strongly encourage them to consider including a mediation step in their dispute resolution processes. We have found that a high percentage of disputes sent to the Commission's Dispute Resolution Service or another mediator or an Administrative Law Judge serving as a Settlement Judge settle without adjudication. If Duke and Progress desire to include the mediation step, they should do so in the compliance filings directed herein.

practices. The Commission declined to mandate the geographic scope of particular planning regions, instead stating that the geographic scope of a planning process should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and subregions. The Commission also made clear that reliance on existing NERC planning processes may not be sufficient to meet the requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations. To the extent a transmission provider's implementation of the NERC processes are not appropriate for such economic issues, individual regions or subregions must develop alternative processes.²⁹

41. In Order No. 890-A, the Commission clarified that while the obligation to engage in regional coordination is directed to transmission providers, participation in such processes is not limited to transmission providers and should be open to all interested customers and stakeholders.³⁰ In Order No. 890-A, the Commission also emphasized that effective regional planning should include coordination among regions and subregions as necessary, in order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.³¹

a. Duke and Progress' Filing

42. Duke and Progress state that they satisfy the regional participation principle through the NCTPC Process, as well as participation in the SERC sub-regional process, the SIRPP, and through certain bilateral arrangements.

43. Duke and Progress state that, although they are in separate control areas, they fully coordinate their planning efforts through the NCTPC. Duke and Progress state that the other NCTPC Participants play a vital role in such coordination, effectively as their partners. Duke and Progress state that the scope of these regional activities was selected based on the existing NCTPC Process, discussions with other potential members, and historical practices. While the Virginia Carolina Reliability Group (VACAR) could be viewed as a natural region, Duke and Progress explain that one of the VACAR transmission providers is a member of PJM Interconnection, L.L.C. (PJM) and that it would have been unwieldy for that entity to have to participate in two comprehensive planning processes. Duke and Progress state that other neighboring transmission providers are non-jurisdictional (Santee Cooper and the TVA) and are thus not under the

²⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-28.

³⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

³¹*Id.*

same level of coordination obligations. Duke and Progress contend that its jurisdictional neighbors are so large geographically, such as Southern Company, that it was not viewed as feasible for them to engage in a process such as the NCTPC, where face-to-face meetings are the norm. Finally, Duke and Progress state that, given that inter-regional reliability-related activity already existed (primarily through SERC and VACAR), there was no need to expand the relevant region to ensure reliability.

44. Duke and Progress state their coordination with transmission systems is primarily through participation in SERC.³² SERC assists the planning conducted by transmission owners within its region through the creation of a SERC-wide transmission model. Construction of the SERC transmission model is a “bottoms-up” process, with each transmission owner in SERC developing and submitting their transmission models to a model development databank, which SERC joins the models to create a SERC-wide model for use in a reliability assessment. Duke and Progress state that the results of such coordinated efforts will be addressed with the TAG participants.

45. If the SERC-wide model identifies additional planning criteria concerns that were not specified in the regional reliability studies, the impacted transmission owners will initiate one or more inter-regional joint studies to better identify the planning criteria concerns and determine the optimal inter-regional reliability transmission enhancements to resolve the limitations. The planning criteria concerns identified at the SERC-wide level are thus “pushed down” to the transmission owner level for detailed resolution. Duke and Progress explain that, given that the construction of the SERC-wide model is a bottoms-up process, stakeholders provide input into this process by participating in the development of the regional reliability models developed by the SERC transmission owners. Duke and Progress further explain that at the SERC-wide level, the model development essentially consists of ensuring that the different regional reliability models are compatible, meaning that substantive transmission planning is performed at the regional level where stakeholders may provide input.

46. Finally, Duke and Progress explain that there are subgroups within SERC that engage in planning activities, as well as bilateral planning activities, and that such activities feed directly into the NCTPC Process. Duke and Progress coordinate activities with the Eastern Interconnection Reliability Assessment Group (ERAG)³³ and the SERC-

³² As discussed further below, Duke and Progress also participate in other inter-regional study groups, and bilateral agreements between Duke and/or Progress and transmission systems with which they are interconnected.

³³ ERAG members other than SERC include: the Florida Reliability Coordinating Council, Inc., the Midwest Reliability Organization, the Northeast Power Coordinating Council, Inc., ReliabilityFirst Corporation, and the Southwest Power Pool.

Reliability First Corporation (RFC) East study group. ERAG augments the reliability of the bulk power system through periodic reviews of generation and transmission expansion programs and forecasted system conditions within the regions served by ERAG members, administering the development of a library of power-flow base case models through its Model Working Group. The SERC-RFC East study group is a subgroup within the ERAG structure through which coordination of plans, data, and assumptions is achieved between TVA, VACAR, and the transmission systems of the eastern portion of PJM.

47. Duke and Progress also participate with Fayetteville, NCEMC, North Carolina Municipal Power Agency #1, North Carolina Eastern Municipal Power Agency, South Carolina Electric & Gas Company, South Carolina Public Service Authority, Southeastern Power Administration, Dominion Virginia Power, and Alcoa Power Generating, Inc. in the VACAR Planning Task Force. As members of the VACAR Planning Task Force, Duke and Progress will engage in studies of the bulk power supply system, with VACAR typically analyzing the performance of their proposed future transmission systems based on five- or ten-year projections. Duke and Progress state that VACAR studies are similar to those conducted for SERC, but are focused on the VACAR subregion, although VACAR coordinates with Southern Company and TVA under existing agreements. In addition, Duke and Progress perform coordinated studies on an as-needed basis pursuant to bilateral interconnection agreements or joint operating agreements with the interconnected transmission systems of American Electric Power, TVA, Southern Companies, PJM, Dominion Virginian Power, SCE&G, Santee Cooper, and Yadkin.

48. Finally, as discussed more fully below in the section on economic planning studies, Duke and Progress joined with the SIRPP Participants to develop the SIRPP to enhance inter-regional coordination efforts in compliance with the requirements of Order No. 890. Duke and Progress state that the SIRPP will provide a means for conducting stakeholder-requested economic planning studies across multiple interconnected systems. Duke and Progress state that the SIRPP provides a process to ensure consistency of data and assumptions and to review and coordinate the results of their regional and inter-regional planning activities. Duke and Progress incorporate the inter-regional economic planning process as an appendix to their Attachment N and Attachment K, respectively.

b. Protests/Comments

49. NC Customers argue that Duke and Progress' proposal to meet the regional participation requirement – through the NCTPC Process, the SERC inter-regional reliability assessment process, and through the SIRPP – is inadequate. Energy Consulting argues that the NCTPC, while effective within the control areas of Duke and Progress, is not sufficient due to its limited geographic scope to satisfy the regional participation planning requirements of Order No. 890. NC Customers believe that additional planning across seams is needed that meets the requirements of openness and

inclusiveness in Order No. 890. NC Customers also argue that the SERC reliability assessment process is also insufficient because it is designed to merely identify reliability problems arising specifically when one transmission provider's plans affect another transmission provider's system – it does not create an open or transparent mechanism for resolving those problems.

50. NC Customers understand that the SIRPP initially was developed to facilitate economic studies. However, NC Customers argue that for any planning process to meet the requirements of Order No. 890, it must address both reliability and economic considerations. NC Customers contend that an open, inclusive and regional transmission planning process should address all expansions, including reliability and economic upgrades, required to serve all load-serving transmission consumers within the region reliably and economically. As a result, NC Customers argue that a serious gap in regional reliability planning exists, given that the SERC reliability assessment process does not constitute a coordinated reliability planning process across seams.

51. NC Customers believe that a possible solution is for the SIRPP to be expanded beyond the facilitation of economic studies to also address reliability studies. NC Customers also believe processes should be set up to facilitate both reliability and economic studies on a coordinated basis across seams throughout the region. NC Customers state that these processes may not be suitable for the entire SIRPP to undertake but may instead involve a subgroup of the SIRPP depending upon the geographic nature of the studies undertaken. NC Customers argue that at a minimum, the affected transmission providers should include the LSEs that are in the affected control areas in the study process and should comply with the principles of Order No. 890. NC Customers offer several additional recommendations to address what they view as additional SIRPP shortcomings, such as creating a forum to design and implement studies that would examine designated network resources that are used to serve load in more than one region and coordinate the timing of studies between the regional and inter-regional groups and SERC assessments in one-year cycles. Energy Consulting contends that, since the SIRPP describes transmission planning and is for a planning region, the SIRPP should be required to comply with the nine principles of Order No. 890. Energy Consulting requests that the Commission direct Duke and Progress, and all companies that have also filed the SIRPP as part of their Attachment K compliance filings, to modify the SIRPP to be in the compliance with Order No. 890's intent as it applies to regional planning.

c. Answers

52. Duke and Progress point out that the only disagreement between them and the NC Customers is whether the NCTPC Process is actually a regional transmission planning process. Duke and Progress state that both NC Customers and Energy Consulting characterize the NCTPC Process as sub-regional and thus demand that there be an additional planning process that covers a much larger group of transmission providers.

Duke and Progress argue that the Commission has from the outset indicated that it will not be drawing regional boundaries and that regions may draw their own boundaries.³⁴ Duke and Progress also argue that, while the Commission Staff White Paper indicated that any given transmission provider should coordinate with each of its neighboring transmission providers, the phrase “coordinating with each interconnected neighboring transmission provider” plainly does not mean “having in place an Attachment K process that meets all nine principles as to each and every interconnected neighbor.” If the Commission wanted an Attachment K process that covered every interconnected neighbor of every transmission provider, Duke and Progress argue that the only possible way for them, and every other transmission provider in the Eastern Interconnection, to fulfill this mandate would be through an interconnection-wide transmission planning process.

53. Duke and Progress contend that the NCTPC footprint is a logical region when one considers the factors that should be applied in making such determination, which include: (i) the number of interconnections between transmission providers; (ii) the capacity of the interconnections between transmission providers; (iii) the location of the off-system network resources of the LSEs in the transmission provider’s balancing area; (iv) historical trading patterns; (v) whether the transmission providers share the same market model; (vi) historical use of interconnection arrangements (including other agreements such as reserve sharing agreements); and (vii) the geographic size of the transmission providers. Duke and Progress contend that no other entity has the task of developing a transmission plan for the NCTPC footprint. They explain that the purpose of SERC coordination efforts is to assess the need for changes to the proposed plans of various regions, not to draft a SERC-wide plan, as Energy Consulting implies.³⁵

54. Duke and Progress explain that there are multiple vehicles for meeting the requirements of inter-regional coordination, including interconnection agreements, attendance at stakeholder meetings of other regions, seams agreements, and coordination activities of Regional Reliability Organizations or other organizations. Duke and Progress argue that SERC is the primary inter-regional coordination vehicle for reliability matters, resulting in the sharing of system plans by transmission owners to ensure that they are simultaneously feasible and based on consistent assumptions and data, as Order No. 890 requires.

55. Due to SERC’s reliability focus, Duke and Progress explain there is no plan to provide economic planning within the SERC structure. Because of this, SERC members were urged to pursue other avenues to support economic inter-regional coordination

³⁴ Order No. 890 at P 527.

³⁵ SCE&G makes the same argument in its answer.

efforts and, in response, the SIRPP to be the primary inter-regional vehicle for meeting the Order No. 890 requirement to identify system enhancements that could relieve congestion or integrate new resources over multiple regions. Duke and Progress note that none of their reliability and economic inter-regional coordination efforts are static and that it is likely they will be enhanced as the first round of Order No. 890 planning activities gets underway. For example, Duke and Progress state that they expect regular meetings between planning regions, e.g., NCTPC and PJM, that focus on the seams between the regions.

56. Duke and Progress argue that, if the Commission were to adopt the procedures interveners request, whereby SERC or SIRPP participants all engaged in planning in accordance with the nine principles, the planning that occurs at the regional level, such as that performed by the NCTPC, would be rendered largely duplicative and/or meaningless. Duke and Progress contend that the commenters in effect seek to wipe the economic and reliability planning slates of the various regions clean and to make all planning occur at the inter-regional level. Duke and Progress state that the purpose of inter-regional coordination is to use the work product already developed and vetted by stakeholders, not to start the entire planning process over with a broader set of players. Duke and Progress argue that NC Customers propose that the adoption of a subgroup of SIRPP raises similar issues of duplication.

57. Duke and Progress reject NC Customers' complaint that there is no open and transparent process for resolving conflicts between draft plans that appear in a SERC reliability assessment. They state that once the transmission provider whose plan is creating the problem knows of the conflict, i.e., as a result of SERC coordination efforts, it can go back to its regional planning process and propose a solution through its open stakeholder process.

58. SCE&G disagrees that there is a gap in regional reliability planning across seams throughout SERC. SCE&G notes that it engages in joint planning with its neighboring transmission owners to address and resolve seams reliability issues, as contractually required by longstanding reliability agreements between SCE&G and all of its neighboring transmission owners. SCE&G states that the newly established SIRPP process is only intended to address economic related seams issues. SCE&G contends that if the Commission were to adopt the procedures requested by NC Customers, whereby the SIRPP was employed for all transmission planning, the result would be both unwieldy and duplicative. SCE&G points out that even NC Customers acknowledge that expanding the transmission planning process beyond current regional borders would be too unwieldy.

d. Commission Determination

59. We find that the transmission planning process proposed by Duke and Progress partially complies with the requirements of the regional participation principle stated in

Order No. 890. Duke and Progress describe the various processes that can be used to coordinate regional reliability and economic planning, such as coordination within the NCTPC and participation in regional and inter-regional processes with the SERC and the SIRPP, as well as through bilateral arrangements. However, Duke and Progress have not provided sufficient detail to allow customers and other interested stakeholders to understand how the NCTPC planning activities will be integrated into these regional processes. For example, Duke and Progress do not identify the timelines and milestones for the coordination of models and planning information with SERC and its subgroups or the process by which stakeholders can be involved. It is also unclear how each of the regional and inter-regional processes will interact with each other when coordinated with the NCTPC planning activities. Accordingly, we direct Duke and Progress to revise their transmission planning process, in a compliance filing to be made within 90 days of issuance of this order, to describe in detail their process for coordinating with interconnected systems to share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and identify system enhancements that could relieve congestion or integrate new resources.

60. With regard to NC Customers' concerns over the geographic scope of regional planning, we find that Duke and Progress' coordination with other transmission owners through the NCTPC and the SERC and SIRPP processes, as modified above, is sufficient to satisfy their regional planning obligations under Order No. 890. In Order No. 890, the Commission declined to mandate the geographic scope of particular planning regions. Instead, the Commission stated that the scope of a particular planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and sub-regions.³⁶ NC Customers has not demonstrated how the regional scope of Duke and Progress' planning activities, taken together, is insufficient to comply with Order No. 890.

61. We therefore disagree with NC Customers that the SIRPP process must be expanded to include reliability planning in order to comply with Order No. 890. As described above, Duke and Progress have mechanisms in place to achieve regional coordination of reliability planning activities, and we have directed Duke and Progress to provide additional information regarding how stakeholders can participate in those activities. NC Customers can bring to the Commission's attention any continuing concerns regarding the inadequacy of Duke and Progress' regional reliability planning activities, as modified, upon review of that compliance filing.

62. We also disagree with Energy Consulting and NC Customers that the SIRPP must comply independently with all nine planning principles of Order No. 890. The SIRPP Participants have committed to using the SIRPP process to satisfy their obligations under

³⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527.

Order No. 890 to engage in economic planning on a regional basis. The obligation to comply with the requirements of Order No. 890 fall on transmission providers, not the processes in which they participate. In Order No. 890-A, for example, the Commission specifically denied a request to expand the regional participation principle to expressly require regions to adopt interregional planning processes subject to the same nine principles applicable to individual regions.³⁷ The Commission concluded that effective regional planning should include coordination among regions, and each of these regions or subregions should coordinate as necessary to share data, information and assumptions in order to maintain reliability and allow customers to consider resource options that span the regions. Duke and Progress' participation in the SIRPP complies with that requirement as it relates to economic planning activities.

8. Economic Planning Studies

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

64. All transmission providers, including RTOs and ISOs, were directed to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies would be recovered as part of the transmission provider's overall OATT cost of service, while the cost of additional studies would be borne by the stakeholder(s) requesting the study.³⁸

65. In Order No. 890-A, the Commission made clear that the transmission provider's planning process must clearly describe the process by which economic planning studies can be requested and how they will be prioritized.³⁹ In Order No. 890-A, the

³⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

³⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 542-51.

³⁹ Order No. 890-A, FERC Stats. & Regs, ¶ 31,261 at P 236.

Commission also made clear that a transmission provider's affiliates should be treated like any other stakeholder and, therefore, their requests for studies should be considered comparably, pursuant to the procedures outlined in the transmission provider's planning process.⁴⁰

a. **Duke and Progress' Filing**

66. Duke and Progress state that the NCTPC Process provides for economic studies through an Enhanced Transmission Access Planning Process (ETAP). The ETAP evaluates the means to increase transmission access to potential supply resources inside and outside their control areas, as well as to reliably integrate new resources. This economic analysis includes, if requested by the TAG voting members, the evaluation of Regional Economic Transmission Paths (RETPs) that would facilitate potential regional point-to-point economic transactions.⁴¹

67. The ETAP begins with the TAG participants proposing scenarios and interfaces to be studied. The information required and the form necessary to submit a request, as well as the submittal deadline, are reviewed and discussed with TAG participants early in the annual planning cycle. The Planning Working Group will determine if it would be efficient to combine and/or cluster any of the proposed scenarios and will also determine if any of the proposed scenarios are of an inter-regional nature. The Oversight Committee will review the Planning Working Group analysis, approve the compiled study list, and provide the study list to the TAG. For the study scenarios that impact the NCTPC region, but are not inter-regional in nature, the TAG voting members will select a maximum of five scenarios that will be studied within the current NCTPC planning cycle. TAG voting members will be permitted to cast one vote in support of any particular scenario and may vote for up to a maximum of five study scenarios.⁴² Oversight Committee will direct the TAG participants to submit the inter-regional study requests to the SIRPP.

⁴⁰ *Id.*

⁴¹ An RETP would permit energy to be transferred on a point-to-point basis from an interface or a point-to-point basis from an interface or a point of receipt on one transmission provider's system to an interface or a point of delivery on another transmission provider's system for a specific period of time. An open season process, described more fully in the Cost Allocation section below, would be used to identify subscribers of an RETP.

⁴² Although there may be multiple representatives of TAG voting members, for voting purposes each TAG voting member can only submit one vote.

68. The costs of the five NCTPC economic studies are borne by the NCTPC Participants pursuant to the Participation Agreement. Additional economic studies will be performed if the requesting TAG participant is willing to pay for the study, as long as the study can be reasonably accommodated (i.e., if the studies will not overburden transmission planning staff). Duke and Progress further explain that there are no restrictions on the type or scope of the economic planning studies that will be undertaken on behalf of stakeholders, whether they are native load or OATT customers, and all study results will be published.

69. Study requests that are inter-regional in scope will be evaluated as part of the SIRPP, which also has committed to study up to five inter-regional economic planning studies per year. In addition to submitting inter-regional economic study requests through each transmission owner, stakeholders also will be able to directly request the performance of an inter-regional economic study through an SIRPP stakeholder group.⁴³ Duke and Progress state that these inter-regional economic studies consist of an initial Step 1, which consists of a high level screen of the request, followed by a more detailed Step 2 evaluation only if the SIRPP stakeholder group decides to pursue a more detailed study of the request.

70. To facilitate the development of these inter-regional economic studies and to provide for stakeholder feedback and interaction, the SIRPP provides for an annual series of three meetings with stakeholders, who organize themselves into the stakeholder group. Through these meetings, the stakeholder group will be allowed to select the five annual inter-regional economic studies and provide input regarding the assumptions, criteria, and methodologies used for each inter-regional economic study. A SIRPP study coordination team will perform the studies, developing inter-regional study assumptions and additional model development, as well as coordinating with stakeholders and impacted external planning processes. Duke and Progress shall provide transmission planning personnel to serve on the SIRPP coordination team. After a study is completed, the coordination team

⁴³ A valid stakeholder under the SIRPP is defined as “any eligible customer, generation owner/development company, state or federal agency, and any organization capable of providing Ancillary Services under one of the Participating Transmission Owners’ OATTs.” See Appendix 1 (Southeast Inter-Regional Participation Process) of Duke and Progress’ Attachment N/K at 6. In addition, any transmission owner, transmission operator, or transmission planner as those terms or their successors are used in the NERC Functional Model, as may be amended from time to time, are eligible stakeholders under the SIRPP. Authorized agents of the above identified stakeholder organizations will also be permitted to represent those organizations in the SIRPP. Any individual wishing to become a SIRPP member can make an application for membership on the SIRPP website. *Id.*

will distribute applicable reports to the SIRPP transmission owners and stakeholders, subject to appropriate confidentiality restrictions.

71. Members of the SIRPP stakeholder group may also request data and information that would facilitate their ability to replicate study results if they first: request and obtain from FERC the Form No. 715 data (including CEII data) for the relevant participating transmission owner(s); have a current SERC Confidentiality Agreement in place; have a current SIRPP Confidentiality Agreement in place; and formally request the data on the SIRPP website. The SIRPP transmission owners will process such requests and, if approved, provide the data to the stakeholder group member.

b. Protests

72. Energy Consulting argues that the participation afforded to SIRPP stakeholders is at such a distance from the planning process that there is opportunity for undue discrimination. While Energy Consulting acknowledges that stakeholders are allowed to request planning materials of the SERC-wide SIRPP system, it complains that the SIRPP does not specify how long before, or even if, the planning-related information will be available before each meeting. Energy Consulting argues that the SIRPP planning process leaves the actual planning out of the public eye and that the SIRPP participants, which have the final decision on how projects being considered are designed, could act in their own self-interest. Energy Consulting requests that the Commission direct Duke and Progress, and all companies that have committed to participate in the SIRPP as part of their Attachment K compliance filings, to modify the SIRPP to include a subcommittee of the stakeholder group in its planning process as it produces economic planning studies. Energy Consulting adds that the involvement does not need to be at the level of specific day-to-day issues, but should be frequent enough to allow inclusion of stakeholders and to promote openness as system issues are revealed and solutions proposed and evaluated.

73. Energy Consulting also suggests that the SIRPP process be amended to include a dispute resolution process. Energy Consulting argues that, as presently proposed in the SIRPP, there is no process by which participating transmission owners or their transmission planners in the “study coordination team” will arrive at decisions among themselves. Should stakeholders decide that they have a substantive or procedural dispute, their only dispute resolution process available is with the participating transmission owner with which they are a stakeholder pursuant to those participating transmission owner’s Attachment Ks. If a SIRPP stakeholder engages the participating transmission owner’s dispute resolution process, Energy Consulting argues that it will either find that its participating transmission owner declines to recognize that the stakeholder has a dispute with the participating transmission owner in the SIRPP or that the participating transmission owner in settling the dispute has no standing, basis or ability to implement the settlement in the SIRPP. Energy Consulting argues that this results in stakeholders being denied a means of appealing SIRPP substantive or

procedural issues outside of filing a complaint with the Commission. Energy Consulting requests that the Commission direct Duke and Progress, and all companies that have committed to participate in the SIRPP as part a of their Attachment K compliance filings, to modify the SIRPP to include a dispute resolution process in the SIRPP, consistent with Order No. 890 and the need for stakeholders of the SIRPP to have such a process at the SIRPP level. Additionally, NC Customers similarly argue that the SIRPP procedures do not address dispute resolution, as required by Order No. 890. Additionally, NC Customers similarly argue that the SIRPP procedures do not address dispute resolution, as required by Order No. 890.

c. Answer

74. Duke and Progress argue that Energy Consulting seems to believe that an entity can only be a stakeholder as to one transmission provider and, thus, can avail itself only of the dispute resolution provisions of that transmission provider's Attachment K. Duke and Progress contend that this assumption is incorrect under the NCTPC Process. Entities that are stakeholders of a transmission provider, such as Southern, may also be, and in many cases should be, NCTPC stakeholders and will be covered by the dispute resolution provisions that apply in the jurisdiction of the entity asked to resolve the dispute.⁴⁴ Duke and Progress state that transmission providers in one region may be stakeholders in other regions and that there is no reason that disputes involving multiple transmission providers cannot be resolved pursuant to any dispute resolution process available to the stakeholder, as long as the dispute falls within the jurisdiction of the entity asked to resolve the dispute. Duke and Progress state that the Commission's ADR process is also always an option.

d. Commission Determination

75. We find that the transmission planning process proposed by Duke and Progress partially complies with the requirements of the economic planning studies principle stated in Order No. 890. Duke and Progress have provided a process for stakeholders to request studies that evaluate potential upgrades or investments that could reduce congestion or integrate new resources. Through the ETAP Process, Duke and Progress will evaluate the means to increase transmission access to potential supply resources inside and outside their control areas and reliably integrate new resources. Duke and Progress will also evaluate RETPs to facilitate expansion of the system to accommodate

⁴⁴ For example, Duke and Progress note that under their tariffs any TAG voting member (which includes a broad array of stakeholders including *any* power wholesaler) may avail itself of mediation using NCUC Staff. Duke and Progress argue that this means that Georgia's electric cooperatives are free to use the NCUC Staff process merely by taking the simple step of signing up for TAG voting member status.

potential regional point-to-point economic transactions. In addition, Duke and Progress will coordinate with the SIRPP Participants to perform economic planning studies of an inter-regional nature.

76. However, consistent with our findings above, we find it unreasonable to limit full participation in the ETAP Process to TAG voting members. Duke and Progress provide that only TAG voting members may propose that a particular RETP be studied and that only TAG voting members are permitted to be involved in the selection of the five scenarios that will be studied within a given NCTPC planning cycle. Our concerns in this regard will be addressed, however, when Duke and Progress submit the compliance filing directed above providing the opportunity for all stakeholders to participate in TAG voting.

77. Additionally, while Duke and Progress explain that the Planning Working Group will determine if it would be efficient to combine and/or cluster any of the proposed ETAP study scenarios, it is unclear whether stakeholders will be allowed input into this process. Accordingly, Duke and Progress are directed to revise their Attachment N and Attachment K, respectively, in a compliance filing to be made within 90 days of issuance of this order, to provide for stakeholder input (e.g., through the TAG) in the determination whether to combine and/or cluster proposed scenarios.

78. With regard to economic planning on a regional basis, we find that the SIRPP, an inter-regional process created to conduct stakeholder requested economic planning studies across multiple interconnected systems, is an open and coordinated process that generally satisfies the requirements of the economic planning studies principle as it relates to those entities that participate in the SIRPP. The SIRPP consolidates the data and assumptions developed at the participating transmission owners' planning level to use in the development of inter-regional models, which ensures consistency throughout the regional and inter-regional economic planning processes. There will be three specific meetings with stakeholders, although stakeholders also will be able to comment and provide input throughout the process. Participating transmission owners will perform up to five inter-regional economic planning studies annually, as selected by stakeholders at the first annual meeting, and the study coordination team will coordinate with stakeholders throughout the process regarding study assumptions, initial analysis and final draft reports. In addition, the SIRPP calls for the formation of a SIRPP stakeholder group to provide a structure to facilitate the stakeholders' participation in the inter-regional process and to work with the participating transmission owners.

79. We are concerned, however, that the definition of stakeholder in the SIRPP process may unduly restrict the ability of all interested parties to participate in the inter-regional economic planning process. We also agree with Energy Consulting that stakeholders should have an appropriate amount of time to review information before meetings. Although Duke and Progress state that the SIRPP stakeholder group will provide timely input on study assumptions and results, it does not obligate transmission

owning members in the SIRPP process to provide study information in advance of meetings of the stakeholder group. In addition, Duke and Progress do not provide that requests may be clustered or batched by the SIRPP stakeholder group to streamline processing of economic studies. Accordingly, we direct Duke and Progress to revise their Attachment N and Attachment K, respectively, in a compliance filing to be submitted within 90 days of issuance of this order, to provide for: participation by any interested party in the SIRPP stakeholder group; the distribution of information that is to be discussed at a stakeholder meeting sufficiently in advance of that meeting to provide for meaningful stakeholder review; and, the ability of the SIRPP stakeholder group to cluster or batch requests for economic studies.

80. Moreover, although the SIRPP process provides a mechanism for SIRPP stakeholders to request data and information to permit replication of inter-regional economic studies, we find that process to be unduly restrictive. As proposed by Duke and Progress, stakeholders may not obtain data supporting an SIRPP study unless they first request and obtain from the Commission the FERC Form No. 715, including CEII, for the relevant SIRPP participants. This effectively requires participants to meet the criteria for accessing CEII even if the data which they seek includes confidential information that is not CEII. Accordingly, we direct Duke and Progress to revise their Attachment N and Attachment K, respectively, in a compliance filing to be submitted within 90 days of issuance of this order to remove the requirement that stakeholders seeking non-CEII confidential information from SIRPP participants first request and obtain from the Commission the Form No. 715, including CEII, for the relevant SIRPP participants.

81. We disagree, however, that it is necessary to establish a subcommittee of the stakeholder group in the SIRPP planning process. We note that the SIRPP provides a detailed description of its stakeholder participation, including the formation of the stakeholder group, which is widely inclusive. We conclude that reliance on this stakeholder group to provide advice and input regarding economic planning studies is adequate to ensure coordination of those studies with stakeholders.

82. We also disagree with Energy Consulting that the SIRPP must independently meet the specific requirements of the dispute resolution principle. The responsibility to implement an open and transparent planning process on a local and regional level rests with each transmission provider. This includes the obligation to ensure that its dispute resolution process is adequate to address matters related to each aspect of transmission planning. Although the SIRPP is not independently subject to the nine planning principles stated in Order No. 890, Duke and Progress nonetheless must establish a mechanism for resolving disputes that arise in regional planning activities, including those performed by the SIRPP. It is unclear whether section 6 of Duke and Progress' Attachment N and Attachment K, respectively, is sufficient to address this requirement. For example, it is unclear how disputes involving a Duke and Progress stakeholder and

other SIRPP stakeholders would be addressed and resolved under Duke and Progress' dispute resolution provisions if neither Duke nor Progress were a party to the dispute. We, therefore, direct Duke and Progress to demonstrate in a compliance filing to be submitted within 90 days of issuance of this order how the dispute resolution provisions of their Attachment N and Attachment K, respectively, can be used to address and resolve disputes related to SIRPP planning activities or, alternatively, propose different dispute resolution provisions that can be used to address and resolve such disputes and implement agreements reached through such dispute resolution.⁴⁵

9. Cost Allocation

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

84. The Commission did not prescribe any specific cost allocation methodology in Order No. 890. The Commission instead suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.⁴⁶ In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as

⁴⁵ Duke and Progress and the transmission owning sponsors of the SIRPP could, for example, establish an inter-regional dispute resolution process to address disputes arising in the SIRPP planning process. We encourage Duke and Progress and other SIRPP sponsors to contact the Commission's Dispute Resolution Service for assistance in developing any alternative dispute resolution provisions that may be necessary.

⁴⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-61.

participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.⁴⁷

a. Duke and Progress' Filing

85. Duke and Progress propose a cost allocation methodology in section 7 of their Attachment N and Attachment K, respectively, and in a paper entitled “NCTPC Transmission Cost Allocation,” provided as an attachment to their transmittal letter and posted on the NCTPC website. Costs of projects needed to maintain system reliability to serve existing obligations, as identified in the NCTPC transmission plan, are rolled into each transmission provider’s respective costs of service. Costs associated with Regional Reliability Projects are an exception. Duke and Progress define a Regional Reliability Project as any reliability project identified in the NCTPC planning process that requires an upgrade to a transmission provider’s system that would not have otherwise been made based upon the reliability needs of that transmission provider in isolation. For example, the NCTPC Process may identify a project that meets a reliability need in a more cost effective manner than if each transmission provider were only considering projects on its system to meet reliability criteria. An “avoided cost” cost allocation methodology will apply to Regional Reliability Projects involving the transmission systems of the NCTPC.⁴⁸ In determining avoided costs, Duke and Progress will take into account the acceleration or delay of reliability projects. A Regional Reliability Project also must have a cost of at least \$1 million to be subject to the avoided cost methodology. The costs of a Regional Reliability Project with a cost of less than \$1 million would be borne by each transmission provider based on the costs incurred on its system.⁴⁹

86. With regard to economic projects, Duke and Progress explain that they do not have an obligation to build projects identified through the ETAP until either a transmission service request is submitted or, in the case of an RETP, the project is fully

⁴⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

⁴⁸ If a Regional Reliability Project suitable for the avoided cost approach involves a transmission system outside the NCTPC, Duke and Progress suggest that costs be fairly allocated among the affected transmission providers based on good-faith negotiation among the parties involved using the “avoided cost” approach outlined above as a starting point, with the resulting transmission costs and associated revenue requirements of each transmission provider recovered through their respective existing rate structures at the time. In the event the affected transmission providers are unable to reach a negotiated solution, the NCTPC would propose that the parties utilize the Commission’s Dispute Resolution Service to settle any issues.

⁴⁹ Attachment N/K at section 7.2.2-7.2.4.

subscribed. If a transmission service request is submitted under their OATTs for an economic project, the costs of that project will be allocated in accordance with their OATTs.⁵⁰ For RETP facilities, however, Duke and Progress propose to allocate costs to those subscribing to the facilities through an open season.⁵¹ During the open season, customers are provided a 60 day window within which to identify their desire to be a subscriber at a particular megawatt level. If the RETP is not fully subscribed, the open season will be extended by 30 days if the initial subscription was to 80 percent or more of the RETP capacity.

87. Duke and Progress state that the decision to pursue an RETP open season should be carefully considered by stakeholders, as it could result in ATC being made unavailable for some time if that ATC was included in the RETP project. For example, if an RETP were proposed for a 1000 MW path from one interface to another, Duke and Progress would identify the incremental amount of ATC necessary to accommodate the project. If 300 MW of existing ATC is available on the Duke system at the time the RETP project will become operational, Duke will assume in reviewing new transmission service requests (and rollover rights of such new requests) that the 300 MW of ATC will no longer be available when the RETP project is operational.

88. Duke and Progress will proceed with construction of an RETP facility only if it is fully subscribed through the open season. The subscribing transmission customers would provide upfront funding for any transmission construction that was required to ensure that the path was available for the relevant time period and would be awarded associated transmission capacity in accordance with their subscription.⁵² The transmission customer then would receive a levelized repayment of this initial funding amount from Duke and/or Progress in the form of monthly transmission credits over a maximum 20-year

⁵⁰ Attachment N/K at section 7.1. Duke and Progress state that there is no need for an alternative cost allocation methodology for economic upgrades within a single transmission provider's system, identified through the ETAP process because there are no internal constraints within the Duke or Progress systems.

⁵¹ Duke and Progress note that an RETP could encompass transmission providers outside the NCTPC. In that case, the impacted transmission providers will work individually and through applicable stakeholder forums to develop processes that would be used to move from a study of the RETP to actual transmission reservations that would be needed to support the RETP.

⁵² See Attachment N/K at sections 4.2.5.5 – 4.2.5.8; Attachment H to Duke and Progress' Transmittal Letter.

period.⁵³ Duke and Progress state that transmission providers will be permitted to work with the transmission customers to provide shorter or different crediting. As the credits are paid, Duke and Progress would have the opportunity to include the costs of upgrades that were needed for the RETP in transmission rates, similar to the generator interconnection pricing/rate approach.⁵⁴

89. With regard to economic upgrades identified through the SIRPP, Duke and Progress' Attachment N and Attachment K, respectively, provide that costs will be allocated as determined by each region in which the construction of such upgrades (in whole or in part) would occur.

b. Protest

90. Energy Consulting contends that the SIRPP produces transmission projects that are not covered under existing cost allocation rules. Energy Consulting asserts that the cost allocation for these projects was required by Order No. 890 and should be included in each participating transmission owner's proposed Attachment K. Energy Consulting requests that the Commission direct Duke and Progress, as well as the other companies that filed the SIRPP as part of their proposed Attachment K filing, to modify the SIRPP to add cost allocation in compliance with Order No. 890. NC Customers argue that the SIRPP procedures do not address cost allocation, as required by Order No. 890.

c. Commission Determination

91. We find that the transmission planning process proposed by Duke and Progress partially complies with the cost allocation principle of Order No. 890. Duke and Progress provide a general structure for allocating the costs of reliability upgrades undertaken on their systems, including Regional Reliability Benefits planning jointly among the NCTPC Participants. Duke and Progress also provide a structure for allocating the cost of RETP facilities within the NCTPC footprint. However, Duke and Progress have failed to identify a cost allocation methodology for non-RETP economic projects that involve the transmission systems of multiple NCTPC Participants. Accordingly, Duke and Progress

⁵³ Duke and Progress explain that no compensation will be provided to the requestor(s) of the RETPs for any "head-room" that would be created on their transmission systems as a result of RETP. Duke and Progress explain that transmission projects constructed for particular expansion needs typically result in additional "head-room" being created in the transmission system, but that compensation for such additional capacity is not provided during normal transmission planning.

⁵⁴ See Attachment N/K at sections 7.3.1-7.3.2.

are directed to address this concern in a compliance filing to be made within 90 days of issuance of this order.

92. Duke and Progress also fail to identify the cost allocation methodology that will be used for economic upgrades identified through a SIRPP study. The Commission made clear in Order No. 890 that each region should address cost allocation issues up front, and affirmed in Order No. 890-A that the details of each cost allocation methodology must be clearly defined.⁵⁵ Duke and Progress merely state that cost allocation for economic projects identified in a SIRPP study will be determined by each region in which the construction of such upgrades, in whole or in part, would occur. Accordingly, we direct Duke and Progress to address, in a compliance filing to be made within 90 days of issuance of this order, the allocation of costs for upgrades identified through the SIRPP economic planning process.

10. Recovery of Planning Costs

93. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically addressing that issue after discussing the nine principles that govern the planning process. The Commission directed transmission providers to work with other participants in the planning process to develop cost recovery proposals in order to determine whether all relevant parties, including state agencies, have the ability to recover the costs of participating in the planning process. The Commission also suggested that transmission providers consider whether mechanisms for regional cost recovery may be appropriate, such as through agreements (formal or informal) to incur and allocate costs jointly.⁵⁶

a. Duke and Progress' Filing

94. Duke and Progress state that their planning-related costs, except for the cost of economic studies performed at the expense of requesting parties, will be recovered in wholesale and retail transmission rates.

b. Commission Determination

95. We find that Duke and Progress' Attachment N and Attachment K, respectively, adequately address the recovery of transmission planning costs.

⁵⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 561; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

⁵⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586.

The Commission orders:

(A) Duke's and Progress's compliance filings are hereby accepted, as modified, effective December 7, 2007, as discussed in the body of this order.

(B) Duke and Progress are hereby directed to submit a compliance filing, within 90 days of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.