

127 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Carolinas, LLC	Docket Nos.	OA08-50-000 OA08-50-001
Progress Energy Carolinas, Inc.	Docket Nos.	OA08-51-000 OA08-51-002

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued June 18, 2009)

1. On December 17, 2008, Duke Energy Carolinas, LLC (Duke) and Progress Energy Carolinas, Inc. (Progress) submitted revisions to their transmission planning processes to comply with the Commission's September 18 Order.¹ In this order, we accept Duke's and Progress' compliance filing, effective December 7, 2007 and March 17, 2008, subject to a further compliance filing, as discussed below.

I. Background

2. In Order No. 890,² the Commission reformed the *pro forma* Open Access Transmission Tariff (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 participants should be treated in the transmission

¹ *Duke Energy Carolinas, LLC and Progress Energy Carolinas, Inc.*, 124 FERC ¶ 61,267 (2008) (September 18 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).

planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all 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 nine planning principles each transmission provider was directed by Order No. 890 to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;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.

II. Duke's and Progress' Compliance Filings

4. On December 7, 2007, Duke and Progress filed their joint transmission planning process as a proposed attachment to their respective OATT to comply with the nine planning principles and other requirements in response to Order No. 890.⁵ In its

³ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its 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 The transmission planning processes for Duke and Progress are identical attachments to their respective OATTs. Duke's transmission planning process is set forth as Attachment N to its OATT. Progress' transmission planning process is set forth in Attachment K to its OATT. Because Order No. 890 and the *pro forma* OATT include the transmission planning process in Attachment K and to avoid confusion, we will refer to Duke's and Progress' transmission planning processes as Attachment K. In addition, the North Carolina Transmission Planning Collaborative Process was formed by the following load serving entities in the State of North Carolina: Duke, Progress,

(continued...)

September 18 Order, the Commission accepted the filing in part, requiring a further compliance filing to address a number of issues.

5. On December 17, 2008, Duke and Progress submitted revisions to their respective tariffs in compliance with the Commission's September 18 Order. The revised Attachment Ks addressed the Commission's directives relating to eight of the nine Order No. 890 planning principles: coordination; openness; transparency; comparability; dispute resolution; regional participation; economic planning studies; and cost allocation.

III. Notice of Filing and Responsive Pleadings

6. Notice of Duke's and Progress' compliance filing was published in the *Federal Register*, 73 Fed. Reg. 79,461 (2008), with interventions and protests due on or before January 7, 2007.

7. Virginia Electric Power Company (Dominion) filed a timely motion to intervene and comments. Duke and Progress filed a motion for leave to answer and answer to Dominion, and NCEMC filed an answer to Dominion.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

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

ElectriCities of North Carolina (ElectriCities), and the North Carolina Electric Membership Corporation (NCEMC) (collectively, North Carolina Transmission Planning Collaborative Participants or Participants). The North Carolina Transmission Planning Collaborative Process will annually develop a single, coordinated transmission plan (Collaborative Transmission Plan) that appropriately balances costs, benefits, and risks associated with the use of transmission, generation, and demand-side resources to meet the needs of load serving entities as well as transmission customers under Duke's and Progress' Attachment Ks.

B. Substantive Matters

10. We find that Duke's and Progress' Attachment K transmission planning processes, with certain modifications, comply with each of the nine planning principles and other planning requirements adopted in Order No. 890 to be effective December 7, 2007 and March 17, 2008.

11. Although the Commission accepts Duke's and Progress' 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. September 18 Order

12. In the September 18 Order, the Commission found that the transmission planning process proposed by Duke and Progress partially complied with the requirements of the coordination principle stated in Order No. 890. The Commission directed Duke and Progress to modify their Attachment Ks to provide an opportunity for participant input in the development of the base case and alternative case models used in the transmission planning process.

b. Compliance Filing

13. Under the planning process, the Planning Working Group⁶ will select the study assumptions for the analysis based on direction provided by the Oversight Steering Committee.⁷ Once the Planning Working Group identifies the study assumptions, Transmission Advisory Group (TAG) participants will review the assumptions and provide input before the set of final assumptions are approved by the Oversight Steering Committee. Subsequently, Duke and Progress will prepare the base case models based on the assumptions provided by the TAG participants through the Planning Working Group and Oversight Steering Committee. According to Duke's and Progress' proposed revisions, sections 5.1.4 and 5.1.5 of their Attachment Ks, will allow TAG participants, upon request, to review the base case and change case models and provide input to the Planning Working Group with regard to whether the models accurately represent the study assumptions approved by the Oversight Steering Committee.⁸

c. Commission Determination

14. The proposed revisions satisfy Order No. 890's coordination principle by providing an opportunity for participant input in the development of the base case and change case models used in the transmission planning process. Accordingly, we find that Duke and Progress have complied with the coordination principle of Order No. 890.

⁶ We note that the September 18 Order explains the North Carolina Transmission Planning Collaborative Process Participants coordinate their activities through an Oversight/Steering Committee (Oversight Committee) and Planning Working Group. The Planning Working Group is responsible for developing and performing transmission studies and also is comprised of representatives of the North Carolina Transmission Planning Collaborative Process Participants. The Planning Working Group also will identify assumptions and criteria, develop study methodologies, perform studies, identify problems and develop solutions.

⁷ We further note that the September 18 Order explains that the Oversight Committee directs the activities associated with the NCTPC Process and is comprised of representatives of the North Carolina Transmission Planning Collaborative Process Participants, including Duke and Progress. Each year, Duke and Progress will prepare base and alternative case models subject to review and approval by the Planning Working Group and Oversight Committee.

⁸ See sections 5.1.4 and 5.1.5 (Criteria, Assumptions, And Data Underlying The Plan And Method of Disclosure of Transmission Plans And Studies) of Duke's and Progress' Attachment Ks.

2. Openness

a. Voting Process and Confidential Information

i. September 18 Order

15. In the September 18 Order, the Commission found Duke's and Progress' two-tiered (voting and non-voting) TAG membership that allows only valid stakeholders to vote in the absence of a consensus among all stakeholders to be unreasonable. The Commission also found it unreasonable to restrict access to confidential information and CEII only to voting TAG members. The Commission directed Duke and Progress to submit a compliance filing to provide the opportunity for all stakeholders to participate in TAG voting and obtain access to planning-related information.⁹

ii. Compliance Filing

16. Duke's and Progress' revised tariffs provide that TAG decision-making is by consensus among the TAG participants. If consensus cannot be reached, voting will be conducted through the TAG Sector Voting Process. This voting process is sector weighted¹⁰ and expands the number and types of participants that can vote. Persons not affiliated with any TAG Sector Entity can register as an Unaffiliated Individual and vote in the General Public Sector. In the other sectors, only organized entities (TAG Sector Entities) will have authority to vote. A TAG Sector Entity may be any organized group (e.g., corporation, partnership, association, trust, agency, government body) but cannot be an individual person. With respect to who may obtain access to planning-related information, the proposed tariffs (section 5.3.8) change the language from TAG voting members to TAG participants.

17. However, in defining the TAG Sector for Eligible Customers and Ancillary Service Providers, Duke and Progress omitted demand response resources in the proposed tariff language even though demand response resources were included in their transmittal letter. Duke's and Progress' Transmittal Letter provides that the Eligible Customers and Ancillary Service Providers (which category includes, among others, developers, ancillary services providers (including demand response resources), and power marketers not currently taking transmission service).¹¹

⁹ September 18 Order, 124 FERC ¶ 61,267 at P 22.

¹⁰ Section 2.4.3.2.

¹¹ *See* December 17, 2008, Transmittal Letter of Duke and Progress at 4.

iii. Commission Determination

18. We find that the transmission planning process proposed by Duke and Progress complies with the requirements of the openness principle set forth in Order No. 890. The revised process provides the opportunity for all TAG participants to participate in voting and to obtain access to planning-related information. However, in defining the TAG Sector for Eligible Customers and Ancillary Service Providers, Duke and Progress omitted the phrase “including demand resources” in the proposed tariff language even though the phrase is included in their transmittal letter. We direct Duke and Progress to correct this oversight in a compliance filing to be made within 60 days of the date of this order.

b. Process for Obtaining Confidential Information

i. September 18 Order

19. In its September 18 Order, the Commission found it unreasonable to limit access to confidential information and Critical Energy Infrastructure Information (CEII) only to those that have obtained authorization from the Commission to access CEII contained in Form 715 reports. Accordingly, the Commission directed Duke and Progress to modify their Attachment Ks, to remove the requirement that stakeholders obtain authorization from the Commission to access CEII contained in Form 715 reports before they are permitted access to confidential information and CEII related to the planning process.¹²

ii. Compliance Filing

20. Duke’s and Progress’ proposal eliminates the Form 715 requirement as to non-CEII confidential information¹³ as directed by the September 18 Order. However, section 9.4.4 of Duke’s and Progress’ proposal retains the Form 715 requirement for CEII.

21. Duke and Progress submitted a request for clarification asking the Commission to clarify that they be permitted to require persons seeking CEII to first obtain Form 715 from the Commission. Duke and Progress argue that the “Form 715 Requirement” is to ensure that any stakeholder that received either confidential information or CEII had been vetted by the Commission as a person that had a legitimate interest in receiving such information.

¹² September 18 Order, 124 FERC ¶ 61,267 at P 23.

¹³ Section 9.4.3 (Obtaining Confidential Information) of Duke’s and Progress’ Attachment Ks.

iii. Commission Determination

22. We find that the information disclosure provisions of Duke's and Progress' Attachment Ks partially comply with Order No. 890's transparency principle. Duke and Progress have appropriately eliminated the Form 715 requirement as to non-CEII confidential information, but have retained it for CEII, asking the Commission to clarify they be permitted to do so. We deny this request for clarification and will require Duke and Progress to remove the Form 715 requirement as to CEII. In Order No. 890 and the September 18 Order the Commission found that it is unreasonable to limit access to confidential information and CEII only to those that have obtained authorization from the Commission to access CEII contained in Form 715 reports. The Commission further stated that these limitations unreasonably restrict 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.¹⁴ Duke's and Progress' Attachment Ks lack provisions demonstrating why measures such as confidentiality agreements, password-protections, or additional login requirements would not provide sufficient protection for CEII and confidential information. Accordingly, in a compliance filing to be made within 60 days of the date of this order, Duke and Progress are directed to remove from their Attachment Ks the Form 715 requirement as to CEII.

23. In addition, we find that the same Form 715 requirement for obtaining access to CEII is also found in the information disclosure provisions of the Southeast Inter-Regional Participation Process (SIRPP) providing for inter-regional economic studies, which Duke and Progress have included as Appendix 1 to their OATTS. For example, 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 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 a condition to receiving any CEII information from a Participating Transmission Owner (SIRPP Form 715 Requirement). As discussed further below, we find that the SIRPP 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.

24. 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

¹⁴ September 18 Order, 124 FERC ¶ 61,267 at P 23.

authorization from the Commission to access CEII data, as would be the case under the SIRPP 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.¹⁵

25. 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.¹⁶

26. There is nothing in the Commission's regulations or precedent that would require the imposition of a requirement like the SIRPP Form 715 Requirement. To the contrary, in Order No. 643,¹⁷ 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 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.¹⁸

¹⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 404.

¹⁶ *Id.* P 460.

¹⁷ Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule), Order No. 643, FERC Stats. & Regs. ¶ 31,149 (2003).

¹⁸ Order No. 643, FERC Stats. & Regs. ¶ 31,149 at P 16.

27. In addition, the Commission stated in the September 18 Order that the SIRPP 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.¹⁹ Finally, if a dispute does arise with respect to providing confidential and CEII information, that dispute may be brought to the Commission for resolution.

28. For these reasons, we find that the SIRPP Form 715 Requirement as proposed by Duke and Progress 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 Duke and Progress, 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 SIRPP Form 715 Requirement.

29. In addition, Duke and Progress must revise the tariff language related to SIRPP so that non-public utility transmission providers do not have more confidentiality protections than public utility transmission providers in the transmission planning process. Specifically, the SIRPP tariff language requires a Participating Transmission Owner not to disclose information supplied by an entity that is not a public utility under section 201(e) of the FPA.²⁰ 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. 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.²¹ Therefore, we direct Duke and Progress to revise their OATT, in a compliance filing due within 60 days of the date of this order, so that information provided by non-public utility transmission providers is subject to the same information disclosure and confidentiality protections that are applied to public utility transmission providers and other stakeholders in SIRPP.

30. Further, 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

¹⁹ September 18 Order, 124 FERC ¶ 61,267, at P 23 (2008).

²⁰ Appendix 1 (SIRPP) of Duke's and Progress' Attachment Ks.

²¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 441.

the SIRPP.²² 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. Moreover, this provision conflicts with the requirement that stakeholders have sufficient information to replicate all transmission planning studies,²³ and is unduly discriminatory. Therefore, we will direct Duke and Progress 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.²⁴

31. Other aspects of the SIRPP and Appendix 1 will be discussed further below in the section addressing the Economic Planning Studies principle.

²² Appendix 1 (SIRPP) 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.

²³ 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.

²⁴ 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).

3. Comparability

a. September 18 Order

32. In the September 18 Order, the Commission found that the transmission planning process proposed by Duke and Progress complied with the requirements of the comparability principle stated in Order No. 890. However, the Commission also found that, because Order No. 890-A was issued on December 28, 2007, subsequent to Duke and Progress submitting their Order No. 890 Attachment K compliance filings, Duke and Progress did not have an opportunity to demonstrate that they comply with the comparability requirement of Order No. 890-A.²⁵ Specifically, Order No. 890-A required that the transmission provider needs 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.”²⁶ Therefore, the Commission directed Duke and Progress to make a compliance filing addressing the necessary demonstration required by Order No. 890-A.

33. As discussed more fully below, Duke’s and Progress’ revised Attachment Ks include many provisions relating to comparability.

b. Commission Determination

34. We find that Duke and Progress partially comply with the Commission’s directives in the September 18 Order regarding comparability.

35. Duke’s and Progress’ planning provisions clearly indicate when and where in the planning process TAG participants have an opportunity to provide their input regarding data provided to develop baseline assumptions. Duke and Progress provide that in the development of their annual transmission plans, TAG participants may, upon request, review the base case and change case models and provide input to the Planning Working Group with regard to whether models represent the study assumptions approved by the Oversight Committee.²⁷

36. Duke’s and Progress’ planning process includes opportunities for TAG participants to propose alternative solutions. Once the Planning Working Group identifies potential solutions to transmission problems and tests the effectiveness of the

²⁵ September 18 Order, 124 FERC ¶ 61,267 at P 36.

²⁶ *Id.* (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216).

²⁷ Section 5.1.4 (Study Assumptions) of Duke’s and Progress’ Attachment Ks.

potential solutions through additional analysis, TAG participants will have the opportunity to suggest alternative solutions.²⁸ To the extent a TAG participant proposes alternatives (e.g., demand resources or generation resources) to be included in the transmission expansion plan, such participant will provide the appropriate data in order for the alternatives to be evaluated comparably with other resources. Duke and Progress note that this approach does not mean, however, that it will interfere with the load and resource decisions of their transmission customers. That is, if a transmission upgrade is required for a new network resource, but could be avoided if the network customer instead adopted a proposed demand resources, the final plan would reflect the network customer's preference as to how best to meet it needs.²⁹

37. All options that satisfactorily resolve an identified problem would be given consideration. The transmission providers estimate costs for each of the proposed transmission solutions (e.g., cost, cash flow, present value) and develop a rough schedule estimate to complete the construction of the proposed facility. However, Duke's and Progress' Attachment Ks state that after the Planning Working Group compares all of the alternatives and selects the preferred solution by balancing the project cost, benefit, and associated risks, the Planning Working Group selects a preferred set of transmission solutions while managing the associated risks.³⁰ The Attachment Ks do not explicitly state Duke and Progress could select a solution other than transmission (i.e., generation or demand resources). Therefore, we direct Duke and Progress, in a compliance filing to be made within 60 days of the date of this order, to identify in Attachment K how it will evaluate and select from among competing solutions such that all types of resources are considered on a comparable basis and revise their Attachment Ks to make clear that when they select a solution, that selection will not be limited to transmission solutions but also may include generation or demand resources..³¹

²⁸ Section 5.7.2 (Solution Development) of Duke's and Progress' Attachment Ks.

²⁹ Duke and Progress's Transmittal at 7.

³⁰ Section 5.8 (Selection of Preferred Transmission Plan) of Duke's and Progress' Attachment Ks.

³¹ Tariff language could, for example, state that solutions will be evaluated against each other based on a comparison of their relative economics and effectiveness of performance. Although the particular standard a transmission provider uses to perform this evaluation can vary, it should be clear from the tariff language how one type of investment would be considered against another and how the transmission provider would choose one resource over another or a competing proposal.

4. Dispute Resolution

a. September 18 Order

38. The Commission found in the September 18 Order that Duke and Progress did not identify dispute resolution procedures to be used by other parties involved in planning-related activities, such as stakeholders and other entities with which Duke and Progress interact in the transmission planning process. The Commission thus directed Duke and Progress to revise their transmission planning process to provide dispute resolution procedures for all parties involved in all North Carolina Transmission Planning Collaborative Process and non-North Carolina Transmission Planning Collaborative Process transmission planning activities.³²

39. With regard to the SIRPP, the Commission also directed Duke and Progress in the September 18 Order to address how disputes between stakeholders would be addressed when Duke and Progress are not parties to the dispute. This is discussed below in the Economic Planning Studies section under “Dispute Resolution in SIRPP.”

b. Compliance Filing

40. Under Duke’s and Progress’ revised Attachment Ks any North Carolina Transmission Planning Collaborative participant or TAG participant that believes it has been adversely affected under the transmission planning process is eligible to participate in the dispute resolution process. Section 6.4.1 (Tariff Disputes) of Duke’s and Progress’ Attachment Ks provide that any TAG participant, not just a TAG participant that is a transmission customer, may avail itself of the dispute resolution provisions of the Tariff, as that process is modified below. In addition, section 6.4.2 provides that if a TAG participant has completed the negotiation step set forth in section 12.1 of the OATT, a TAG participant may ask to have the issue mediated on a non-binding basis before the next step (i.e., arbitration) commences. A request for mediation must be made within thirty days of the agreed-upon conclusion of the negotiation step. If the mediation step is concluded without resolution, the disputing party has thirty days to inform the transmission provider that it seeks to commence the arbitration step set forth in section 12.2. If this mediation option is selected, the parties to the dispute will use the Commission’s Dispute Resolution Service as the forum for mediation.

c. Commission Determination

41. The revised Attachment Ks provide dispute resolution procedures for all parties involved in all North Carolina Transmission Planning Collaborative Process and non-

³² September 18 Order, 124 FERC ¶ 61,267 at P 39.

North Carolina Transmission Planning Collaborative Process transmission planning activities. Therefore, we find that the Attachment Ks are in compliance with the September 18 Order.

5. Regional Participation

a. September 18 Order

42. The Commission found in the September 18 Order that Duke and Progress had not provided sufficient detail to allow customers and other interested stakeholders to understand how the North Carolina Transmission Planning Collaborative Process planning activities would be integrated into regional and inter-regional processes. For example, they did not identify timelines and milestones for the coordination of models and planning information with SERC and its subgroups or the process by which stakeholders can be involved, and it is unclear how each of the regional and inter-regional processes will interact with each other when coordinated with the North Carolina Transmission Planning Collaborative Process planning activities. Accordingly, the Commission directed Duke and Progress to revise their transmission planning processes 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.³³

b. Compliance Filing

43. With respect to providing information for stakeholders to understand the integration of the North Carolina Transmission Planning Collaborative Process into regional and inter-regional processes, section 10.1.3 (SERC – Wide Reliability Assessment by Transmission Planners) now provides that, after the transmission models are developed through the regional planning processes, the transmission planners within SERC will create a SERC-wide transmission model and conduct a long-term reliability assessment.³⁴ Duke and Progress also explain that the intent of the SERC-wide reliability assessment is to determine whether the different regional reliability transmission expansion plans are simultaneously feasible and to otherwise ensure that

³³ September 18 Order, 124 FERC ¶ 61,267 at P 59.

³⁴ Section 10 of Duke's and Progress' Attachment Ks provides that the North Carolina Transmission Planning Collaborative will coordinate with other transmission systems primarily through Duke and Progress participating in SERC (as Transmission Planners), or inter-regional study groups, and bilateral agreement between Duke and/or Progress and transmission systems to which they coordinated.

these regional processes use consistent models and data. In addition, the reliability assessment measures and reports the transfer capabilities between regions within SERC.

44. With regard to the interaction of regional and inter-regional processes, Duke and Progress explain that transmission planners use a 10-year transmission expansion plan as the basis for models used for the regional reliability process such as the North Carolina Transmission Planning Collaborative Process, and this plan serves as the transmission planner's input into the development of the SERC-wide model.³⁵ Duke and Progress state that the transmission models also incorporate external regional models (at a minimum the current SERC models) using similar assumptions as the base case.

45. With regard to the SERC-wide reliability assessment, Duke and Progress explain that it serves as a valuable tool for the transmission planners to reassess the need for additional inter-regional reliability joint studies. They state that if the SERC-wide reliability model projects additional planning criteria concerns that were not identified in the regional reliability studies, the impacted transmission planners may initiate one or more *ad hoc* inter-regional coordinated studies (in accordance with existing Reliability Coordination Agreements) to identify the planning criteria concerns and determine the optimal inter-regional reliability transmission enhancements needed to resolve the limitations.³⁶ They further state that once a study is completed, transmission enhancements will be incorporated into the region's 10 year plan as a reliability project. Accordingly, planning criteria concerns identified at the SERC-wide level are pushed down to the regional level for detailed resolution.

46. With regard to other coordination activities, the SERC transmission models are developed through an annual model development process. Each transmission planner in the SERC incorporates input from their regional planning process and develops and submits its 10-year transmission model to a model development databank.³⁷ Duke and Progress explain that the databank then joins the models to create the SERC-wide models for use in reliability assessment.

47. With regard to stakeholder input into regional coordination activities, sections 4 and 5 of Duke's and Progress' Attachment Ks, provide TAG participants with

³⁵ Section 10.1.1 (Regional Reliability Planning by Transmission Planners Located in the SERC) of Duke's and Progress' Attachment Ks.

³⁶ Section 10.1.4.2 (Additional Inter-Regional Reliability Joint Studies) of Duke's and Progress' Attachment Ks.

³⁷ Section 10.1.4.1 (Other Coordination Activities Within the SERC) of Duke's and Progress' Attachment Ks.

opportunities to review and provide input and to propose alternatives concerning the development of the regional transmission plan. Additionally, TAG participants will be able to review and comment on study results and will have the opportunity to suggest alternative solutions to the transmission problems identified. The 10-year transmission expansion plan developed in the North Carolina Transmission Planning Collaborative Process is the basis for Duke's and Progress' input into the SERC model development.

48. As to identifying timelines and milestones of how the regional and inter-regional process will interact with each other, Duke and Progress revised their Attachment Ks to include an Appendix 2 (Regional and Inter-Regional Reliability and Economic Planning Milestones and Timeline) that provides a milestones timeline demonstrating the interaction of Duke's and Progress' regional and inter-regional processes when coordinated with North Carolina Transmission Planning Collaborative planning activities.

c. Comments

49. In its comments, Dominion explains that it participates in certain activities with Duke and Progress through the VACAR sub-region of SERC and requests that the Commission clarify that: (1) the nine Order No. 890 planning principles do not apply to the VACAR processes; and (2) the VACAR transmission owners may themselves determine the most efficient and effective methods for participation in the VACAR assessment processes.

50. Dominion supports the changes Duke and Progress propose with respect to regional participation, and it endorses their description of the distinctions between regional planning activities through the North Carolina Transmission Planning Collaborative process and coordination activities conducted with SERC and SIRPP.

51. Dominion states that the VACAR assessment activities, which involve assessments of the reliable operation of the interconnected Virginia-Carolinas systems, are not, in and of themselves, regional planning activities. Dominion asserts that the results of the VACAR assessment process are shared with all affected stakeholders and can be used as inputs for the regional transmission planning process and inter-regional coordination. Dominion explains that stakeholders have the opportunity to participate in the North Carolina Transmission Collaborative Process, and, as described in the compliance filing, in SERC and SIRPP inter-regional activities. Dominion maintains that no further changes are necessary or called for with respect to Virginia-Carolinas' assessment activities.

52. Dominion explains that the VACAR's assessment activities are conducted by the VACAR transmission owners, with involvement of other system users (market participants) as determined necessary by the transmission owners, and it is not necessary

or required that the Commission's Order No. 890 planning principles be applied independently to VACAR assessment activities.

d. Duke's and Progress' Answer

53. Duke and Progress state that the clarification Dominion seeks is not necessary because the Commission has previously ruled on this issue. Specifically, Order No. 890-A determined that the nine principles do not apply to inter-regional coordination activities.³⁸ Duke and Progress state that VACAR coordination activities that have impacts on transmission planning are discussed and raised with stakeholders in the North Carolina Transmission Planning Collaborative Process, as provided by the Attachment Ks, and how VACAR chooses to conduct its coordination activities is irrelevant to the compliance filing.³⁹

54. Duke and Progress seek to ensure that the Commission has no misconceptions about VACAR, stating that they are concerned that Dominion has not properly portrayed the role of transmission owners in the VACAR assessment activities – that there are differing types of VACAR members – transmission owners and system users – with differing roles. Duke and Progress state that the agreement governing VACAR does not differentiate between its members nor does it have members that are identified as stakeholders. Rather, all members must meet agreed-upon eligibility criteria and have agreed to abide by the Commission's Standards of Conduct.⁴⁰

e. Answer of North Carolina Electric Membership Corporation

55. NCEMC states that it is an active participant in the North Carolina Transmission Planning Collaborative Process and a member of VACAR and of SERC. NCEMC states that the assumption that the Commission's nine Order No. 890 planning principles do not apply to the VACAR process does not give Dominion or other VACAR transmission owners license to conduct that process in a manner that is otherwise unjust, unreasonable or unduly discriminatory by barring non-transmission owning members from participation in an inter-regional planning or coordination process.⁴¹

³⁸ September 18 Order, 124 FERC ¶ 61,267 at P 62.

³⁹ Answer of Duke and Progress at 3.

⁴⁰ *Id.* at 3-4.

⁴¹ NCEMC Comments at 3.

56. NCEMC asserts that the Commission has determined that inter-regional planning does not require the level of regulation that is reserved for regional planning activities, but it seems unlikely that the Commission could have intended Order No. 890-A to result in curtailing access already afforded to non-transmission owning load-serving entities in existing inter-regional planning or coordination activities such as the VACAR. NCEMC contends that the Commission should not sanction such a retreat from the sound principles of openness and inclusion announced in Order Nos. 890 and 890-A.

f. Commission Determination

57. We find that the revisions proposed by Duke and Progress sufficiently describe how their transmission planning process provides inter-regional coordination and how it allows for sub-regional processes to address any problems and concerns that pertain to the Duke and Progress transmission planning processes. Duke's and Progress' proposed provisions also ensure that interested stakeholders may provide input and propose potential solutions in the regional and inter-regional planning processes.

58. We also find Duke's and Progress' Regional and Inter-Regional Reliability and Economic Planning Milestones Timeline (Appendix 2) in combination with their SERC provisions in section 10 (Coordination Activities Within the SERC) satisfy the Commission's directive in the September 18 Order on the coordination of models and planning information with the SERC. Accordingly, we find that Duke's and Progress' revised Attachment Ks comply with the regional participation principle.

59. With respect to the comments of Dominion, the clarification Dominion seeks is not necessary because the Commission has previously ruled on this issue. Specifically, Order No. 890-A determined that the nine principles do not apply to inter-regional coordination activities.⁴² In addition, the Commission found in the September 18 Order that it is the transmission providers, not the processes in which they participate, that must comply with the requirements of Order No. 890.⁴³

60. With regard to NCEMC's concern that non-transmission owning North Carolina Transmission Planning Collaborative participants will be excluded from certain of the VACAR coordination activities, Duke's and Progress' open transmission planning

⁴² Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

⁴³ September 18 Order, 124 FERC ¶ 61,267 at P 62.

process allows non-transmission owners to participate in all aspects of the North Carolina Transmission Planning Collaborative Process.⁴⁴

61. Lastly, NCEMC's concern that Dominion will try to exclude non-transmission owning VACAR members from certain VACAR activities is speculative. In any event, we emphasize that, Duke's and Progress' open transmission planning process allows non-transmission owners to participate in all aspects of the North Carolina Transmission Planning Collaborative process.

6. Economic Planning Studies

a. September 18 Order

62. In the September 18 Order, the Commission found several deficiencies with respect to compliance with the Economic Planning Studies Principal and directed Duke and Progress to revise their processes accordingly.⁴⁵ The Commission found that it is unreasonable to limit full participation in the Enhanced Transmission Access Planning Process⁴⁶ to TAG voting members. The Commission's concerns in this regard are addressed by the requirement that all stakeholders be given the opportunity to participate in TAG voting (discussed above).

63. With respect to clustering requests for economic studies, the Commission found that, while Duke and Progress explain that the Planning Working Group will determine if it would be efficient to combine and/or cluster any of the proposed Enhanced Transmission Access Planning Process study scenarios, it is unclear whether stakeholders will be allowed input into the clustering process. Accordingly, the Commission directed Duke and Progress to provide for stakeholder input (e.g., through the TAG) in the determination whether to combine and/or cluster proposed scenarios.

⁴⁴ See, e.g., sections 2.4.4 (TAG Sector Voting Process) and 4.2 (Overview of Enhanced Transmission Access Planning Process of Duke's and Progress' Attachment K and N, respectively).

⁴⁵ September 18 Order, 124 FERC ¶ 61,267 at P 79.

⁴⁶ The North Carolina Transmission Planning Collaborative Process provides for economic studies through an Enhanced Transmission Access Planning Process that evaluates the means to increase transmission access to potential supply resources inside and outside their control areas, as well as to reliably integrate new resources. September 18 Order, 124 FERC ¶ 61,267 at P 65.

64. As to participation in the SIRPP regarding inter-regional economic studies, the Commission found that the definition of stakeholder in the SIRPP process may unduly restrict the ability of all interested parties to participate in the inter-regional economic planning process. Accordingly, the Commission directed Duke and Progress to provide for participation by any interested party in the SIRPP stakeholder group.

65. With regard to the time for stakeholder review of meeting material, the Commission found that the stakeholders should have an appropriate amount of time to review information before meetings. Accordingly, the Commission directed Duke and Progress to provide for the distribution of information that is to be discussed at a stakeholder meeting sufficiently in advance of that meeting to provide for meaningful stakeholder review.

66. The Commission found that Duke and Progress did not provide that requests may be clustered or batched by the SIRPP stakeholder group to streamline processing of economic studies. Accordingly, the Commission directed Duke and Progress to provide for the ability of the SIRPP stakeholder group to cluster or batch requests for economic studies.

67. As to confidential information in the SIRPP, the Commission found that the process for SIRPP stakeholders to request data and information to permit replication of inter-regional economic studies is unduly restrictive.⁴⁷

68. With respect to resolving disputes that arise in inter-regional economic planning activities, the Commission found that it was unclear whether the Attachment Ks disputes involving a Duke and Progress stakeholder and other SIRPP stakeholders would be addressed and resolved if neither Duke nor Progress were a party to the dispute. Accordingly, the Commission directed Duke and Progress to demonstrate how the dispute resolution provisions in their respective Attachment Ks 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.⁴⁸

⁴⁷ September 18 Order, 124 FERC ¶ 61,267 at P 80. We have already addressed the SIRPP information disclosure provisions in the section above discussing the Openness principle.

⁴⁸ *Id.* P 82.

b. Compliance Filing

69. With respect to the Commission's concern that the economic planning process was limited to TAG voting members, Duke's and Progress' amended section 4.2 (Overview of Enhanced Transmission Access Planning Process) to provide that TAG participants rather than only voting members may participate through the economic planning process. With respect to clustering requests for economic planning studies, the amended section 4.2 also includes an option for stakeholder input in determining whether to combine and/or cluster proposed scenarios. This section provides that if consensus cannot be reached on which scenarios to study, the TAG Sector Voting Process will be used to resolve the issue. The TAG participants may request that the five scenarios be combined or clustered.

70. Additionally, Duke and Progress revised their Appendix 1s to provide that the SIRPP Stakeholder Group should consider clustering similar economic planning study requests. Duke's and Progress' Appendix 1s provide that if two or more economic planning study requests are similar in nature and the Participating Transmission Owners conclude clustering of such requests and studies is appropriate, the Participating Transmission Owners may, following communications with the SIRPP Stakeholder Group, cluster those studies for the purposes of the transmission evaluation.

71. With respect to the Commission's concerns regarding the inter-regional economic planning study process. Duke and Progress revised their SIRPP Appendix 1s to provide that the SIRPP Stakeholder Group membership and the ability to attend meetings are open to any interested party. With respect to the distribution of information prior to stakeholder meetings, the SIRPP Appendix 1s have been revised to provide that the information to be discussed at such meetings will be made available in final draft form for review prior to any such meeting by posting on the SIRPP website and/or electronic mail to the SIRPP Stakeholder Group members. The Participating Transmission Owners will use reasonable efforts to make information available at least 10 calendar days prior to the meeting.

72. With regard to dispute resolution in SIRPP, Duke's and Progress' revised Appendix 1s provide that any procedural or substantive dispute between a Duke and Progress stakeholder and a Participating Transmission Owner that arises from the SIRPP will be addressed pursuant to the dispute resolution provisions of the Participating Transmission Owner's regional planning process. Disputes among stakeholders may be resolved by the stakeholders using the Commission's alternative dispute resolution services. Duke's and Progress' Appendix 1s further provide that if dispute resolution procedures occur in multiple regional planning processes that involve a single dispute among multiple Participating Transmissions Owners, the affected Participating Transmission Owners, in consultation with the affected stakeholders, will use reasonable efforts to consolidate the resolution of the dispute so that it will be resolved using the

dispute resolution provisions of a single regional planning process. Finally, parties are not restricted from filing a complaint with the Commission under the relevant provisions of the FPA.

c. Commission Determination

73. We find that Duke's and Progress' proposed revisions to section 4.2 of their Attachment Ks adequately address the Commission's concerns expressed in the September 18 Order that the Enhanced Transmission Access Planning Process regarding economic planning studies was limited to TAG voting members. The revisions now make clear that all TAG participants may participate. The amended section 4.2 also addresses the Commission's concerns regarding clustering requests for economic planning studies by including a provision for stakeholder input in determining whether to combine and/or cluster proposed economic planning scenarios.

74. We also find Duke's and Progress' proposed revisions to their Appendix 1s regarding the SIRPP inter-regional economic studies process as in compliance with the September 18 Order. The revised Attachment Ks provide that the SIRPP Stakeholder Group membership and the ability to attend meetings are open to any interested party.

75. In addition, the revised Appendix 1s require that Participating Transmission Owners use reasonable efforts to make information available at least 10 days prior to a meeting.

76. Duke and Progress also revised their SIRPP Appendix 1s to provide a role for the SIRPP Stakeholder Group in clustering similar economic planning study requests. For example, Duke's and Progress' Appendix 1s provide that if two or more economic planning study requests are similar in nature and the Participating Transmission Owners conclude clustering of such requests and studies is appropriate, the Participating Transmission Owners may, following communications with the SIRPP Stakeholder Group, cluster those studies for the purposes of the transmission evaluation.

77. Additionally, the revised Appendix 1s clarify how disputes involving a Duke and Progress stakeholder and other SIRPP stakeholders would be addressed and resolved if neither Duke nor Progress were a party to the dispute. Accordingly, with the modifications discussed above, we find that Attachment Ks, including their Appendix 1s, comply with the September 18 Order.

7. Cost Allocation

a. September 18 Order

78. The Commission found in the September 18 Order that Duke and Progress provide a general structure for allocating costs of reliability upgrades undertaken on their

systems, including joint Regional Reliability Benefits planning on the part of the North Carolina Transmission Planning Collaborative participants. The Commission also found that Duke and Progress provide a structure for allocating the cost of Regional Economic Transmission Path facilities within the North Carolina Transmission Planning Collaborative footprint. However, the Commission found that Duke and Progress failed to identify a cost allocation methodology for non-Regional Economic Transmission Path economic projects that involve the transmission systems of participants within the North Carolina Transmission Planning Collaborative footprint, and it directed Duke and Progress to do so. Additionally, in the September 18 Order, the Commission required that the allocation of costs for upgrades identified through the SIRPP economic planning process be addressed.

b. Compliance Filing

79. Duke and Progress state that the costs of any non-Regional Economic Transmission Path project or any non-Regional Reliability Project that involves the transmission systems of multiple North Carolina Transmission Planning Collaborative participants, whether an economic or a reliability project, would be allocated pursuant to the OATT of each transmission provider.⁴⁹ With regard to cost allocation in SIRPP, Duke's and Progress' compliance filing provides that, for the portion of an inter-regional economic upgrade project that is located in the North Carolina Transmission Planning Collaborative footprint, the cost allocation principles of their Attachment Ks will apply.⁵⁰

c. Commission Determination

80. We find that Duke and Progress clarify that they use the same cost allocation process for non-regional economic or non-regional reliability projects that involve multiple developers. Duke and Progress add new sections 7.1 (OATT Cost Allocation) and 7.4 (SIRPP Cost Allocation) to their Attachment Ks that clarifies that for the portion of an inter-regional economic upgrade project that is located in the North Carolina Transmission Planning Collaborative Process footprint, the cost allocation provisions in section 7 would apply. Therefore, we find that Duke's and Progress' Attachment Ks, as modified, complies with the September 18 Order.

81. With regard to cost allocation in SIRPP, we find that Duke's and Progress' proposal complies with Order No. 890's cost allocation principle. We will accept the revisions to the inter-regional cost allocation provisions of the Appendix 1s because they add the required clarity and definition we directed in the September 18 Order.

⁴⁹ Duke's and Progress' Compliance Filing at 12-13.

⁵⁰ Section 7.4 (SIRPP Cost Allocation) of Duke's and Progress' Attachment Ks.

The Commission orders:

(A) Duke's and Progress' compliance filing, as modified, is hereby accepted, effective December 7, 2007, and March 17, 2008, subject to a further compliance filing, as discussed in the body of this order.

(B) Duke and Progress are 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.