

127 FERC ¶ 61,272
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket Nos. OA08-59-003
OA08-59-004

ORDER ACCEPTING COMPLIANCE FILINGS, AS MODIFIED

(Issued June 18, 2009)

1. On December 17, 2008, in Docket No. OA08-59-003, Entergy Services, Inc. (Entergy) submitted a revised Attachment K (Transmission Planning Process) to its Open Access Transmission Tariff (OATT), as required by the Commission in the Entergy Planning Order.¹ On February 6, 2009, in Docket No. OA08-59-004, Entergy submitted an additional compliance filing to address the Commission's requirements in the Entergy Planning Order related to regional participation. In this order, we will accept Entergy's filings, as modified, subject to a further compliance filing.

I. Background

2. In Order No. 890,² 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. To remedy the potential for undue discrimination in planning activities, the Commission directed all

¹ *Entergy Services, Inc.*, 124 FERC ¶ 61,268 (2008) (Entergy Planning Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to their OATT (Attachment K).

3. The Commission in Order No. 890 directed each transmission provider to address in its Attachment K planning process the following nine planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;³ (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. The Commission also explained, however, 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, as supplemented with web-posted business practices when appropriate,⁴ must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

4. On December 7, 2007, in Docket No. OA08-59-000, Entergy submitted a new Attachment K to its OATT in compliance with Order No. 890's transmission planning requirements. Attachment K outlined the process that Entergy and its Independent Coordinator of Transmission (ICT) will use to develop Entergy's transmission plans.⁵ In the Entergy Planning Order, the Commission accepted the compliance filing, as modified, to be effective December 7, 2007. The Commission found that Entergy had complied with the Order No. 890 requirements related to information exchange, dispute resolution, and recovery of planning costs. However, the Commission directed Entergy to file, in a compliance filing due within 90 days of the date of the order, revisions to Entergy's Attachment K to address requirements related to the principles of coordination, openness,

³ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of Entergy's amended Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

⁵ Southwest Power Pool, Inc. (SPP) acts as Entergy's ICT.

transparency, comparability, regional participation, economic planning studies, and cost allocation. On December 17, 2008, the Commission issued a notice granting Entergy's request for an extension of time, until February 6, 2009, to comply with the Entergy Planning Order, as it relates to the coordination of transmission planning activities by Entergy with SPP in its role as regional transmission organization (RTO).

5. Entergy's transmission planning process consists of two plans. The first is the Base Plan, which is used for cost allocation on the Entergy system and is developed by the ICT. The second is the Construction Plan, which is the list of projects that will actually be built, and is developed by Entergy. Both plans are vetted through the stakeholder working group and as regional and inter-regional opportunities are identified, they are included in the respective plans.⁶

II. Compliance Filings

6. On December 17, 2008, in Docket No. OA08-59-003, Entergy submitted a revised Attachment K in compliance with the Entergy Planning Order, with the exception of the regional planning coordination provisions. Entergy's compliance filing in Docket No. OA08-59-003 includes revisions to Attachment K that Entergy states are intended to meet the requirements of several of the Order No. 890 transmission planning principles.

7. On February 6, 2009, in Docket No. OA08-59-004, Entergy submitted an additional compliance filing to address the issue of coordination of regional planning activities with SPP.

III. Notice of Filings and Responsive Pleadings

8. Notice of Entergy's filing in Docket No. OA08-59-003 was published in the *Federal Register*, 74 Fed. Reg. 271 (2009), with interventions and protests due on or before January 7, 2009. Union Power Partners, L.P. (Union Power) (Union Power January 7 Protest) and Lafayette Utilities System, the Louisiana Energy and Power Authority, the Municipal Energy Agency of Mississippi, and the Mississippi Delta Energy Agency (collectively, L-M Municipals) filed protests. Entergy filed an answer to Union Power's and L-M Municipals' protests (Entergy January 22 Answer). Southeast Inter-Regional Participation Process Sponsors⁷ filed a motion to intervene out-of-time and an answer to the protests.

⁶ Additional background information and a detailed description of Entergy's planning process are provided in the Entergy Planning Order.

⁷ Southeast Inter-Regional Participation Process Sponsors (SIRPP Sponsors) are the City of Dalton; Georgia Transmission Corp.; Municipal Electric Authority of

9. Notice of Entergy's filing in Docket No. OA08-59-004 was published in the *Federal Register*, 74 Fed. Reg. 7,882 (2009) with interventions and protests due on or before February 27, 2009. Union Power filed a protest (Union Power February 27 Protest). The Arkansas Public Service Commission filed a notice of intervention. Arkansas Electric Cooperative Corporation and the Lafayette Utilities System (Arkansas-Lafayette) filed joint comments. Interested Parties⁸ and Arkansas Cities⁹ filed motions to intervene and comments. East Texas Cooperatives¹⁰ filed comments. Entergy filed an answer (March 17 Answer).

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding. We will grant SIRPP Sponsors' motion to intervene out-of-time in Docket No. OA08-59-003 given the early stage of the proceeding, its interest in the proceeding, and the absence of undue prejudice or delay. 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 unless otherwise ordered by the decisional authority. We will accept Entergy's and SIRPP Sponsors' answers because they have provided information that assisted us in our decision-making process.

Georgia; Duke Energy Carolinas, LLC; E.ON U.S. LLC, as agent for and on behalf of Louisville Gas and Electric Co. and Kentucky Utilities Co.; PowerSouth Energy Coop.; Carolina Power & Light Co.; South Carolina Public Service Authority; South Carolina Electric & Gas Co.; and Southern Company Services, Inc., on behalf of itself and Alabama Power Co., Georgia Power Co., Gulf Power Co. and Mississippi Power Co.

⁸ American Electric Power Service Corp.; Oklahoma Gas & Electric Co.; Westar Energy, Inc.; Kansas Gas and Electric Company; Southwestern Public Service; Oklahoma Municipal Power Authority; Kansas City Power & Light Co.; Dogwood Energy, LLC; Sunflower Electric Power Corp.; Mid-Kansas Electric Co., LLC; and Golden Spread Electric Coop., Inc.

⁹ The City of Benton, Arkansas, the City of Prescott, Arkansas, the Conway Corporation, the Hope Water & Light Commission, the City of Osceola, Arkansas, and the West Memphis Utilities Commission.

¹⁰ East Texas Electric Coop., Inc., Sam Rayburn G&T Electric Coop., Inc., and Tex-La Electric Cooperative of Texas.

B. Substantive Matters

11. Although the Commission accepts Entergy's compliance filing below, subject to a further compliance filing to address certain discrete issues, the Commission remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. We reiterate the encouragement made in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes. As part of the Commission's ongoing evaluation of the implementation of the planning processes, the Commission intends to convene regional technical conferences this year to determine if further refinements to these processes are necessary. 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 other stakeholder input, and discuss any areas that may need improvement. The conferences will examine whether existing transmission planning processes adequately consider needs and solutions on a regional or interconnection-wide basis to ensure adequate and reliable supplies at just and reasonable rates. The Commission will also explore whether existing processes are sufficient to meet emerging challenges to the transmission system, such as the development of inter-regional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources.

1. Coordination**a. Entergy Planning Order**

12. In the Entergy Planning Order, the Commission found that Entergy partially complied with Order No. 890's coordination principle. The Commission noted that Order No. 890 required that customers have the opportunity to participate in the early stages of development of a transmission provider's transmission plan and not merely given the opportunity to comment on transmission plans that were developed in the first instance without their input.¹¹ The Commission found that Entergy's process did not allow for stakeholder input into the development of the planning criteria and Construction Plan. The Commission required Entergy to revise Attachment K to provide for stakeholder input into the planning criteria prior to the draft Construction Plan being posted by the ICT and into the Construction Plan as that plan is being developed.¹²

¹¹ Entergy Planning Order, 124 FERC ¶ 61,268 at P 47 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 454).

¹² *Id.* P 48.

13. The Commission also found that Entergy had not fully explained the relationship between the annual Transmission Planning Summit and the other activities performed by the ICT during the planning cycle. The Commission directed Entergy to address the relationship between the Transmission Planning Summit and the planning-related activities performed by the ICT during the planning cycle, and the provision of feedback by the ICT to Entergy.¹³

14. In addition, the Commission required notice of stakeholder meetings be posted on the ICT's website in addition to Entergy's OASIS. The Commission noted that the ICT serves to coordinate stakeholder review and input at various stages of Entergy's planning process, and it is therefore appropriate to post notice of planning-related meetings on the ICT's website. The Commission also noted that while Entergy referred to the Long-Term Transmission Issues Working Group (Stakeholder Working Group) in Attachment K, it did not define the working group in its tariff. The Commission directed Entergy to define the Stakeholder Working Group, as well as any other relevant working groups, and their role in transmission planning.¹⁴

b. Entergy's Filing

15. Entergy revised section 9.1.1 of Attachment K to provide that stakeholders will have an opportunity to provide input on the planning criteria, including any proposed changes thereto, before those criteria are posted. In addition, prior to or during the development of the Construction Plan, stakeholders will have an opportunity to provide input, including written comments, regarding (1) data gathering and the study process associated with development of the Construction Plan and (2) other inputs, assumptions, and methodologies relied upon in developing the Construction Plan. Entergy asserts that this is the same approach that the Commission approved for providing stakeholder input on the ICT's reliability assessment, Base Case Model, Base Plan, and Regional and Inter-Regional Studies.

16. In addition, new section 9.1.2 of Attachment K provides that, through the Stakeholder Working Group, stakeholders will have an opportunity outside of the Transmission Planning Summit to provide input regarding the reliability assessment, the Base Case Models, the Base Plan, Regional and Inter-Regional Studies, and the Construction Plan. Attachment K also now provides that stakeholders will have an opportunity through the Stakeholder Working Group to submit comments in a manner that provides Entergy and the ICT sufficient time to consider such comments prior to completion of the Construction Plan and Base Plan. Entergy notes that these provisions

¹³ *Id.* P 51.

¹⁴ *Id.* P 52.

supplement the provisions addressing the Transmission Planning Summit, where stakeholders will have additional opportunities to comment on various matters.

c. Comments and Protests

17. L-M Municipals argue that Entergy's changes to Attachment K do not meet the letter and intent of the Commission's directives on the coordination principle in the Entergy Planning Order. They request that the Commission reject Entergy's proposal and direct it to submit a revised version of Attachment K that includes provisions for direct and continuing stakeholder input into the Entergy Construction Plan during plan development. L-M Municipals argue that while the Commission may have deemed the stakeholder process Entergy proposes to be adequate for plans prepared by the ICT, the stakeholder input is not sufficient for Entergy-controlled plans. L-M Municipals assert that Entergy has jealously guarded its own control over the Construction Plan, and, therefore, it is reasonable to impose more specific stakeholder-input requirements on Entergy's development of the Construction Plan.

18. L-M Municipals suggest changes Entergy should make to sections 9.1.1.2 and 9.1.1.3 of Attachment K to make clear that stakeholder input is not a one-time matter but occurs throughout the development of Entergy's Construction Plan and development of the ICT's reliability assessment, Base Case models, Base Plan, and Regional and Inter-Regional Studies. L-M Municipals also believe changes are needed in sections 9.1.1.3 and 6.2 of Attachment K to allow stakeholders an opportunity to review and comment on each draft of the Construction Plan that is prepared by Entergy during the development process.

19. In addition, both L-M Municipals and Union Power note that Entergy has deleted language from former section 9.1.2.2 that provided for the ICT to hold a stakeholder meeting at which it would address stakeholder comments prior to the Transmission Planning Summit. They assert that the Commission should reject this change as impermissible because it is beyond the scope of what the Commission directed in the Entergy Planning Order. Union Power notes that with the deletion of original section 9.1.2.2, the first opportunity for any dialog with stakeholders is deferred to the Transmission Planning Summit, which would be too late in the planning process to discuss stakeholder comments adequately.

d. Answer

20. Entergy states that the L-M Municipals' argument that the stakeholder process that applies to Entergy should be different from the one that applies to the ICT incorrectly assumes that the ICT prepares the Base Case Model, the Base Plan, and Regional and Inter-Regional Studies. As an example, Entergy cites section 13.2.6 of Attachment K to show that the ICT does not prepare Inter-Regional Studies. Entergy argues that there is thus no reason to distinguish between the approach used to obtain stakeholder input into

the Construction Plan and the approach used to obtain stakeholder input into Inter-Regional Studies.

21. Entergy goes on to argue that, in any event, L-M Municipals provide no basis for finding that the standards applicable to stakeholder input into the Construction Plan are in any way inadequate or that they should differ from the standards applicable to plans and models the ICT develops. Entergy points to several provisions from the revised Attachment K and states that the review and comment process related to the Construction Plan complies fully with the requirements of the Entergy Planning Order.¹⁵ Entergy states that if stakeholders believe that specific standards are not being satisfied, they may raise their concerns with the Commission.

22. In response to L-M Municipals' argument that there should be stakeholder input on the multiple drafts of the Construction Plan, Entergy asserts that L-M Municipals are incorrect in arguing that stakeholders are given the opportunity to comment on only one draft of the Construction Plan. Entergy states that under Attachment K, at least two separate drafts of the Construction Plan will be posted, presented at stakeholder meetings, and made available for stakeholder comment. Entergy states that the first draft of the Construction Plan will be made available during the first quarter of the year, and a second, more detailed draft will be made available prior to the Transmission Planning Summit. Entergy states that additional drafts also will be provided for comment when appropriate.

23. Entergy states that the language in section 9.1.1.3 to which L-M Municipals object is the same language that applies to other studies and models under Attachment K that the Commission approved in the Entergy Planning Order. Entergy asserts that L-M Municipals provide no basis for finding that the language applicable to the Construction Plan should be different from the language applicable to other studies and models. Entergy notes that L-M Municipals instead assert in a footnote to their Protest that changes should also be made to the comparable language in section 9.1.1.2 of Attachment K, addressing the Base Case Model, the Base Plan, and Regional and Inter-Regional Studies. Entergy asserts that L-M Municipals' argument is a collateral attack on the Entergy Planning Order and should be rejected.

24. Entergy states that the Commission did not require a change to section 6.2 in the Entergy Planning Order or otherwise require Entergy to permit further input into the draft Construction Plan after it is posted on OASIS. Entergy states that it has amended Attachment K to provide for further input into the Construction Plan before the draft is

¹⁵ Entergy January 22 Answer at 3-4 (citing sections 6.2, 9.1.1.3, 9.1.1.5, 9.1.2.2, 9.1.2.3, 9.1.3.2.1, and 9.1.3.2.3).

posted on OASIS and to allow submission of comments directly to Entergy. Entergy argues that no further changes are needed to comply with the Entergy Planning Order.

25. Entergy responds to L-M Municipals and Union Power's objection to the elimination of the ICT's stakeholder meeting to address the comments submitted by stakeholders by noting that section 9.1.2.2 has been revised to state that "[t]hrough the [Stakeholder Working Group], the Transmission Provider will provide an opportunity outside of the Transmission Planning Summit for stakeholders to provide input, including written comments, regarding the Construction Plan."¹⁶ Entergy states that that opportunity will be provided prior to the Transmission Planning Summit. Entergy disputes Union Power's claim that "opportunity for a dialog" has been eliminated from Attachment K. It argues that relevant Attachment K provisions have been amended consistent with the Entergy Planning Order, including the Commission's finding that the Stakeholder Working Group's role in transmission planning should be better defined.

e. Commission Determination

26. We find that Entergy has, with one modification directed below, complied with the requirements of the Entergy Planning Order with respect to Order No. 890's coordination principle. Specifically, section 9.1.1.1 now provides that stakeholders will have the opportunity to provide input regarding planning criteria or changes to the planning criteria. In addition, section 9.1.1.3 provides that Entergy will provide stakeholders an opportunity to provide input, including written comments, regarding data gathering, the study process, and other inputs, assumptions and methodologies relied upon in developing the Construction Plan. Section 9.1.1.5 provides that stakeholders will be provided an opportunity to submit comments in a manner that provides Entergy sufficient time to consider such comments prior to completion of the Construction Plan. In addition, section 9.1.2 provides stakeholders with the opportunity to provide input regarding Base Case Models, the Base Plan, Regional and Inter-regional Studies, and the Construction Plan in Stakeholder Working Group meetings (which are currently held monthly). Entergy has also revised section 9.1.4 to require notice of all meetings to be posted on both Entergy's OASIS and the ICT website.

27. We disagree with L-M Municipals that Entergy must have more specific stakeholder-input requirements for the Construction Plan than those that the Commission already accepted for input into other aspects of Entergy's transmission planning process. Entergy has revised section 9.1.2 to clarify that stakeholders will be able to provide input into all aspects of the Entergy transmission planning process, including the Construction Plan, through the regular meetings of the Stakeholder Working Group. We also find that

¹⁶ *Id.* at 6.

the stakeholder input into Entergy's development of the Construction Plan is not limited to a one-time matter, as L-M Municipals asserts, but is on-going as Entergy develops its Construction Plan.

28. We also find that Entergy has sufficiently addressed L-M Municipals' concern regarding stakeholder opportunity to provide input into various drafts of the Construction Plan. Entergy states in its answer that at least two separate drafts of the Construction Plan will be posted, presented at stakeholder meetings, and made available for stakeholder comment. Entergy explains that under the timeline in Appendix 1 of Attachment K, the first draft of the Construction Plan will be made available during the first quarter of the year, and a second, more detailed draft will be made available prior to the Transmission Planning Summit. Entergy also states that, when appropriate, additional drafts will be provided for comment, and that, in 2008, three versions of the Construction Plan were made available in draft form for stakeholder comment.

29. Lastly, we agree with L-M Municipals and Union Power that Entergy should not have deleted section 9.1.2.2, which stated that the ICT would hold a meeting with stakeholders to address comments made in accordance with section 9.1. The Commission did not direct Entergy to eliminate the ICT stakeholder meeting. Entergy has also not shown how elimination of the ICT stakeholder meeting is consistent with the Commission's directive for Entergy to define the role of the Stakeholder Working Group in the transmission planning process. We therefore direct Entergy to revise Attachment M to restore the language from former section 9.1.2.2 and to submit a revised Attachment M in a compliance filing due within 60 days of the date of this order.

2. Openness

a. Entergy Planning Order

30. In the Entergy Planning Order, the Commission found that Entergy had partially complied with the openness principle of Order No. 890. The Commission required Entergy to revise section 9.1.5 of its Attachment K to state clearly that all stakeholder meetings under section 9.1 shall be open to "all interested parties," including those already listed by Entergy, subject to appropriate confidentiality restrictions.¹⁷

b. Entergy's Filing

31. Entergy has revised section 9.1.5 to state that all stakeholder meetings are open to all interested parties, subject to appropriate confidentiality provisions.

¹⁷ Entergy Planning Order, 124 FERC ¶ 61,268 at P 56.

c. Commission Determination

32. We find that Entergy has complied with the requirements in the Entergy Planning Order related to the openness principle of Order No. 890.

3. Transparency

a. Entergy Planning Order

33. In the Entergy Planning Order, the Commission found that Entergy had partially complied with Order No. 890's transparency principle. The Commission found that Entergy's transmission planning process did not meet the requirement in Order No. 890 that transmission providers provide sufficient information to "enable customers, other stakeholders, or an independent third party to replicate the results of planning studies."¹⁸ The Commission also found that Entergy's Attachment K did not adequately describe the method that Entergy will use to disclose the criteria, assumptions, and data that underlie its transmission system plans. The Commission thus directed Entergy to revise its Attachment K to (1) provide the basic methodology, criteria, and processes used to develop transmission plans sufficient for interested parties to be able to replicate its transmission plans and (2) describe the methods it will use to disclose the criteria, data and assumptions that underlie its transmission system plans. The information should be of sufficient detail to allow a customer to replicate the results of planning studies.¹⁹

b. Entergy's Filing

34. Entergy has revised Attachment K to state that the ICT will post on Entergy's OASIS the basic methodology, criteria, processes, data and assumptions used in developing the Construction Plan, the Reliability Assessment, and the Base Plan in sufficient detail to facilitate interested parties' ability to replicate the applicable transmission plan. Entergy states that this is the same standard that the Commission already approved for the inter-regional planning process. Entergy points out that in each case the information will be posted on OASIS, and the ICT will notify stakeholders using the appropriate stakeholder exploder list.

c. Comments and Protests

35. L-M Municipals state that Entergy's proposed language to provide information in sufficient detail "to facilitate interested parties' ability to replicate" planning studies does

¹⁸ *Id.* P 69 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471).

¹⁹ *Id.*

not comply with the requirement in the Entergy Planning Order to provide information that is sufficient for interested parties to be able to replicate transmission plans. L-M Municipals argue that Entergy presumably attributes a different meaning to the language it proposes than for the language the Commission required; otherwise, there would be no reason for Entergy not to adopt the Commission's language. L-M Municipals state that the Commission should direct Entergy to submit a further compliance filing that adopts the language specified in the Entergy Planning Order.

36. L-M Municipals also argue that the Commission should direct Entergy to modify the language in at least two additional provisions in Attachment K where Entergy should have modified the language to comply with the Entergy Planning Order: sections 3.2.2 concerning the ICT's review of the planning criteria and 10.1.1(ii) requiring the planning criteria to be transparent.

d. Answer

37. Entergy responds that it has complied with the requirement in the Entergy Planning Order for it to revise Attachment K to provide the basic methodology, criteria, and processes used to develop transmission plans sufficient for interested parties to be able to replicate Entergy's transmission plans. Entergy states that stakeholders will have access to all of the tools and components that are needed to replicate its transmission plans.²⁰

e. Commission Determination

38. We find that Entergy has partially complied with the transparency requirements of the Entergy Planning Order. We find that Entergy's proposal that information posted on Entergy's OASIS will be provided in sufficient detail to "facilitate" interested parties ability to replicate the transmission plan does not comply with the directive in the Entergy Planning Order and is unnecessarily vague. In Order No. 890, the Commission stated that the basic criteria, assumptions and data a transmission provider must disclose "should enable customers . . . to replicate the results of planning studies . . ." ²¹ We note that, in its answer, Entergy states that interested parties will have access to all of the tools and components needed to replicate its transmission plans. To avoid any doubt as to the intention of the tariff language, we require Entergy to change the phrase "facilitate interested parties ability to replicate" to "enable interested parties to replicate" in sections 10.3.1, 10.4.1, 10.5.1, and 10.6. We also agree with L-M Municipals that Entergy should revise sections 3.2.2 and 10.1.1 to include this language. This change

²⁰ Entergy January 22 Answer at 7-8.

²¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471.

incorporates the language from Order No. 890 into Entergy's Attachment K and merely confirms what Entergy says it has already done.

39. We direct Entergy to submit a compliance filing, within 60 days from the date of this order, that makes the changes to the transparency section of Attachment K described above.

4. Comparability

a. Entergy Planning Order

40. In the Entergy Planning Order, the Commission found that Entergy had complied with the comparability principle as set forth in Order No. 890. However, the Commission also found that, because Order No. 890-A was issued on December 28, 2007, after Entergy submitted its Attachment K compliance filing, Entergy did not have an opportunity to demonstrate that it complies with the comparability requirement of Order No. 890-A. Specifically, the Commission stated in Order No. 890-A 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."²² Therefore, the Commission directed Entergy to include in its compliance filing the demonstration that Order No. 890-A requires.

b. Entergy's Filing

41. Entergy has added a new section 9.1.6 to its Attachment K stating that sponsors of transmission solutions, generation solutions, and solutions utilizing demand-side resources will have equal opportunities to participate throughout the transmission planning process.

42. With regard to development of its Base Case Model, Entergy requires network and point-to-point customers to submit information regarding load and resource forecasts and projected uses of the system, using a data template included as an Appendix to Attachment K. The data template for network customers contains line items for "Direct Control Load Management," "Interruptible Demand," and "Committed Planned Resources." Entergy and the ICT will use this information in developing the Base Case Model, which in turn will be used to create the annual Base Plan and Construction Plan. As noted above in the coordination section, Entergy provides an opportunity for all interested parties to address the Base Case Model and underlying data and assumptions

²² Entergy Planning Order, 124 FERC ¶ 61,268 at P 79 (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216).

used in developing transmission plans and models at the periodic (currently monthly) meetings of the Stakeholder Working Group and at an annual Transmission Planning Summit.

43. At the Stakeholder Working Group meetings and annual Transmission Planning Summit, stakeholders may comment on the planning criteria and potential solutions to Entergy's needs, as well as suggest alternative solutions. Entergy has also added the following language at section 3.1.2 to describe how it will choose the particular projects:

Advanced technologies and demand-side resources will be treated comparably, where appropriate in the transmission planning process, to transmission and generation solutions. Transmission plans developed under this Attachment K will be technology neutral, balancing costs, benefits, and risks associated with the use of transmission, generation, and demand-side resources to meet the needs of transmission customers and [Entergy].

44. For comparability related to economic planning studies, section 14.5 of Attachment K states that any transmission customer, eligible customer, or interconnection customer may request the ICT to conduct one or more economic upgrade studies in order to evaluate specific, potential upgrades or other specific investments that could reduce transmission congestion or integrate new resources and loads on the Entergy system.

c. Comments

45. L-M Municipals is concerned that Entergy's proposal to treat advanced technologies and demand-side resources comparably to transmission and generation solutions only "where appropriate" in the transmission planning process would require Entergy or the ICT to exercise subjective judgment, opening the door to discrimination. L-M Municipals state that the Commission should direct Entergy to specify the circumstances in which it would deem it inappropriate to treat advanced technologies and demand-side resources comparably to transmission and generation solutions. Alternatively, the Commission should direct Entergy to delete the exception.

46. L-M Municipals is concerned that new section 9.1.6, which states that sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources will be provided equal opportunities to participate throughout the transmission planning process, is ambiguous and suggests that comparability must exist among the sponsors of transmission, generation and demand response solutions, rather than between those entities and other stakeholders. L-M Municipals suggest that the Commission require Entergy to modify section 9.1.6 to state that sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources will be provided equal

opportunities to participate throughout the transmission planning process that are equivalent to the opportunities other stakeholders and interested parties receive.

47. L-M Municipals argue that developers of potential transmission solutions also should have equivalent opportunities to participate in the inter-regional Southeast Inter-Regional Participation Process (SIRPP) in which Entergy intends to participate. They assert that it is unclear from Entergy's Attachment K provisions relating to the SIRPP whether transmission developers would have equivalent rights because section 13.2.7.3.3 lists SIRPP sectors that are eligible to participate in the SIRPP, but there is not a transmission developers sector. L-M Municipals argue that the Commission should direct Entergy to modify section 13.2.7.3.3, and, if necessary, other provisions of Attachment K to clarify that transmission developers may participate on an equal basis with other interested parties.

d. Answer

48. Entergy maintains that L-M Municipals misunderstand the phrase "where appropriate" in revised section 3.1.2. Entergy states that section 3.1.2 does not provide that it may be appropriate to treat advanced technologies and demand-side resources in a way that is not comparable to transmission and generator solutions. The language means only that Entergy will consider all resources on a comparable basis at the appropriate point in the transmission planning process. Entergy also notes that the language it proposes tracks almost exactly the Commission's language in Order No. 890-A, which stated that "advanced technologies and demand-side resources must be treated comparably where appropriate in the transmission planning process and, thus, the transmission provider's consideration of solutions should be technology neutral."²³

49. In response to L-M Municipals' argument regarding transmission developers ability to participate in the SIRPP, Entergy states that Attachment K provides that SIRPP stakeholder group membership is open to any interested party and that transmission developers may participate in the SIRPP on the same basis as any other stakeholder. To address L-M Municipals' concern, Entergy states that sections 13.2.7.3.1 through 13.2.7.3.4 of Attachment K should be deleted since there are no SIRPP sectors in the filings submitted by other SIRPP sponsors.²⁴

50. Entergy states that it does not object to amending section 9.1.6 to state that sponsors of transmission solutions, generation solutions, and solutions utilizing demand

²³ Entergy January 22 Answer at 9 (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 215).

²⁴ *Id.* at 15.

resources will be provided equal opportunities to participate throughout the transmission planning process that are equivalent to the opportunities other stakeholders and interested parties receive.²⁵

e. Commission Determination

51. We find that Entergy complies with the directives in the Entergy Planning Order related to the comparability principle as outlined in Order No. 890-A. Attachment K identifies where and when in the planning process all stakeholders, including sponsors of transmission, generation and demand resources, have an opportunity to provide their input regarding the development of assumptions used by Entergy and the ICT in transmission planning activities. Attachment K also provides all stakeholders with an opportunity to propose alternative solutions for evaluation by Entergy and the ICT. In addition, transmission plans developed under Attachment K will be technology neutral, balancing costs, benefits, and risks associated with the use of transmission, generation, and demand-side resources to meet the needs of transmission customers and Entergy. Attachment K also provides that economic planning studies may be requested for the evaluation of potential upgrades or other specific investments that could reduce transmission congestion or integrate new resources and loads on the Entergy system.²⁶

52. We find that Entergy has sufficiently explained that its proposal to treat advanced technologies and demand-side resources comparably, where appropriate in the transmission planning process, to transmission and generation solutions, does not allow Entergy to treat advanced technologies and demand-side resources in a non-comparable manner to transmission and generation solutions. We agree with Entergy that the phrase “where appropriate” provides only that Entergy will consider all resources on a comparable basis at the appropriate point in the transmission planning process. This is consistent with the language used by the Commission used in Order No. 890-A.

53. With regard to L-M Municipals’ concern that Entergy’s proposed tariff language is needlessly ambiguous, we note that Entergy states that it does not object to amending Attachment K as L-M Municipals suggests. We therefore direct Entergy to revise section 9.1.6 so that it reads: “Sponsors of transmission solutions, generation solutions, and

²⁵ *Id.* at 9.

²⁶ As noted below, however, we are also ordering Entergy to revise section 14.5 to revise the term “Eligible Customer” to permit existing and potential customers to request economic planning studies in order to fully comply with the directives of the Entergy Planning Order. For purposes of requesting an economic study, potential customers would include stakeholders that participate in Entergy’s planning process. *See, e.g.*, Order No. 890 at P 547; Order No. 890-A at P 235.

solutions utilizing demand resources will be provided equal opportunities to participate throughout the transmission planning process that are equivalent to the opportunities provided to other stakeholders and interested parties” and to include such revision in a compliance filing due within 60 days of the date of this order. With regard to L-M Municipals’ concern about which sectors can participate in the SIRPP, we accept Entergy’s proposal and direct Entergy to delete sections 13.2.7.3.1 through 13.2.7.3.4 of Attachment K. We direct Entergy to reflect these changes in the compliance filing due within 60 days of the date of this order.

5. Regional Participation²⁷

a. Entergy Planning Order

54. In the Entergy Planning Order, the Commission found that Entergy’s Attachment K did not adequately provide for regional participation because the regional reliability study procedures were incomplete. Although the Attachment K generally described processes for coordinating regional reliability planning, Entergy had not provided sufficient detail to allow customers and other interested stakeholders to understand how its local planning activities would be integrated into those regional processes. Entergy did not identify the timelines and milestones for the coordination of models and system plans by the SERC Reliability Corporation (SERC) and SPP, including opportunities for stakeholders to provide input and comment in each process. It was also unclear how each of the regional and inter-regional processes would interact with each other when coordinated with Entergy’s own planning activities, including development of the Construction Plan and Base Plan. The Commission noted that Entergy had acknowledged the inadequacies in its proposal and had agreed to make a compliance filing once the details of its regional reliability planning procedures have been developed.²⁸

55. The Commission therefore directed Entergy to describe in detail its 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. The Commission also required that Entergy revise Attachment K to identify all neighboring transmission owners with which it will coordinate.²⁹

²⁷ Entergy addressed Regional Participation in its compliance filing in Docket No. OA08-59-004.

²⁸ Entergy Planning Order, 124 FERC ¶ 61,268 at P 102.

²⁹ *Id.*

b. Entergy's Filing

56. Entergy has revised section 13.1 to state that for purposes of regional planning it will coordinate with SPP³⁰ and its respective members, including Arkansas Electric Cooperative Corporation, Lafayette Utilities System, Oklahoma Gas & Electric Company, American Electric Power-West, East Texas Electric Cooperative, Southwestern Power Administration, Empire District Electric Company, City of Clarksdale, and Cleco Corporation (together, the Regional Planning Parties).

57. Entergy states that its filing details the process that Entergy will use to coordinate with SPP and the Regional Planning Parties. Specifically, section 13.1.2 of Attachment K provides for the formation by Entergy and SPP of a Joint Planning Committee. The Joint Planning Committee will comprise representatives from the Regional Planning Parties “in numbers and functions necessary to ensure that the [Joint Planning Committee] has the appropriate subject matter experts to perform its functions.”³¹ Section 13.1.5 provides that the Joint Planning Committee will be responsible for various matters related to regional transmission planning and data sharing, including providing the technical support and personnel required for the Regional Planning Process. The Joint Planning Committee will also oversee, develop assumptions, and perform model development for customer-requested economic transmission studies across the systems of the Regional Planning Parties.

58. Entergy states that section 13.1.3 provides for the sharing of system plans among the Regional Planning Parties. Each Regional Planning Party will provide the other with its system plans, data, and other information as necessary to ensure the simultaneous feasibility of the Regional Planning Parties' approved expansion plans and the use of consistent assumptions and data in the development of system plans. Entergy further explains that section 13.1.3 also provides for specific information and data to be exchanged and the format for the data. Also, Section 13.1.4 states that if the Regional Planning Parties determine that their approved expansion plans are not simultaneously feasible or did not use consistent data or assumptions, the Joint Planning Committee will attempt to identify solutions.

59. Entergy notes that section 13.1.5.2 provides that the Regional Planning Process will include up to a total of five Step 1 and Step 2 Regional Studies annually. A Step 1 evaluation consists of a high level screening of the requested study and will be performed within a single year's planning cycle to identify transfer constraints and likely

³⁰ For purposes of regional participation, Entergy coordinates with SPP in its role as an RTO, not in SPP's role as Entergy's ICT.

³¹ Docket No. OA08-59-004 Transmittal Letter at 4.

transmission enhancements to resolve the constraints. The Step 1 evaluation would provide approximate costs and timelines for the transmission enhancements identified in the evaluation. If a stakeholder requests a Step 2 evaluation, the Joint Planning Committee will develop detailed cost estimates and timelines associated with the transmission enhancements.

60. Entergy states that section 13.1.5.3 provides that a transmission customer, an eligible customer, or an interconnection customer under a Regional Planning Party's OATT may request a Regional Study under that OATT or through the applicable Regional Planning Party's stakeholder process. The Regional Planning Parties may consider clustering similar Regional Study requests. Entergy also notes that if two or more of the Regional Study requests are similar in nature and the Regional Planning Parties conclude that clustering of such requests is appropriate, the applicable studies will be clustered for purposes of the transmission evaluation.

61. With respect to stakeholder participation, Entergy states that section 13.1.5.9.1 provides that the Regional Planning Process is open to any interested party. Section 13.1.5.4.1 provides that the Joint Planning Committee will hold three stakeholder meetings over the course of the bi-annual Regional Planning Process cycle. The information to be discussed at such meetings will be made available in draft form for stakeholder review and the Joint Planning Committee will use reasonable efforts to make such information available at least 10 calendar days prior to the particular meeting. Sections 13.1.5.4.2 through 13.1.5.4.5 outline what will be discussed at each of the three stakeholder meetings. At the first stakeholder meeting, all requests for Regional Studies will be presented and stakeholders will select up to five Regional Studies to be performed. Stakeholders will also be able to provide comments regarding the assumptions to be used in a Regional Study. After the Joint Planning Committee performs the initial analyses of the Regional Studies, it will conduct the second stakeholder meeting. At the second meeting, results of the initial analyses will be reviewed and stakeholders can provide comments regarding the initial analyses. After the Joint Planning Committee finalizes its analyses and draft regional study reports, it will hold the third stakeholder meeting, where the Regional Study Reports will be presented and stakeholders will be able to provide comments on the draft reports. The Joint Planning Committee will then finalize its reports and provide them to all stakeholders.

62. Entergy states that Attachment K details the interaction between the Entergy system, regional, and inter-regional transmission planning processes. Entergy claims that enough detail is provided so that customers will understand where to address issues and the data assumptions that will be used in the different processes. Section 13.5 provides that to the extent alternatives are identified in the regional or inter-regional process, Entergy shall have the option of revising the Construction Plan.

63. The dispute resolution procedures in section 13.1.7 include a five-step process for disputes between the Regional Planning Parties. Disputes between a stakeholder and a Regional Planning Party will be addressed under the procedures in the Regional Planning Party's OATT. Disputes between stakeholder parties other than Regional Planning Parties are to be resolved under the Commission's alternative dispute resolution procedures or other means agreed to by the stakeholders. Section 13.2.11.3 provides that nothing restricts the rights of any party to file a complaint with the Commission.

c. Commission Determination

64. We find that, with certain modifications discussed below, Entergy complies with the regional participation principle as detailed in Order No. 890. We note that the modifications we direct below related to the provisions in Attachment K that Entergy relies on to coordinate with SPP also apply to the SPP-Entergy Agreement dated February 6, 2009.³² SPP and Entergy coordinate their planning pursuant to the SPP-Entergy Agreement, the terms of which Entergy incorporated at section 13.1 of its Attachment K. Instead of incorporating the terms into its OATT, SPP filed the SPP-Entergy Agreement as a stand-alone rate schedule in Docket No. ER09-659-000. The Commission accepted and nominally suspended the SPP-Entergy Agreement and made it subject to the outcome of the proceedings addressing SPP's and Entergy's follow-up transmission planning compliance filings in Docket Nos. OA08-61-001 and OA08-59-004, respectively.³³ Then, in its order addressing SPP's transmission planning compliance filing in Docket No. OA08-61-001, the Commission decided to evaluate whether the SPP-Entergy Agreement, and Entergy's incorporation of its terms into its Attachment K, satisfies both SPP's and Entergy's compliance with Order No. 890's regional participation principle when it addressed Entergy's compliance with that principle in Docket No. OA08-59-004 (i.e., in the instant proceeding).³⁴ Therefore, our analysis of and directives below regarding the provisions in Entergy's Attachment K in section 13.1 related to coordination with SPP apply equally to the SPP-Entergy Agreement filed in ER09-659-000. Because the Commission's acceptance of the SPP-Entergy Agreement in Docket No. ER09-659-000 was made subject to the outcome of our findings in the instant proceeding, SPP must revise the SPP-Entergy Agreement to comply with directives discussed below.

³² Agreement between Southwest Power Pool, Inc. and Entergy Services, Inc. to Implement Principles Governing Regional Planning in Accordance with the Regional Planning Requirements of the Federal Energy Regulatory Commission (SPP-Entergy Agreement).

³³ *Southwest Power Pool Inc.*, 127 FERC ¶ 61,032 at P 19 (2009).

³⁴ *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,171 at P 64-66 (2009).

i. Seams Agreement

65. Interested Parties and Arkansas-Lafayette state that Entergy must enter into a detailed seams agreement with SPP to comply with the directives in the Entergy Planning Order and Order No. 890 regarding regional planning. Interested Parties and Arkansas-Lafayette state that Entergy must enter into a comprehensive seams agreement with SPP to address additional regional planning issues such as: congestion management planning and operations; redispatch; and allocation of the costs for projects that benefit both SPP and Entergy.³⁵ Interested Parties believe that these matters are within the scope of Order No. 890 because otherwise SPP cannot account for regional impacts in its own transmission planning and assessment of requests for service.

66. Arkansas-Lafayette also state that an Entergy-SPP seams agreement would further the policy goal of promoting renewable resources. Arkansas-Lafayette argues that the lack of a fully developed seams agreement between Entergy and SPP is one barrier to the integration of wind and other renewable resources in the Eastern Interconnection. Arkansas-Lafayette urge the Commission to heed SPP's previous advice that the Commission strongly encourage, if not direct, adjacent transmission systems to enter into seams agreements that address how long distance transmission facilities are studied, constructed, and paid for.³⁶

67. In addition, Arkansas-Lafayette asserts that competitive market development in the Entergy region has been hampered by the lack of a seams agreement with SPP. Arkansas-Lafayette argues that the absence of detailed seams arrangements creates uncertainty and risk for any developer whose project might impact transmission facilities close to the seam, which raises development costs to the point that otherwise beneficial projects will not be built. Arkansas-Lafayette argues that the barriers to market entry are particularly acute where market-based congestion management processes interact with

³⁵ Other issues that Interested Parties and Arkansas-Lafayette want a seams agreement to address include, among other things: customer requests for transmission service that have paths through both regions; coordination in sales of transmission service to customers in each footprint; integrated studies and the coordination of analysis for transmission service requests, generation interconnection, and feasibility studies; sharing of transmission service reservations and schedules; emergency and restoration procedures; means to mitigate impediments to cross-border transaction arising from transmission rate, rate design and/or revenue distribution factors.

³⁶ Arkansas-Lafayette comments at 7 (citing Comments of SPP Regarding Transmission Barriers to Entry, filed on November 13, 2008 in Docket No. AD08-13-000).

neighboring areas that use physical transmission loading relief (TLR)-based congestion management tools.

68. In its March 17 Answer, Entergy states that the calls for the Commission to require Entergy to enter into a broad seams agreement with SPP should be rejected as beyond the scope of Order No. 890. Entergy argues that to satisfy regional and inter-regional planning requirements of Order No. 890, a transmission provider must "coordinate with interconnected systems to (1) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and (2) identify system enhancements that could relieve congestion or integrate new resources[.]"³⁷ Entergy asserts that the parties want the Commission to require a comprehensive seams agreement between Entergy and SPP that goes beyond the requirements of Order No. 890, or any other applicable order.

69. Entergy states that, to its knowledge, the Commission has not ordered any other transmission provider, for compliance with transmission planning requirements under Order No. 890 or any other Order No. 890 requirement, to address the matters parties are proposing for a comprehensive seams agreement between Entergy and SPP. Therefore, Entergy argues that it would be arbitrary and capricious to find that Order No. 890 requirements require Entergy to enter into a seams agreement but not impose such a requirement on all similarly situated transmission providers.³⁸

70. Entergy also argues that the Commission has long established that compliance filings must be limited to the specific directives ordered by the Commission.³⁹ Entergy further notes that the Commission routinely rejects proposals that fall outside the scope of a compliance filing, whether made by the filing party or another party in the particular proceeding.⁴⁰ Thus, Entergy explains that the history of this proceeding makes clear that the appropriate scope of the February 6 Filing is limited to compliance with one matter addressed in Order No. 890 and the Entergy Planning Order – the Order No. 890 regional participation principle, as that principle applies to coordination between Entergy and the

³⁷ Entergy March 17 Answer at 5 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523).

³⁸ *Id.* at 9 (citing, e.g., *Alabama Power Co. v. FERC*, 220 F.3d 595, 599-600 (D.C. Cir. 2000) (holding that it is arbitrary and capricious for the Commission to treat similarly situated entities differently)).

³⁹ *Id.* at 10 (citing *Xcel Energy Servs. Inc.*, 125 FERC ¶61,284, at P 5 (2008)).

⁴⁰ *Id.* (citing, e.g., *ISO New England Inc.*, 126 FERC ¶ 61,180, at P 23 (2009)); *Xcel Energy Servs. Inc.*, 125 FERC ¶ 61,284, at P 1 (2008)).

SPP. Entergy states that claims for a seams agreement go beyond that scope, and thus should be rejected.

71. While beyond the scope of Order No. 890, Entergy states that it is actively pursuing additional coordination efforts with SPP related to data sharing, transmission planning, operations and granting of services. Entergy states that the parties do not necessarily view the substance of the scope of a possible agreement exactly the same, but it is hopeful that an agreement can be reached to increase coordination between the Entergy and SPP regions. Entergy states that given that negotiations are on-going, it is not possible to identify the scope of any agreement into which the parties will enter.

72. We are not persuaded by the argument that a seams agreement between Entergy and SPP is necessary. This proceeding is related to Order No. 890 compliance with respect to Attachment K. Though we strongly encourage Entergy and SPP to pursue a seams agreement, the agreement is not necessary for Entergy to comply with the regional participation principle of Order No. 890. By participating in the Joint Planning Committee and under the information sharing requirements now outlined in Attachment K, Entergy will: (1) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data; and (2) identify system enhancements that could relieve significant and recurring transmission congestion. Therefore, Entergy's Attachment K, with the changes ordered in the following subsections, complies with the regional participation principle of Order No. 890.

ii. Reliability Regional Studies

73. Union Power argues that it is unclear how reliability projects will be studied in the Regional Planning Process. Union Power notes that section 2.16 of Attachment K defines "Regional Study" as "an economic transmission planning study conducted in accordance with section 13.1.5 of this Attachment K." Union Power claims that section 13.1.5 and Attachment K do not indicate what would happen if the economic Regional Study is determined during the process to be a combination economic/reliability study or a reliability-only study. Union Power asks whether the study process would continue under section 13.1.5, would the economic/reliability study somehow be bifurcated, or would the study be removed from the section 13.1.5 process. Union Power asks the Commission to direct Entergy to clarify how regional reliability studies would be processed.

74. Similarly, Arkansas Cities note that section 13.5 appears to indicate that the Regional Planning Process can result in either "regional optimization opportunities" or "regional economic upgrades." Arkansas Cities question whether regional optimization opportunities that result from the Regional Planning Process are ever considered for reliability purposes.

75. In its March 17 Answer, Entergy states that to the extent a Regional Study identifies projects on the Entergy system that properly are considered reliability projects, those projects will be studied consistent with the study processes for reliability projects under Attachment K (and the cost allocation for such projects will be consistent with Attachment T).

76. We agree with intervenors that Entergy must include reliability studies in its definition of Regional Study in order to be consistent with other provisions of Attachment K. The Commission stated in Order No. 890 that regional planning must address reliability and economic considerations in order to meet the requirements of Order No. 890.⁴¹ We note that proposed section 13.1.5.5.1 provides that a Regional Study may identify regional optimization opportunities. Section 13.1.1.1.3 provides that regional optimization means the identification of a set of coordinated transmission upgrades on the system of more than one party that satisfies the parties' respective planning criteria at a lower overall cost. As set forth in section 2.12, the Planning Criteria are based on North American Electric Reliability Corporation (NERC) Reliability Standards, SERC supplements to those standards, and Entergy's local reliability criteria and business practices. In short, the Commission interprets Entergy's proposed Attachment K as including reliability studies in Regional Studies. However, we will require Entergy in its compliance filing due within 60 days of the date of this order, to explicitly include reliability studies in its definition of Regional Study. This change should allay intervenor concerns over how reliability studies would be treated in the Regional Study process. Accordingly, the Regional Planning Parties would consider such studies under section 13.1.5.

iii. Step 1 and Step 2 Issues

77. Union Power asserts that the terms "Step 1" and "Step 2" should be defined either before or at the time the terms are first used in Attachment K. Union Power notes that the terms are used in section 13.1.5.2.1 but are not defined until a later section.⁴² Union Power also argues that a Step 1 evaluation should include the approximate benefits of a potential project, not just the costs and timelines. Otherwise, stakeholders will not be

⁴¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 528.

⁴² A Step 1 evaluation consists of a high level screening of the requested study and will be performed within a single year's planning cycle to identify transfer constraints and likely transmission enhancements to resolve the identified constraints. A Step 1 evaluation will provide approximate costs and timelines associated with transmission enhancements identified in the evaluation. A Step 2 evaluation includes detailed cost estimates and timelines associated with the identified transmission enhancements. (See Attachment K, sections 13.1.5.2.2 and 13.1.5.2.3).

able to judge whether to request a Step 2 evaluation for the potential project. Union Power asserts that the Step 2 evaluation should also include a benefits analysis. In addition, Union Power states that although section 13.1.5.2.3 states that stakeholders will have the option to request a Step 2 evaluation, Attachment K does not identify how the stakeholder selection process will work or how issues will be resolved if there is disagreement among stakeholders. Union Power also believes it is unclear what happens after a Step 2 evaluation is completed. Union Power asserts that Entergy should revise Attachment K to make its requested clarifications.

78. In its March 17, 2009 Answer, Entergy asserts that Order No. 890 does not require the transmission provider to quantify the benefits stakeholders may receive from a particular transmission upgrade; that is for each stakeholder to determine.⁴³ Entergy notes that the Commission already has approved the Step 1 and Step 2 approach under the SIRPP, including the multi-year planning cycle, and there is no basis for treating the Regional Planning Process differently.

79. With respect to the Step 1 and Step 2 issues raised by Union Power, we agree with Entergy that Order No. 890 does not require the studies Entergy performs to include the specific benefits that might accrue to individual stakeholders. That burden falls on the individual stakeholder to determine. However, we understand under Attachment K, Entergy will provide to stakeholders the results of all studies, which will include information about the overall benefits (e.g., those related to reliability or a reduction in congestion) of proposed projects. We find also that Entergy need not include a detailed process on the selection process, as Union Power requests, since the stakeholders themselves will be the ones that decide which studies to request that Entergy perform. Once the studies are completed, any projects that stakeholders believe should be built will be subject to the Entergy transmission planning process. We also note that the Commission has already accepted a similar Step 1/Step 2 process for Entergy's inter-regional planning process.

iv. Stakeholder Involvement

80. Union Power states that the requirement in section 13.1.5.4.1 that the Joint Planning Committee will use reasonable efforts to make information available to stakeholders at least 10 calendar days prior to the particular meeting should be lengthened to 10 *business* days and should represent a firm obligation. Union Power argues that Entergy should provide more than 10 calendar days for review as coordinated review among Regional Planning Parties may require additional time. Union Power also

⁴³ Entergy March 17 Answer at 22 (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 240).

argues that section 13.1.5.4.4 should be revised so that draft Regional Study reports are distributed in advance of the third stakeholder meeting since stakeholders are expected to provide comments on such drafts at that meeting.

81. Union Power states that although sections 13.1.5.4.2.3, 13.1.5.4.3.2, and 13.1.5.4.4.2 define a process by which stakeholders provide comments during stakeholder meetings, there is no requirement for the Joint Planning Committee to engage in a dialogue with the stakeholders on the comments. Union Power argues that Attachment K should be revised to include the requirement that the Joint Planning Committee engage in such a dialogue. Similarly, Arkansas Cities note that stakeholders can submit comments on draft reports, but Arkansas Cities ask what weight would be given to stakeholder comments. Arkansas Cities also asks whether there would be situations, such as a large consensus among stakeholders on an issue, when stakeholder comments would be afforded a higher level of input than merely advisory. East Texas Cooperatives request that the Commission permit stakeholders to participate in the Joint Planning Committee.

82. Arkansas Cities note that section 13.2.5.4.2 limits to five the number of study requests that stakeholders can request in the joint planning process. Arkansas Cities state that Entergy should clarify the rationale for this limitation; whether there are situations where it may be possible to add additional studies; and what would be the threshold basis for adding studies. Interested Parties and Arkansas-Lafayette also argue that Entergy's filing simply documents an informal agreement that has been in place since SPP assumed the role of ICT.

83. In its March 17 Answer, Entergy states that Union Power's request to extend the advance distribution requirement from 10 calendar days to 10 business days should be rejected. Entergy notes that the 10 calendar day period it proposes is identical to the period approved by the Commission for distribution of data under Southern Company Services, Inc.'s OATT.⁴⁴ Entergy contends that there is no basis for requiring a different time-frame here. Entergy also commits to distribute information to stakeholders more than 10 calendar days prior to a meeting when that information is available. In addition, Entergy states that draft Regional Studies will be *presented* at the third stakeholder meeting, but the draft studies themselves will be distributed to stakeholders in advance of that meeting. Entergy also notes that stakeholders will have an opportunity to provide comments or ask questions regarding information prior to, during, and after stakeholder meetings.

⁴⁴ *Id.* at 20 (citing *Southern Co. Servs., Inc.*, 124 FERC ¶ 61,265, at P 22 (2008)).

84. In response to Union Power and Arkansas Cities' claim that there is not enough involvement in the regional process, Entergy notes that Order No. 890 does not require development of transmission plans on a co-equal basis with customers. Rather, Order No. 890 requires that stakeholders be provided sufficient opportunities for timely and meaningful input and participation during the development process.⁴⁵ Entergy contends that it has satisfied the requirement for the Regional Planning Process and notes that it proposes to use the same process already approved for the SIRPP. In response to East Texas Cooperatives' request to allow stakeholders to join the Joint Planning Committee, Entergy notes that the Joint Planning Committee acts as a committee for the Regional Planning Parties, not as a stakeholder group.

85. Entergy responds to Interested Parties and Arkansas-Lafayette's assertion that the planning provisions under Attachment K provide for a process that appears to be little more than written documentation for informal procedures that have been used since SPP began acting as the ICT for Entergy. Entergy asserts that Attachment K now provides, for example, that the parties will share additional transmission information associated with transmission planning.⁴⁶ Entergy further asserts that new sections 13.1.5 and 14.5.3 also provide for the performance of Regional Studies requested by stakeholders, identify the process for performing those studies (including the associated stakeholder process), provide that the costs of certain studies will be rolled-in to base transmission revenue requirements, and identify the cost allocation that will apply to projects constructed through the Regional Planning Process. Entergy asserts that these matters all go beyond existing practices.

86. We find that Union Power, East Texas Cooperatives' and Arkansas Cities' concerns regarding stakeholder participation on the Joint Planning Committee are unfounded. We believe that a dialogue among the stakeholders will occur in the regional planning process, as the parties collectively work towards improving Entergy's transmission system, and that Entergy's proposed language provides for sufficient stakeholder input into the Regional Study process. We find that Entergy's transmission planning process will provide an opportunity for meaningful and timely input by all stakeholders into all aspects of that process. As Union Power points out, sections 13.1.5.4.2.3, 13.1.5.4.3.2, and 13.1.5.4.4.2 define a process by which stakeholders provide comments on study assumptions, initial analyses, and draft reports of Regional Studies during Joint Planning Committee meetings. In addition, section 13.1.5.1.3 provides that the Joint Planning Committee shall consider stakeholder input and evaluate

⁴⁵ *Id.* at 22 (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 188; Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 454).

⁴⁶ *Id.* at 17 (citing Entergy OATT, Entergy's amended Attachment K § 13.1.3).

stakeholder-suggested solution options when performing a Regional Study. Section 13.1.5.4.5 provides that the Joint Planning Committee is to furnish all stakeholders with copies of final study reports. We encourage stakeholders to take full advantage of these opportunities to express their views in the regional planning process. If disputes arise, the dispute resolution process will be available to resolve them.

87. Also, we reject Union Power's request that we require the Joint Planning Committee to distribute information to stakeholders no later than 10 business days, rather than 10 calendar days, in advance of a stakeholder meeting. This timeframe enables Entergy and the Joint Planning Committee to provide the most-up-to-date information while providing the stakeholders with sufficient opportunity to review the information before the stakeholder meeting. We note that the 10 calendar day time frame is the same as that proposed for use in the SIRPP, discussed and accepted below.

88. In response to Arkansas Cities' issue regarding the number of regional studies to be performed, we find section 13.2.5.4.2's limit of five regional studies that stakeholders can request in the joint planning process to be reasonable, and is also consistent with what Order No. 890 requires for economic planning studies.⁴⁷ Therefore, no revision is required.

89. However, Entergy states that section 13.1.5.3 provides that a transmission customer, an eligible customer, or an interconnection customer under a Regional Planning Party's OATT may request a Regional Study under that OATT or through the applicable Regional Planning Party's stakeholder process. We find that this is inconsistent with the statement in section 13.1.5.9.1, which provides that the Regional Planning Process is open to any interested party. Accordingly, Entergy must make a compliance filing within 60 days of the date of this order revising section 13.1.5.3 so that any interested party may request a Regional Study.

v. 10-Year Horizon

90. Interested Parties and Union Power raise a concern that language in Attachment K could be interpreted as placing a three-year limitation on regional reliability planning since Entergy's Construction Plan only includes facilities for which construction will be initiated within the next three years. Interested Parties note that SPP expansion plans identify reliability upgrades for a 10-year horizon, as required by NERC planning standards. Similarly, Union Power believes that Entergy should be made to clarify that no matter what the duration of the Construction Plan, Entergy's reliability planning will be consistent with applicable NERC and/or SERC reliability standards. Union Power

⁴⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 547.

notes that the Regional Planning Process already calls for 10-year load forecasts and for access to power flow models for up to the next 10 years.

91. Entergy, in its March 17, 2009 Answer, states that concerns about a 3-year limitation to the Regional Planning process have no merit. Entergy confirms that its transmission planning process meets NERC Reliability Standards and SERC supplements to those standards.

92. We find that changes to the 3-year limitation for the Construction Plan are unnecessary. Entergy confirms that it will meet all applicable NERC and SERC reliability standards, including standards related to long-term planning. As Union Power notes, Attachment K already provides that Entergy will perform studies based on information for a 10-year time horizon. In addition, we note that Interested Parties and Union Power raised a similar concern in response to Entergy's initial Attachment K compliance filing, and the Commission stated in the Entergy Planning Order that, if stakeholders believe that the scope of studies and transmission plans performed pursuant to Attachment K do not comply with NERC reliability standards, they should address those concerns in the first instance through NERC compliance procedures.⁴⁸

vi. Data Issues

93. Union Power states that section 13.1.3.1.2, concerning the sharing of system plans and associated data, should be revised to identify all relevant categories of data so that it would not be interpreted as being limited to those types actually mentioned. Union Power states that section 13.1.3.1.2 could also be revised to link the types of data covered in the section to the data used in Entergy's other planning processes set forth in Attachment K.

94. East Texas Cooperatives state that several provisions of Entergy's proposal are vague and should be clarified to ensure full transparency of the transmission planning process, and to ensure that stakeholders have the opportunity to fully participate in the planning process. East Texas Cooperatives state that section 13.1.1 provides that the parties will share and use consistent assumptions and data in the development of system plans. East Texas Cooperatives state that Entergy and SPP use different criteria for planning their systems, and it is thus unclear what SPP and Entergy mean when they say they will use consistent assumptions and data. East Texas Cooperatives argue that SPP and Entergy should be required to provide more detail on what assumptions will be used in the regional planning process.

⁴⁸ Entergy Planning Order, 124 FERC ¶ 61,268 at P 151.

95. In its March 17, 2009 Answer, Entergy states that the data explicitly listed in section 13.1.3.1.2 is meant only as a representative sample. Entergy's intent is for the data that is shared pursuant to that section to include all relevant modeling information. Entergy does not oppose amending the second sentence of section 13.1.3.1.2 to provide as follows: "Data will include (a) all relevant modeling information, including ten (10) year load forecasts and (b) all critical assumptions that are used in the development of the applicable party's models."

96. We agree with Union Power that section 13.1.3.1.2 needs to be clarified to ensure that no relevant data is inadvertently omitted. Accordingly, we accept Entergy's proposal and direct Entergy in a compliance filing 60 days from the date of this order to include its proposed language. We find East Texas Cooperatives' request for additional detail regarding the use of consistent assumptions and criteria to be beyond the scope of Order No. 890 and this compliance filing. Under Order No. 890, the primary requirement is that the regional process is open and inclusive and addresses both reliability and economic considerations.⁴⁹ Entergy's regional coordination process with SPP meets these criteria. Also, we find that Entergy adequately addresses this issue in section 13.1.4 (Assessing Simultaneous Feasibility of System Plans and Use of Consistent Assumptions and Data).

vii. Modeling Contingencies

97. East Texas Cooperatives note that section 13.1.3.1.6 provides that each Regional Planning Party will provide the other Regional Planning Party with "lists of all single contingency events." East Texas Cooperatives state that since N-2 contingencies must be addressed as part of transmission planning for compliance with NERC standards, it is unclear why SPP and Entergy are not also required to share information on N-2 contingencies.

98. In its March 17 Answer, Entergy notes that under section 13.1.3.1.6 each party is to provide to the other "[c]ontingency lists for use in load flow and stability analyses. Entergy states that such information shall include . . . lists of all single contingency events[.]" Entergy argues that the underlying analysis for studying potential economic transmission projects, which is the focus of this section, will be power transfer studies. Entergy maintains that the transfer studies are conducted using single contingency events. Entergy states that, in contrast, East Texas Cooperatives' comments are focused on reliability assessments as required by NERC standards.

99. We agree with East Texas Cooperatives' concerns regarding N-2 contingencies. Although Entergy states that the focus of section 13.1.3.1.6 is economic projects, Entergy

⁴⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 528.

also clarified (as discussed in the next section) that the expansion plan referred to in this portion of its OATT is the Construction Plan, which includes both economic and reliability projects. Accordingly, we direct Entergy to revise section 13.1.3.1.6, in an order to be filed 60 days from the date of this order, to provide that N-2 contingencies will be shared in the same way as N-1 contingencies.

viii. Approved Expansion Plan & Simultaneous Feasibility

100. Union Power states that sections 13.1.4.2 and 13.1.4.3 refer to the phrase “approved expansion plan.” Union Power argues that to the extent the phrase refers to plans approved under other processes set forth in Attachment K, the proposed regional planning provisions require clarification in the event their respective approved expansion plans are not simultaneously feasible. Union Power states that under section 13.1.4.3, the Joint Planning Committee will attempt to identify solutions. Union Power argues that because the approved expansion plans were developed in a non-regional context, the question arises whether the plans must go back to the original process for reconsideration.

101. East Texas Cooperatives note that section 13.1.4 addresses “simultaneous feasibility of system plans and use of consistent assumptions and data.” East Texas Cooperatives state that it is unclear what is meant by “simultaneous feasibility.”

102. Also, Arkansas Cities and East Texas Cooperatives question whether “approved expansion plan” is the ICT’s Base Plan or the Construction Plan and state that this language needs to be clarified. East Texas Cooperatives also argue that SPP and Entergy should explain what they mean by “approved.”

103. In its answer, Entergy notes disputes about how simultaneous feasibility will be resolved will be handled through the dispute resolution process under Attachment K. If the dispute is not resolved through that process, the parties retain the rights they otherwise would have to seek resolution of the issue. In addition, Entergy agrees to clarify that in the case of Entergy, the Construction Plan is the operative plan for those provisions (sections 13.1.3.1.1, 13.1.4.2, and 13.1.4.3).

104. We agree with Union Power that Entergy should clarify the process that it will use to revise the Construction Plan if it is found to not be simultaneously feasible with the approved expansion plan of the other Regional Planning Parties. We direct Entergy, in a compliance filing due 60 days from the date of this order, to add language to its Attachment K to reflect that it will work through this process with the stakeholder working group as these circumstances arise.

105. Lastly, we agree with the intervenors that Entergy needs to clarify what “approved” means and we note that Entergy has agreed on the need to provide such

clarification. We order Entergy in a compliance filing 60 days from the date of this order to make this clarification.

ix. Miscellaneous Issues

106. Union Power argues that Entergy's proposed revisions to Attachment K are almost identical to the SPP-Entergy Agreement. Union Power asserts that this similarity is not helpful because it results in the loss of clarity in the planning process as it pertains to Entergy and the stakeholders under Attachment K. Union Power asserts that the regional planning provisions should be specifically tailored to Entergy's Attachment K, using the terms already defined in Attachment K. Other terms that Union Power claims need to be defined include "expansion studies, system impact studies, and generation interconnection studies," used in sections 13.1.3.1.4 and 13.1.3.1.7; "transmission customer, an eligible customer, or an interconnection customer under either Regional Planning Party's transmission tariff," used in section 13.1.5.3.1; "detailed power flow models," used in section 13.1.3.1.3; "each planned enhancement," used in section 13.1.3.1.7; "system plans," used in section 13.1.1.1.1; "reliability assessments," used in section 13.1.3.1.9; "stakeholder meetings" in section 13.1.2.2.6 and "stakeholder" in section 13.1.5.1.3. Union Power argues that its examples are representative of the lack of clarity resulting from Entergy relying on the more general language in the SPP-Entergy Agreement instead of tailoring the regional planning provisions to processes and terms already included in the Entergy OATT. Union Power states that the Commission should direct Entergy to correct these shortcomings to provide clarity on the processes intended by the regional planning provisions.

107. East Texas Cooperatives note that section 13.1.5.6 provides that "Regional Studies shall not affect the study queues for transmission or interconnection studies." East Texas Cooperatives allege that if SPP or Entergy revises its Construction Plan to include a new project as provided in section 13.1.5.5.1, it is unclear how the study queues for transmission and interconnection studies would not be affected. East Texas Cooperatives argue that SPP and Entergy should clarify when and how a transmission project that results from the Regional Planning Process will be incorporated into the transmission planning models.

108. Union Power and Arkansas Cities state that proposed section 13.1.1.1 of Attachment K fails to include Entergy in listing the Regional Planning Parties. Union Power and Arkansas Cities argue that section 13.1.1.1 should be revised to reflect Entergy's role in the Regional Planning Process.

109. Union Power also questions what process will be followed if the ICT's role is modified or eliminated next year at the end of the ICT's four-year term. Union Power states that during the first cycle of the Regional Planning Process, the ICT's involvement in the Regional Planning Process may change dramatically. Union Power argues that

Entergy should be required to revise Attachment K to reflect how the process will be maintained in the event the ICT's role does change.

110. East Texas Cooperatives note that section 13.1.3.1.4 provides that each Regional Planning Party will provide the status of "expansion studies, system impact studies, and generation interconnection studies." East Texas Cooperatives argue that this section should also include facilities studies, which are an important step in the transmission planning process.

111. East Texas Cooperatives note, with respect to section 13.1.3.1.7 and the timing of planned enhancements, that Entergy currently posts all pertinent files for the Entergy Construction Plan and as part of the ICT protocol. East Texas Cooperatives argue that SPP and Entergy should clarify that these files will be posted for regional planning purposes as well, to ensure that at least the same level of transparency will be provided in the Regional Planning process.

112. East Texas Cooperatives note that section 13.1.3.1.8 provides that each Regional Planning Party will provide information regarding long-term firm transmission services on "all relevant interfaces." East Texas Cooperatives state that SPP and Entergy should clarify what "relevant" means in this context, and what criteria will be used to determine whether a particular interface is relevant.

113. Union Power states that "Stakeholder Meeting" is a defined term under Attachment K, but that the defined term is not always used.⁵⁰ Consistent with Order No. 890, Attachment K provides for a number of different types of stakeholder meetings, each with different purposes.

114. Arkansas Cities state that section 13.1.5.5 provides that each Regional Planning Party shall have the option of revising its Construction Plan in accordance with regional optimization opportunities and regional economic upgrades. Arkansas Cities ask under what type of situation would the Planning Party not revise its construction plan and whether the Planning Party would refuse to revise the Construction Plan in situations when there is a willing party available to fund the upgrade. East Texas Cooperatives state that it is unclear which construction plans are referred to and ask if the construction plan in this provision is the same as the expansion plan referenced in section 13.1.3.1.1.

115. Union Power argues that the Regional Planning process should not be a rigid multi-year process. Union Power argues that the Regional Planning Process should be revised to add flexibility to perform studies over a shorter duration. The process should

⁵⁰ Union Power February 27 Protest at 8.

also have a more expedited track where the nature of a particular study supports such an approach.

116. In response, Entergy notes that under section 13.1.5.6 of Attachment K, "Regional Studies shall not affect the study queues for transmission or interconnection services." Entergy notes that East Texas Cooperatives question the meaning of this provision when new projects are identified in the Regional Planning Process. For purposes of modeling, transmission projects identified in the Regional Planning Process will be treated the same as projects identified in other processes (e.g., projects that will be constructed in response to a specific request for transmission service). Entergy explains that the purpose of section 13.1.5.6 is to clarify that Regional Studies will not be included in or affect the queues for transmission or interconnection services, just as the queues for transmission and interconnection requests are separate.

117. Entergy responds to a number of other claims that provisions under Attachment K are vague or otherwise should be amended. Entergy notes that in many cases parties assert that defined terms under Entergy's OATT should be used rather than more generic references. Entergy does not agree. Entergy asserts that the terms at issue apply not only to matters addressed directly under Entergy's OATT, but also to matters addressed under SPP processes. Further, Entergy notes that the terms used in Attachment K match the terms used by SPP in the agreement it filed in Docket No. ER09-659-000, also addressing regional planning between SPP and Entergy. Entergy asserts that consistency in terminology between that agreement and Attachment K helps provide clarity. Finally, Entergy maintains that the parties making these claims have made no showing that their proposed amendments to Attachment K clarify an ambiguity or otherwise are necessary. Entergy does concede, however, that a few exceptions should be made and agrees to: (1) clarify that in the case of Entergy, the Construction Plan is the operative plan for the term "approved expansion plan;" (2) change the defined term "Stakeholder Meeting" to "Regional Stakeholder Meeting," and to use that defined term when referring to stakeholder meetings that are part of the Regional Planning Process under Section 13.1 of Attachment K; and (3) amend section 13.1.1.1 to include Entergy as a Regional Planning Party.

118. We are not persuaded by East Texas Cooperatives' request that Entergy and SPP clarify when and how a transmission project that results from the regional process be incorporated into transmission planning models. We find that Entergy's revised Attachment K provides for this in section 13.1.5.5 (Construction of System Enhancements Identified in Regional Studies). This section provides that once a regional optimization opportunity is identified, it will be considered for inclusion in the Construction Plan. Moreover, stakeholders will have opportunities to comment on and monitor the development of the process for selecting and identifying a regional opportunity through the stakeholder working group meetings.

119. Union Power argues that Entergy uses numerous terms in its proposed revisions that are vague and need to be defined. We note that Entergy has agreed to clarify some terms, including “approved expansion plan,” “Stakeholder Meeting,” and “Regional Planning Party.” We agree with Union Power that Entergy needs to define the various terms introduced in its revision to Attachment K in relation to the terms and provisions of its OATT. Entergy stated in the transmittal to the February 6, 2009 filing that it was amending its OATT to include the terms and conditions agreed to by itself and the SPP. Such revision must be conformed to or distinguished from the existing terms and conditions of Entergy’s OATT. We direct Entergy in a compliance filing to be submitted 60 days of the date of this order, to provide definitions of the various terms listed by Union Power, along with its commitment to clarify “approved expansion plan,” “Regional Stakeholder Meeting,” and “Regional Planning Party.”

120. Also, we direct Entergy to make three clarifying changes, in response to East Texas Cooperatives’ requests. First, we find availing East Texas Cooperatives’ request to add facilities studies to the list contained in section 13.1.3.1.4. As East Texas Cooperatives note, facilities studies are just as relevant to the transmission planning process as the system impact and generator interconnection studies. In addition, we agree with East Texas Cooperatives’ that any files Entergy posts for its local planning should also be posted for its regional planning as well. Finally, we agree with East Texas Cooperatives that section 13.1.3.1.8 is insufficiently transparent and thus, Entergy must clarify what it means by “relevant interfaces.” Accordingly, we order Entergy, in a compliance filing to be made 60 days from the date of this order, to make these clarifying changes.

121. We agree with Arkansas Cities that Attachment K does not automatically require Entergy to include a regional or inter-regional project in its Construction Plan, even if there is a party willing to fund the project. However, any regional or inter-regional project that is proposed for inclusion in the Construction Plan as a result of a regional or inter-regional planning process is subject to Entergy’s overall transmission planning process. If a party is willing to fund a particular regional project that Entergy does not include in the Construction Plan, it can propose such a project during the Entergy transmission planning process. Any decision not to build a particular project can be scrutinized by a stakeholder in Entergy’s on-going transmission planning process. We disagree with Union Power’s argument that the Regional Planning Process should not be a rigid multi-year process. We find it reasonable for the Regional Planning Process to span two-years and to overlap with the underlying transmission providers’ one-year processes. In addition, the Regional Planning Process can be modified if parties, as they gain experience, decide that something less than two-years is appropriate.

122. Lastly, we disagree with Union Power that Entergy must immediately address how Entergy’s Attachment K will work if the ICT does not exist come November 2010. Currently, all arguments regarding the ICT’s future are speculative. Entergy has been

required by the Commission to discuss the future of the ICT in a filing by November 2009 and, at that time, parties may raise issues regarding Entergy's transmission process.⁵¹

6. Economic Planning Studies

a. Entergy Planning Order

123. In the Entergy Planning Order, the Commission found that Entergy's proposed Attachment K partially complied with the economic planning principle set forth in Order No. 890. The Commission directed Entergy to revise its Attachment K to: (1) include a process for the ICT to cluster economic study requests;⁵² (2) permit existing and potential customers to request economic planning studies;⁵³ (3) clarify that the criteria the ICT uses for its own economic studies will be the same as the criteria it uses for customer-requested studies;⁵⁴ and (4) provide additional detail regarding the regional economic planning activities to be coordinated with SPP and its members.⁵⁵

124. The Commission noted that in addition to regional economic planning activities coordinated with SPP, Entergy will coordinate additional regional economic studies through the SIRPP. The Commission found that participation in the open and coordinated SIRPP generally satisfied the requirements of the economic planning principle.⁵⁶ However, the Commission required Entergy to revise Attachment K to provide for: (1) participation by any interested party in the SIRPP stakeholder group; (2) distribution of information to be discussed at a stakeholder meeting sufficiently in advance of that meeting to provide for meaningful stakeholder review; and (3) the ability of the SIRPP stakeholder group to cluster or batch requests for economic studies.⁵⁷ The

⁵¹ *Entergy Services, Inc.*, 126 FERC ¶ 61,227, at P 83 (2009).

⁵² Entergy Planning Order, 124 FERC ¶ 61,268 at P 128.

⁵³ *Id.* P 129.

⁵⁴ *Id.* P 130.

⁵⁵ *Id.* P 131. The Commission stated that if Entergy intends to rely on SPP documentation for these purposes, it should provide direct links to the appropriate documents on the SPP website. *Id.* n.45.

⁵⁶ *Id.* P 132.

⁵⁷ *Id.* P 133.

Commission also required Entergy to remove the requirement that stakeholders seeking non-Critical Energy Infrastructure Information (CEII) confidential information from SIRPP participants first request and obtain from the Commission the Form No. 715, including CEII, for the relevant SIRPP participants.⁵⁸ Finally, the Commission directed Entergy to demonstrate how the dispute resolution provision of its proposed Attachment K 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.⁵⁹

b. Entergy's Filing

125. Entergy has revised section 14.5.2 to provide that the ICT shall propose a process for batching of requests for economic upgrade studies. In response to the requirement to allow existing and potential customers to request economic planning studies, Entergy has removed references to "customers" from sections 14.5.2, 14.5.4 and 14.6. Entergy has also included a new section 14.5.3.2, providing that the screening criteria the ICT uses to determine the highest priority economic planning studies shall be the same screening criteria the ICT uses for its own economic planning studies. As noted above, section 13.1.5 covers similar requirements for the annual regional joint transmission planning process and regional studies to be conducted by Entergy and SPP.

126. In response to directives regarding the SIRPP, Entergy revised section 13.2.7.3 to allow any interested party to become a member of the SIRPP stakeholder group. Entergy also revised section 13.2.6 to require information to be discussed at SIRPP stakeholder meetings to be made available in final draft form for stakeholder review prior to any such meetings by posting the information on the SIRPP website and/or by email to SIRPP stakeholder group members. Inter-Regional Participating Transmission Owners⁶⁰ are to use reasonable efforts to make such information available at least 10 calendar days prior to the particular meeting.

127. In addition, Entergy added a new section 13.2.3.4, providing that if two or more SIRPP economic studies are similar in nature and the Participating Transmission Owners conclude that clustering of such requests and studies is appropriate, the Participating

⁵⁸ *Id.* P 134.

⁵⁹ *Id.* P 136.

⁶⁰ Inter-Regional Participating Transmission Owners (Participating Transmission Owners) means transmission owners participating in the SIRPP. Attachment K, section 2.8.

Transmission Owners may, following communications with the SIRPP stakeholder group, cluster those studies. Entergy has also added new section 13.2.8.3 to explain how stakeholders can obtain non-CEII confidential information, and that section does not include a requirement that stakeholders seeking non-CEII confidential information from SIRPP participants first request and obtain from the Commission the Form No. 715. In new section 13.2.8.3.2 Entergy also addresses the non-CEII confidential disclosure requirements for an entity that is a public utility under section 201(e) the Federal Power Act (FPA).⁶¹ Section 13.2.8.3.2.2 provides that “[r]esource-specific data shall not be made available by the Participating Transmission Owners if the data has been designated confidential by the data provider or if the data can be used to (a) determine security constrained unit commitment or economic dispatch of resources or (b) perform an economic evaluation of costs and benefits.” Finally, Entergy added new section 13.2.11 outlining the dispute resolution process for SIRPP stakeholders.

c. Comments

128. L-M Municipals raise concerns about the new provisions Entergy proposes to allow SIRPP stakeholder access to non-CEII confidential data. L-M Municipals are concerned because section 13.2.8.3.2.2 provides that “[r]esource-specific data shall not be made available by the Participating Transmission Owners if the data has been designated confidential by the data provider or if the data can be used to (a) determine security constrained unit commitment or economic dispatch of resources or (b) perform an economic evaluation of costs and benefits.” L-M Municipals argue that this provision unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP. Under the language Entergy proposes, Participating Transmission Owners can withhold resource-specific data that “can be used to ... perform an economic evaluation of costs and benefits.” L-M Municipals argue that since a fundamental purpose of SIRPP analyses is to evaluate the costs and benefits of alternative transmission solutions, restricting access to data that can be used for such an evaluation would transform section 13.2.8.3.2.2 from a provision that nominally makes data available into a provision that justifies withholding relevant data. L-M Municipals assert that Entergy should be directed to eliminate the restriction.

129. Union Power raises similar concerns about new section 13.2.8.3.2.2, which it states provides an absolute bar to furnishing the information if the data provider designates the data confidential. Union Power asserts that this bar to disclosure holds regardless of whether or not the information should be treated as confidential, and no consideration has been given to whether reviewing procedures could be put in place to address confidentiality concerns. Union Power argues that if a data provider can merely

⁶¹ 16 U.S.C. § 824d (2006).

designate data as confidential, it will have discretion to decide whether or not stakeholders will have the ability to replicate Inter-Regional Studies. Union Power asserts that the Commission should direct Entergy to revise Attachment K to permit stakeholders to be able to replicate studies and still meet confidentiality concerns.⁶²

130. L-M Municipals also raise concerns over new section 13.2.8.3.1, which stipulates that non-CEII confidential information supplied by an entity that is not a public utility under section 201(e) of the FPA will not be disclosed to third parties, posted on the SIRPP website, or otherwise made publicly available absent written consent from the entity that supplied the information or an order from a court or governmental agency with jurisdiction over the Participating Transmission Owner that is in possession of such confidential information. L-M Municipals state that they agree with the general sense of this provision but are concerned by the possibility that a non-public utility might be used as a shield to protect information that is confidential, not to a public utility, but to another party with which a public utility has some commercial relationship. L-M Municipals assert that the provision should be modified to state that the protection from disclosure will extend only to information that is designated as confidential by the non-public utility relative to its own legitimate interests.

131. Regarding Entergy's proposal to comply with the directive to provide the SIRPP stakeholder group with the ability to cluster or batch requests for economic planning studies, Union Power asserts that, as proposed, new section 13.2.3.4 provides Participating Transmission Owners, but not the SIRPP stakeholder group, with the ability to cluster requests. Union Power argues, therefore, that Entergy has not complied with the compliance requirement in the Entergy Planning Order.

132. Union Power also argues that Entergy's proposal in section 13.2.6, which requires Participating Transmission Owners to use reasonable efforts to make information available to stakeholders at least 10 calendar days prior to a stakeholder meeting, is inadequate. Union Power states that if the information is made available 10 calendar

⁶² Union Power January 7 Protest at 6. Union Power also asserts that the Commission should direct Entergy to clarify how sections 13.2.8.2 and 13.2.8.3, as referenced in section 13.2.8.4, are to be followed where information is both competitively sensitive/confidential and CEII. Union Power states that because section 13.2.8.2 is drafted to apply only to non-competitively sensitive/non-confidential CEII data, while section 13.2.8.3 applies only to competitively sensitive/confidential non CEII data, it is not clear which provisions of each of the two sections would apply where the information is both competitively sensitive/confidential and CEII data. Union Power argues that section 13.2.8.4 should be revised to address in detail the requirements to be applied to this category of data. *Id.* n.23

days prior to a meeting, a stakeholder may have only six business days for review and analysis, which may be inadequate. If reasonable efforts result in less time for review, meaningful participation in the meeting is compromised. Union Power argues that section 13.2.6 should be revised to provide for a firm obligation to distribute the information no later than 10 business days in advance of a stakeholder meeting.

d. Answer

133. In response to L-M Municipals and Union Power's objections to the proposed disclosure requirements for non-CEII confidential information, Entergy and SIRPP Sponsors note that, under section 13.2.8.3.2.2, only resource-specific data can be designated confidential and that the section protects only very specific data that is competitively sensitive. Entergy and SIRPP Sponsors state that the proposed non-disclosure provision was adopted directly from a provision the Commission approved for SPP's transmission planning process.⁶³ Entergy and SIRPP argue that it would be arbitrary and capricious to reject the provision here since they – just like SPP – are simply seeking to protect resource-owners' competitively sensitive information.

134. SIRPP Sponsors also assert that resource-specific data is not relevant to parties in deciding which of two (or more) alternative transmission plans is most cost-effective for them. The primary benefit of such data would be its use in determining how best to compete against or negotiate with the owner(s) of the resource(s). SIRPP Sponsors argue that the proposed provision is inherently reasonable and strikes an appropriate balance between giving stakeholders (1) too little information to make appropriate planning-related decisions, participate in the SIRPP and replicate study results; and (2) any and all confidential transmission customer information in a transmission provider's possession.⁶⁴

135. Entergy and SIRPP Sponsors argue that the Commission should reject L-M Municipals' request that section 13.2.8.3.1 be revised so that information provided by an entity that is not a public utility be withheld from disclosure only if the entity designates the information as confidential in light of its legitimate interests. Entergy and SIRPP

⁶³ Entergy January 22 Answer at 11 and SIRPP Sponsors Answer at 10 (citing *Southwest Power Pool, Inc*, 124 FERC ¶ 61,028 (2008)).

⁶⁴ SIRPP Sponsors also argue that even if resource-specific data is relevant to either evaluating whether a particular transmission plan may be cost-effective for a party or for replicating a transmission provider's study results, that data is competitively sensitive. SIRPP argues that having recipients of such confidential information sign a non-disclosure agreement is useless because a confidentiality agreement cannot adequately mitigate the harm inherently caused by giving a stakeholder's confidential/proprietary/competitively sensitive information to its competitor.

Sponsors state that the provision addressing information provided by non-public utilities was included in the SIRPP at the request of non-jurisdictional entities. SIRPP Sponsors state that the provision does not attempt to shield information that is otherwise available to the stakeholders from jurisdictional public utilities. Entergy states that the information that such non-public utilities will provide is important for transmission planning, and section 13.2.8.3.1 is essential to ensure that such information will be made available. Entergy states that it should not be put in a position of second guessing which information submitted by a non-jurisdictional entity should be treated as confidential and which should not. Entergy claims that L-M Municipals' proposed amendment to Attachment K could put Entergy in exactly that position.

136. In response to Union Power's request for clarification of the procedures to be followed in the event that information is both competitively sensitive/confidential and CEII, Entergy states that each of the requirements of both sections 13.2.8.2 and 13.2.8.3 apply in that case.

137. Entergy states that it will amend section 13.2.3.4 to address Union Power's concerns over clustering of requests for economic studies. The revised language specifies that the SIRPP stakeholder group should consider clustering similar Inter-Regional Study requests. If two or more of the Inter-Regional Study requests are similar in nature and the Participating Transmission Owners conclude that clustering is appropriate, the Participating Transmission Owners may, following communications with the SIRPP stakeholder group, cluster those studies for purposes of the transmission evaluation. Entergy states that the amended section 13.2.3.4 will be consistent with provisions that other SIRPP participants filed and with other OATT language addressing clustering that the Commission has approved.⁶⁵

138. In response to Union Power's objection to Entergy distributing information to SIRPP stakeholders 10 calendar days before a stakeholder meeting, Entergy notes that the 10 calendar day period it proposes is identical to the period approved by the Commission for distribution of data under Southern Company Services, Inc.'s OATT. Entergy contends that there is no basis for requiring a different time-frame here. Entergy notes further that the information that will be distributed will be presented at the following stakeholder meeting. Stakeholders will have an opportunity to provide comments or ask questions regarding the information prior to, during, or after that meeting. Entergy asserts that stakeholders are not limited to 10 calendar days to review and comment on the information that is distributed under section 13.2.6. It also states that section 13.2.6 provides that information will be made available "at least" 10 calendar days before a

⁶⁵ Entergy January 22 Answer at 13.

meeting. Entergy states that information will be distributed to stakeholders more than 10 days prior to a meeting when it is available.

139. Entergy also argues that it would not be reasonable to impose an absolute obligation to provide information at least 10 days in advance of a meeting. The reasonable efforts standard of section 13.2.6 reflects the fact that in some situations it is unreasonable to expect distribution of information within the 10 days. In addition, SIRPP Sponsors argue that a hard deadline would be unreasonable because it would not allow for modifications of the information sent out due to such things as agenda changes, discoveries of error in the materials previously distributed, or receiving new information that should be incorporated into (or that might change) the information already distributed.⁶⁶

e. Commission Determination

140. We find that Entergy has partially complied with the requirements of the Entergy Planning Order concerning economic planning studies. Entergy has partially complied by revising section 14.5.2 to provide that the ICT shall propose a process for batching of requests for economic studies. However, we find that Entergy must file a revised Attachment K so that it includes the actual process the ICT will use for batching of requests for economic studies, in a compliance filing to be made within 60 days of the date of this order.

141. In addition, Entergy has inserted new section 14.5.3.2, which states that the ICT will use the screening criteria to determine the highest priority studies. However, we find that Entergy did not fully comply with the directive, which was to clarify that the criteria the ICT uses to *perform* Entergy's economic studies will be the same as the criteria used to perform customer-requested studies. Accordingly, we direct Entergy to revise Attachment K, in a filing to be made 60 days from the date of this order, to provide this clarification.

142. In response to the directive in the Entergy Planning Order to revise section 14.5 to permit existing and potential customers to request economic planning studies, Entergy revised Attachment K to provide that any transmission customer, eligible customer, or interconnection customer may request the ICT to conduct one or more economic upgrade studies in order to evaluate specific, potential upgrades or other specific investments that could reduce transmission congestion or integrate new resources and loads on the Entergy system. We find that the term "Eligible Customer" is unduly restrictive and does not meet the Commission's directive for Entergy to permit existing *and potential* customers to request economic planning studies. Entergy must therefore revise the term "Eligible

⁶⁶ SIRPP Sponsors Answer at 13.

Customer” to meet the Commission’s prior directive for Entergy to permit existing and potential customers to request economic planning studies, and submit a revised Attachment K with that change within 60 days of the date of this order.⁶⁷

143. With regard to SIRPP-related changes that the Entergy Planning Order requires, we note first that Entergy has revised section 13.2.7.3 to provide that membership in the SIRPP stakeholder group is open to any interested party. This change complies with the instruction in the Entergy Planning Order.

144. We also find that Entergy has complied with the requirement to provide for the distribution of information to be discussed at a SIRPP stakeholder meeting sufficiently in advance of that meeting to provide for meaningful stakeholder review. Entergy has revised section 13.2.6 to provide that Participating Transmission Owners will use reasonable efforts to distribute information to stakeholders at least 10 calendar days before stakeholder meetings. As Entergy explains, information will be distributed earlier than 10 days before a stakeholder meeting when the information is available and stakeholders will have opportunities to provide comments and ask questions before, during, and after a meeting. We disagree with Union Power that a firm deadline should be imposed on the distribution of information before a meeting. As SIRPP Sponsors explain, such a deadline could interfere with the revision of information before a meeting. The requirement to use reasonable efforts to provide information 10 calendar days before a stakeholder meeting (and earlier when the information is available) is sufficiently in advance of a meeting to provide for meaningful stakeholder review.

145. In regard to the ability of the SIRPP stakeholder group to cluster or batch requests for economic studies, we find section 13.2.3.4, as Entergy proposed to amend it in response to Union Power, complies with directive in the Entergy Planning Order. The provision will now provide that the SIRPP stakeholder group should consider clustering similar Inter-Regional study requests and that transmission owners may cluster similar study requests after consultation with the SIRPP stakeholder group. We direct Entergy to make the revision it proposed in its January 22 Answer to section 13.2.3.4 and to include it in a compliance filing due within 60 days of the date of this order.

146. We find that Entergy has complied with the directive in the Entergy Planning Order to revise Attachment K to describe the dispute resolution procedures to be used in the SIRPP. New section 13.2.11 sufficiently outlines procedures for handling disputes

⁶⁷ For purposes of requesting an economic study, potential customers would include stakeholders that participate in Entergy’s planning process. *See, e.g.*, Order No. 890 at P 547; Order No. 890-A at P 235.

between SIRPP stakeholders, between transmission owners in multiple regional planning processes, and between a stakeholder and a transmission owner.

147. However, we find that the SIRPP provision that forbids Participating Transmission Owners from disclosing certain resource-specific data unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP.⁶⁸ As written, the provision requires Participating Transmission Owners to exempt from disclosure any resource-specific data that can be used to determine security constrained unit commitment and economic dispatch or to perform an economic evaluation of costs and benefits, even if that data would not otherwise be considered confidential. In addition, even if the resource-specific data is confidential, it is not clear why all such data must be exempt from disclosure, even under appropriate confidentiality protections that are already in the tariff.⁶⁹ Moreover, this provision conflicts with the requirement that stakeholders have sufficient information to replicate all transmission planning studies,⁷⁰ and is unduly discriminatory. Therefore, we

⁶⁸ Section 13.2.8.3.2.2 states:

Resource-specific data shall not be made available by the Participating Transmission Owners if the data has been designated confidential by the data provider or if the data can be used to (a) determine security constrained unit commitment or economic dispatch of resources or (b) perform an economic evaluation of costs and benefits.

⁶⁹ For example, section 13.2.8.3.2 restricts disclosure of confidential information to those SIRPP stakeholder group members that have executed an appropriate confidentiality agreement. While SIRPP Sponsors argue that confidentiality agreements cannot mitigate the harm inherently caused by giving a stakeholder competitively sensitive information, we note that Energy's Attachment K at section 2.5 already defines confidential information, which is subject to disclosure only to parties that have executed a confidentiality agreement, to include data that is proprietary, commercially valuable or competitively sensitive, as well as generator-specific information regarding unit commitment and dispatch levels. SIRPP Sponsors do not explain why they believe confidentiality agreements are sufficient to protect competitively sensitive information outside of the SIRPP but not for the same type of information provided in the SIRPP.

⁷⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471. The Commission also noted, that without certain generator dispatch and economic information, it becomes difficult or impossible to conduct meaningful load flow studies for some transmission planning purposes. The Commission therefore required disclosure of criteria, assumptions, data and other information that underlie transmission plans. *Id.* P 478.

will direct Entergy to revise the provision, within 60 days of the date of this order, to require that resource-specific data in the planning process be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies.⁷¹

148. We also agree with L-M Municipals' concerns about the information distribution requirements for a non-public utility in section 13.2.8.3.1, which requires a Participating Transmission Owner not disclose information supplied by an entity that is not a public utility under section 201(e) of the FPA. In Order No. 890, the Commission stated that a coordinated, open and transparent regional planning process cannot succeed unless all transmission owners participate. The Commission also stated that it expects all non-public utility transmission providers will fully participate in the transmission planning processes required by Order No. 890 without the Commission needing to use its authority under FPA section 211A.⁷² The Commission added that reciprocity dictates that non-public utility transmission providers that take advantage of open access due to improved planning should be subject to the same requirements of openness and transparency as public utilities.⁷³ Therefore, we direct Entergy to revise section 13.2.8.3.1 so that information provided non-public utility transmission providers be subject to the same information disclosure and confidentiality protections as public utility transmission providers and other stakeholders in SIRPP.

149. Entergy has appropriately revised its Attachment K 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. However, the tariff language related to the process that the SIRPP stakeholder group members must use to obtain CEII data and information used in the SIRPP still includes a requirement that the stakeholders demonstrate that they have been authorized by the Commission to receive the CEII-protected version of Form 715 as

⁷¹ We note that the Commission previously accepted an identical provision in the SPP OATT. However, the Commission is addressing the SPP provision in an order on rehearing being issued concurrently with this order. *See Southwest Power Pool, Inc.*, 127 FERC ¶ 61,271 (2009).

⁷² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 441 (section 211A gives the Commission authority to require non-public utility transmission providers to provide transmission services on a comparable and not unduly discriminatory of preferential basis).

⁷³ *Id.*

a condition to receiving any CEII information from a Participating Transmission Owner (Form 715 Requirement). As discussed further below, we find that the Form 715 Requirement is unjust, unreasonable, unduly discriminatory or preferential because it is unnecessarily burdensome and restrictive in the context of the transmission planning process, as it relates to CEII or non-CEII confidential information.

150. In Order No. 890, the Commission acknowledged its responsibility to protect CEII and recognized that those with a legitimate need for CEII information must be able to obtain it on a timely basis. In several places the Commission specified the measures transmission providers can use to protect CEII, but did not require stakeholders to receive authorization from the Commission to access CEII data, as would be the case under the Form 715 Requirement. For example, in order to provide transparency and avoid undue delays in providing information to those with a legitimate need for it, the Commission required transmission providers to establish a standard disclosure procedure for CEII, noting measures such as digital certificates or passwords, additional login requirement for users to view CEII sections of the OASIS, requiring users to acknowledge that they will be viewing CEII information, and nondisclosure agreements. The Commission also noted that it will be available to resolve disputes if they arise.⁷⁴

151. The Commission confirmed this approach when it emphasized that the overall development of the transmission plan and the planning process must remain open. The Commission agreed with the concerns of some commenters that safeguards must be put in place to ensure that confidentiality and CEII concerns are adequately addressed in transmission planning activities. The Commission required that transmission providers, in consultation with affected parties, develop mechanisms, such as confidentiality agreements and password-protected access to information, in order to manage confidentiality and CEII concerns.⁷⁵

152. There is nothing in the Commission's regulations or precedent that would require the imposition of a requirement like the Form 715 Requirement. To the contrary, in Order No. 643,⁷⁶ the Commission amended its CEII regulations and noted that nothing in the revisions it was making nor in the regulations outlined in Order No. 630 is intended to require companies to withhold CEII or to prohibit voluntary arrangements for sharing information. The Commission's CEII regulations do not affect an entity's ability to reach

⁷⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 404.

⁷⁵ *Id.* P 460.

⁷⁶ *Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)*, Order No. 643. FERC Stats. & Regs. ¶ 31,149, (2003).

appropriate arrangements for sharing CEII and the Commission in fact encourages such arrangements. In many cases, companies and persons that have had dealings with one another in the past will be in a better position than the Commission to judge the security of such an arrangement. There is nothing in the CEII regulations that would, for example, prevent a regional council from obtaining data from member companies or from sharing it both with member and non-member companies.⁷⁷

153. The Commission has also previously stated that the Form 715 Requirement unreasonably restricts the ability of affected stakeholders to participate fully in transmission planning meetings and that transmission providers may develop mechanisms, such as confidentiality agreements and password-protected access to information, in order to manage confidentiality and CEII concerns.⁷⁸ Finally, if a dispute does arise with respect to providing confidential and CEII information, that dispute may be brought to the Commission for resolution.

154. For these reasons, we find that the Form 715 Requirement proposed by Entergy is unjust, unreasonable, unduly discriminatory or preferential in the context of the transmission planning process and that its removal will yield a just and reasonable result. Therefore, we direct Entergy, in a compliance filing to be submitted within 60 days of the date of this order, to modify the relevant OATT provisions to remove any Form 715 Requirement.

7. Cost Allocation

a. Entergy Planning Order

155. In the Entergy Planning Order, the Commission found that Entergy's proposed Attachment K partially complied with Order No. 890's cost allocation principle. The Commission found that Entergy's Attachment K did not provide the degree of certainty required by participants seeking to pursue new investment on a regional basis. The Commission therefore directed Entergy to identify in its compliance filing the methodologies to be used to allocate costs for projects developed in response to the regional and inter-regional planning processes.

b. Entergy's Filing

156. Regarding regional planning, section 13.1.5.8 provides that the costs for projects developed under the Regional Planning Process will be allocated to the party (i.e.,

⁷⁷ Order No. 643, FERC Stats. & Regs. ¶ 31,149 at P 16.

⁷⁸ See *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267, at P 23 (2008).

Entergy or SPP) that constructs the facilities. Costs will then be further allocated in accordance with Attachment T (Recovery of New Facilities Costs) of Entergy's OATT or the cost allocation provisions of the SPP OATT. Section 13.5 provides that Entergy will not proceed with an upgrade identified in the Regional Planning Process unless a party enters into binding arrangements to fund the upgrade.

157. Entergy also has revised Attachment K to include a methodology to allocate costs for projects developed in response to the inter-regional planning process. New section 13.2.10.1 states that absent an agreement on cost allocation among the transmission owners, the costs of facilities constructed under the SIRPP will be allocated to the individual transmission owner that constructs the facilities. Entergy further notes that if, for example, an inter-regional project consists of a single 100-mile 500 kV transmission line, with 30 miles physically located on the systems of transmission owners in regional planning process A, and 70 miles physically located on the systems of transmission owners in regional planning process B, the costs for the 30 miles of the line located in regional planning process A will be allocated to the transmission owners participating in that planning process, with the remaining costs allocated to the transmission owners participating in regional planning process B (assuming in both cases that a regional cost allocation methodology has been adopted). Entergy also states that the costs then will be further allocated in accordance with the cost allocation principles of the regional process (or the individual transmission owner, when applicable). Entergy states that it will not proceed with a regional optimization opportunity or regional economic upgrade unless a customer under the OATT, Entergy's Energy Management Organization, or another interested party enters into binding arrangements to fund the upgrade.

c. Comments

158. L-M Municipals note that Entergy has included a new section 13.2.10, which provides that unless transmission owners agree on some other unspecified method for allocating the costs of constructing facilities that may be planned through the inter-regional process, the transmission owner(s) that perform the construction will be responsible for the costs. L-M Municipals assert that under this methodology, Entergy will not construct optimization facilities unless they suit Entergy's own purposes or are funded by others, and this serves to demonstrate why SIRPP inter-regional planning activities are likely to prove ineffective. L-M Municipals state that this also highlights that Entergy has avoided entering into seams agreements with adjacent regions, such as SPP, that would establish the framework for allocating the costs of transmission upgrades that impact or benefit both regions.

159. East Texas Cooperatives note that section 13.1.5.7.1 provides that each Regional Planning Party will be responsible for its own costs associated with performing Regional Studies, and section 13.1.5.7.2 provides that each Regional Planning Party may recover its costs associated with performing Regional Studies in accordance with that party's

OATT. East Texas Cooperatives state that section 13.1.5.7.3, however, provides that a stakeholder requesting a Regional Study may be required to pay for SPP's or Entergy's (or both) actual costs of the study. East Texas Cooperatives argue that this provision appears inconsistent with the previous two provisions. East Texas Cooperatives ask why there is a separate provision that could result in the direct assignment of study costs to a particular stakeholder if the costs of performing a Regional Study will be recovered in accordance with the procedures in the SPP and Entergy OATTs. East Texas Cooperatives ask under what circumstances a stakeholder would be required to pay for a Regional Study under section 13.1.5.7.3. East Texas Cooperatives argue that section 13.1.5.7.1 should be removed or at least clarified.

160. In response, Entergy states that Attachment K addresses how upgrade costs will be allocated both when regional cost allocation methodologies are in place and when they are not. Entergy stated that costs allocated to Entergy for allocating for projects developed in response to the regional planning process will be allocated on the Entergy system in accordance with Attachment T to Entergy's OATT. Entergy states that this approach applies to all other economic upgrades identified under the Attachment K planning process. Entergy states that consistent with Attachment T it will not proceed with an inter-regional optimization opportunity or inter-regional economic upgrade unless a party enters into binding arrangements to fund the upgrade. Entergy states that the Commission clarified in Order No. 890-A that a transmission provider is not obligated to construct facilities identified in the planning process,⁷⁹ and thus an obligation to construct need not be included in Attachment K.

161. With respect to East Texas Cooperatives argument regarding study costs, Entergy states that the costs of the highest priority studies will not be directly assigned to the customer(s) requesting the studies.⁸⁰ Instead, for such studies, SPP and Entergy each will be responsible for their own costs and for recovering those costs under their OATTs.⁸¹ For other Regional Studies, the customer will be responsible for the costs of performing the study.⁸² Entergy maintains that there is no inconsistency in these provisions.

162. SIRPP Sponsors state that the intent of the cost allocation procedures in section 13.2.10 is that the construction of transmission improvements resulting from the SIRPP

⁷⁹ Entergy January 22 Answer at 17 (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251).

⁸⁰ Entergy's amended Attachment K at § 14.5.3.3.

⁸¹ *Id.* § 13.1.5.7, 14.5.3.3.

⁸² *Id.* § 13.1.5.7.3, 14.5.3.3

will be allocated in accordance with the regional planning process in which the improvements are located. SIRPP Sponsors argue that section 13.2.10 shows that the SIRPP does contain a binding structure to allocate the costs of inter-regional projects pursued through the SIRPP economic study process.⁸³

d. Commission Determination

163. We find that Entergy has complied with the requirement in the Entergy Planning Order to identify the methodologies that will be used for allocating costs for projects developed in response to its regional and inter-regional planning processes. Under both the Regional Planning Process with SPP and the SIRPP, if the parties do not agree to a different cost allocation, the cost of any upgrade will be allocated to the transmission owner that constructs that upgrade. The transmission owner will then allocate the costs of the upgrade pursuant to its own OATT. For Entergy, the costs will be allocated to Entergy's customers in accordance with Attachment T.⁸⁴

164. We reject as speculative L-M Municipals claim that regional and inter-regional facilities will not be built under the proposed cost allocation methodology. Although a seams agreement negotiated between Entergy and SPP, for example, might contain a different cost allocation methodology, that does not mean that the methodology Entergy proposes does not comply with the requirements of Order No. 890. We also find that Entergy's answer addresses East Texas Cooperatives' concern about when study costs will be directly assigned to the requesting party.

The Commission orders:

(A) Entergy's compliance filings in Docket Nos. OA08-59-003 and OA08-59-004 are hereby accepted, as modified, subject to a further compliance filing, as discussed in the body of this order.

⁸³ SIRPP Sponsors Answer at 14-15.

⁸⁴ The Commission noted in the Entergy Planning Order that it had previously approved the cost allocation methodologies embodied in Attachment T. Entergy Planning Order, 124 FERC ¶ 61,268 at P 151.

(B) Entergy is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.