

127 FERC ¶ 61,282
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.

Docket Nos. OA08-37-001
OA08-37-002

ORDER ON REHEARING AND COMPLIANCE

(Issued June 18, 2009)

1. On September 18, 2008, the Commission issued an order that accepted, with modifications, a compliance filing by Southern Company Services, Inc. (Southern) (Initial Compliance Filing).¹ In that order, the Commission addressed Southern's proposed Attachment K to its Open Access Transmission Tariff (OATT) in which it submitted its transmission planning process as required by Order No. 890.² On October 20, 2008, Southern filed a request for rehearing with respect to a single issue of the September 18 Order. On December 17, 2008 Southern filed its compliance with the September 18 Order (Current Compliance Filing). In this order, we reject Southern's request for rehearing and accept the Current Compliance Filing, subject to a further compliance filing as directed.

I. Background

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

¹ *Southern Company Services, Inc.*, 124 FERC ¶ 61,265 (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).

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.

4. As noted in the September 18 Order, Southern's proposed Attachment K codifies the Southeastern Regional Transmission Planning Process (SERTP), in which it participates along with the Alabama Electric Cooperative, Dalton Utilities, Georgia Transmission Corporation, Municipal Electric Authority of Georgia, and South Mississippi Power Association. The proposed Attachment K also includes an additional document, proposed Exhibit K-2, which relates to inter-regional economic studies performed through the Southeast Inter-Regional Participation Process (SIRPP). Duke Energy Carolinas, LLC, Entergy Operating Companies, E.ON U.S., LLC, Progress Energy Carolinas, Inc., South Carolina Public Service Authority, South Carolina Electric & Gas Company, and the Tennessee Valley Authority also participate in the SIRPP.

5. In the September 18 Order, the Commission found that Southern's Initial Compliance Filing, with certain modifications, complied with the planning requirements adopted in Order No. 890. Accordingly, the Commission accepted Southern's Initial

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.

Compliance Filing to be effective December 7, 2007, subject to a further compliance filing.

6. Notice of Southern's Current Compliance Filing was published in the *Federal Register*, 73 Fed. Reg. 79,460 (2008), with interventions and protests due on or before December 29, 2008. No comments were filed.

II. Discussion

7. Although the Commission accepts Southern's Current 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 later 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 interregional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources.

A. Coordination

8. In its Initial Compliance Filing, Southern defined stakeholder as the term was used in the SIRPP:

1.47 Stakeholder: Any Eligible Customer, generation owner/development company, state or federal regulatory agency, and anyone capable of providing Ancillary Services under the Tariff is eligible to be a Stakeholder under the Tariff. In addition, any Transmission Owner, Transmission Operator, or Transmission Planner as those terms or their successors are used under the NERC Functional Model, as may be amended from time to time, are eligible to be a Stakeholder under the Tariff.

9. The Commission found in the September 18 Order that this definition may exclude certain interested parties, such as developers of alternative resources, and directed Southern to revise its proposed definition to clearly provide that all interested parties may participate in the process.⁵ Further, the Commission required that Southern revise its Exhibit K-2, which relates to inter-regional economic studies performed through the SIRPP, to provide for participation by any interested party in the SIRPP stakeholder group.⁶

10. In addition, the Commission found that Southern's proposed section 1.2.1 did not clearly provide stakeholders an opportunity to review and provide input regarding the methodology and criteria used to develop the transmission plans. Accordingly, the Commission directed that Southern revise its proposal to provide for stakeholder review and comment.⁷

1. **Request for Rehearing**

11. Southern requests rehearing on the grounds that the Commission erred in its requirement that Southern revise its definition of "stakeholder," because such a revision would be inconsistent with Order No. 890, and argues that the definition already includes developers of alternative resources. Southern contends that the Commission, in Order No. 890, stated that ancillary issues, such as specific siting concerns, should be addressed in a forum other than that for transmission planning,⁸ and that allowing "all interested parties" would permit those in opposition of transmission planning, or those who would seek to harm the transmission system, to obstruct the planning process.⁹ Southern also applies the traditional canons of construction to the language of Order No. 890 to find that the phrase "other stakeholders" is limited by its context and should not be read to include "all interested parties." Moreover, Southern notes that its definition of stakeholder includes "generation owner/development company" as well as "anyone capable of providing Ancillary Services under the Tariff." Southern argues that Order No. 890 stated that demand resources are capable of providing ancillary services under

⁵ September 18 Order, 124 FERC ¶ 61,265 at P 22.

⁶ *Id.* P 94.

⁷ *Id.* P 23.

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 453.

⁹ Southern states that it has recently received requests from apparent electronic mail spammers to become stakeholders in the SIRPP, raising concerns related to Critical Energy Infrastructure Information (CEII). Request for rehearing at 6.

the tariff,¹⁰ and that its definition is intended to include developers of demand resources.¹¹ However, Southern states that it does not oppose incorporating more direct language regarding the inclusion of developers of alternative resources if directed to do so by the Commission.

2. Southern's Compliance

12. In its Current Compliance Filing, Southern proposes to revise the definition of stakeholder in section 1.47, but does so under protest, as follows:

1.47 Stakeholder: Any party interested in the [SERTP], including but not limited to transmission and interconnection customers, generation owners/development companies, developers of alternative resources, or state commissions.¹²

13. Southern also proposes to revise section 1.2.1, regarding the initial Regional Planning Stakeholders Group (RPSG) meeting and training session, to clarify that the session will be conducted prior to finalizing the methodology and criteria, for the purpose of developing that year's transmission expansion plan.

3. Commission Determination

14. We will deny Southern's request for rehearing on the requirement to define stakeholder to include all interested parties and accept Southern's proposed revisions to section 1.47. The Commission stated in Order No. 890 that the goal of the coordination principle is to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders.¹³

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479; *see also id.* P 888 (“We therefore modify Schedule 2, 3, 4, 5, 6, and 9 of the pro forma OATT to indicate that Reactive Supply and Voltage Control, Regulation and Frequency Response, Energy Imbalance Spinning Reserves, Supplemental Reserves and Generator Imbalance Services, respectively, may be provided by generating units as well as other non-generation resources such as demand resources were appropriate.”).

¹¹ Current Compliance Filing, Attachment K, section 1.3.1(8), Regional Planning Stakeholders Group (RPSG) Sector Representation, Demand Side Management/Demand Side Response.

¹² Southern states that this revision is made under protest to preserve its rights under the pending request for rehearing.

¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 451-454.

Under the openness principle, the Commission also “require[d] that transmission planning meetings be open to all affected parties including, but not limited to, all transmission and interconnection customers, state commissions and other stakeholders.”¹⁴ The Commission further discussed the appropriateness of limiting participation “in certain circumstances” and developing protections for confidential information, but emphasized “that the overall development of the transmission plan and the planning process must remain open.”¹⁵ While the transmission provider bears the final responsibility for transmission planning, “the planning process must provide for the timely and meaningful input and participation of all interested customers and other stakeholders.”¹⁶ In accordance with these goals, the definition of stakeholder should include end users and other entities that may not be buyers or sellers in Southern’s wholesale market, such as developers of transmission, generation and demand resources.

15. Southern raises the concern that, if it was required to define stakeholder to include all interested parties, entities other than legitimate stakeholders may seek to access sensitive information or disrupt the planning process. We disagree; rather, we believe that the processes that are already in place provide sufficient protection. Protections are in place for CEII and other sensitive information, and registration of attendance at planning meetings enables Southern to identify parties and to take action against any that attempt to be disruptive to the planning process. Moreover, transmission planning is an ongoing process and a broad definition of stakeholders to include all interested parties allows participation by new entities who may want or need to participate in planning in the future, without a tariff change to the definition of stakeholder to include such new parties. Accordingly, because the Commission has stated that the definition of stakeholder should be inclusive and because Southern has processes in place to ensure that parties are not inappropriately given access to sensitive information or are disruptive to the planning process, we will deny Southern’s request for rehearing on its definition of stakeholder.

16. Accordingly, we will accept Southern’s proposal to define stakeholder to include any interested party as in compliance with the Commission directive in the September 18 Order.

17. Southern also proposes revisions to section 1.2.1, stating that Southern will “explain and discuss” the methods and criteria used to develop the transmission expansion plan, before they are finalized, and for the purposes of development of that year’s transmission plan. However, the proposed revisions do not provide for

¹⁴ *Id.* P 460.

¹⁵ *Id.*

¹⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 188.

stakeholders to review and comment on these planning criteria and methodology at the initial training session, as the Commission directed in the September 18 Order. Therefore, we will direct Southern to file within 60 days from the date of this order provisions that specifically permit stakeholders to comment on these planning criteria and methodology and for consideration by Southern of these comments.

B. Openness

18. The Commission stated in the September 18 Order that Southern's Initial Compliance Filing did not address how stakeholders may obtain access to non-Critical Energy Infrastructure Information (CEII) confidential information used by Southern in the planning process without requiring parties to meet the CEII criteria. Accordingly, the Commission directed Southern to address how stakeholders may obtain access to confidential information that is not CEII.¹⁷

1. Southern's Compliance

19. Southern proposes to adopt the procedures for non-CEII confidential information that the Commission accepted in the Order No. 890 transmission planning compliance filing of the Southwest Power Pool, Inc. (Southwest Power Pool).¹⁸ Southern proposes a new section 2.5 which provides for the availability of confidential non-CEII information to stakeholders who have executed a confidentiality agreement that will be posted on Southern's website. Southern made the same revisions to Exhibit K-2, which relates to the SIRPP. The proposed revisions also state that confidential information of a non-jurisdictional entity or stakeholder will not be disclosed without agreement from that entity unless Southern is ordered to do so by a jurisdictional authority. Lastly, section 2.5.4 of Southern's Attachment K includes provisions that forbid it from disclosing to stakeholders certain resource-specific data.¹⁹

¹⁷ September 18 Order, 124 FERC ¶ 61,265 at P 28.

¹⁸ See *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028, at P 19 (2008).

¹⁹ Section 2.5.4 of Southern's Attachment K states:

Resource specific data shall not be made available by the Transmission Provider if the data has been designated confidential by the data provider or if the data can be used to:

1. Determine security constrained unit commitment or economic dispatch for resources; or
2. Perform an economic evaluation of costs and benefits.

2. Commission Determination

20. We accept Southern's proposed revisions, as modified. Southern now provides stakeholders access to non-CEII confidential information used by Southern in the planning process without requiring the stakeholders to meet the CEII criteria.

21. However, Southern must revise section 2.5.1 and Exhibit K-2 so that non-public utility transmission providers do not have more confidentiality protections than public utility transmission providers in the transmission planning process. Specifically, section 2.5.1 and Exhibit K-2 requires Southern and Participating Transmission Owners 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 will direct Southern to revise its 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.

22. Lastly, because section 2.5.4 of Southern's Attachment K, which forbids it from disclosing to stakeholders certain resource-specific data, is similar to a provision in Exhibit K-2 regarding the SIRPP, we will address section 2.5.4 along with the similar SIRPP provision in the section below on the Economic Planning Studies principle where we address other issues associated with Exhibit K-2.

C. Transparency

23. In the September 18 Order, the Commission found that Southern's Initial Compliance Filing did not state clearly that it will provide all information necessary for stakeholders to replicate the results of its planning studies and directed Southern to revise section 3.2 to state that additional information needed to replicate the results will be

²⁰ Current Compliance Filing, Southern Operating Companies, FERC Electric Tariff, Fourth Revised Volume No. 5, First Revised Sheet Nos. 154A.12 – 154A.12a and Exhibit K-2, Original Sheet Nos. 154A.50 – 154A.50a.

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

provided.²² The Commission also encouraged Southern to provide a flowchart of its planning process to stakeholders.²³

1. Southern's Compliance

24. Southern proposes to revise section 3.2 to provide for the availability of any additional information necessary to replicate the results of the planning studies, subject to applicable confidentiality and CEII provisions. In accordance with the Commission's recommendation, Southern provides a flowchart of its planning process as new Exhibit K-3.

2. Commission Determination

25. We find that with Southern's proposed revisions to section 3.2 comply with the transparency principle stated in Order No. 890.

D. Comparability

26. In the September 18 Order, the Commission found that Southern's planning process complied with the comparability principle as set forth in Order No. 890.²⁴ However, the Commission also found that, because Order No. 890-A was issued on December 28, 2007, after Southern submitted its Order No. 890 Attachment K compliance filing, Southern did not have an opportunity to demonstrate that it complies 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 Southern to make a compliance filing addressing the necessary demonstration required by Order No. 890-A.

1. Southern's Compliance

27. Southern's planning process organizes stakeholders into eight voting sectors that provide opportunities for stakeholders to propose transmission, generation and demand

²² September 18 Order, 124 FERC ¶ 61,265 at P 34.

²³ *Id.* P 35.

²⁴ *Id.* P 47.

²⁵ *Id.* P 48.

²⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

response projects.²⁷ Southern holds at least four stakeholder meetings each year that, as discussed above, are open to all interested parties.²⁸ Transmission customers must submit their load and usage projects to Southern by September 1 of each year. Southern expects that transmission customers having service agreements for network integration transmission service that have demand resource assets will appropriately reflect those assets in those customers' load projections.²⁹ In the first quarter of the calendar year, Southern will hold a stakeholder meeting where it will conduct an interactive training and input session for all stakeholders regarding the methodologies and criteria Southern uses to conduct transmission planning analyses.³⁰ During the second quarter of each year, Southern will hold the preliminary expansion plan stakeholder meeting to explain and discuss its preliminary transmission plan.³¹ To the extent that stakeholders have transmission expansion plan/enhancement alternatives that they would like Southern and other sponsors to consider, the stakeholders must perform an analysis prior to, and provide any such analysis at, that meeting. A stakeholder seeking to have a demand resource asset considered for purposes of the transmission expansion plan must provide all information (e.g. technical and operational characteristics, affected loads, cost, performance, and lead time to install) Southern would need in order to consider such a resource comparably with other alternatives. The transmission expansion plan/enhancement alternatives suggested by stakeholders will be considered for possible inclusion in the transmission plan.³² To the extent similarly situated, the transmission provider will treat stakeholder submitted demand resource projects on a comparable basis for transmission planning purposes.³³

28. During the third quarter of each year, Southern will hold another stakeholder meeting.³⁴ There, the transmission provider will report to the stakeholders regarding the

²⁷ Current Compliance Filing, Attachment K, section 1.3.1 (RPSG Sector Representation). These eight sectors are: transmission owners/operators; transmission service customers; cooperative utilities; municipal utilities; power marketers; generation owners/developers; ISO/RTOs; and demand side management/demand side response.

²⁸ *Id.* section 1.2.

²⁹ *Id.* section 4.4 (Demand Resource Projects).

³⁰ *Id.* section 1.2.1 (First RPSG Meeting and Interactive Training Session) and sections 3.5.1.1 – 3.5.1.2.

³¹ *Id.* sections 1.2.2 (Preliminary Expansion Plan Meeting) and 3.5.3 (The Transmission Expansion Review and Input Process).

³² *Id.* section 3.5.3 (The Transmission Expansion Review and Input Process).

³³ *Id.* section 4.4 (Demand Resource Projects).

³⁴ *Id.* section 1.2.3 (Second RPSG Meeting).

suggestions/alternatives provided by the stakeholders at the preliminary expansion plan stakeholder meeting. Finally, during the fourth quarter of each calendar year, Southern will hold an Annual Transmission Planning Summit and Assumptions Input Meeting (Transmission Summit).³⁵ Among other things, the Transmission Summit will provide an open forum for discussion with, and input from, stakeholders regarding the data gathering and transmission model assumptions that Southern will use for the following year's 10-year transmission plan.³⁶ The preliminary modeling assumptions may include renewable resources and demand side options under consideration.³⁷

2. Commission Determination

29. We find that Southern has partially complied with requirements in the September 18 Order regarding the comparability principle. Attachment K identifies when and where in the planning process that stakeholders, including sponsors of transmission, generation and demand resources, may provide input regarding data to develop baseline assumptions and may propose alternatives for consideration by Southern. However, Southern does not explain how it will evaluate alternatives when determining what projects to include in its plan. We therefore will require Southern to submit a further compliance filing, within 60 days of the date of this order, revising Attachment K to state how Southern will evaluate and select from among competing solutions such that all types of resources are considered on a comparable basis.³⁸

30. Additionally, in the September 18 Order, the Commission required Southern to modify its Attachment K to provide the opportunity for stakeholders to request studies that evaluate all potential upgrades or other investments on Southern's transmission system that could reduce congestion or integrate new resources. We find that Southern's revisions in the Current Compliance Filing complies with this requirement. For example, Southern explains that its economic planning studies will be confined to sensitivity requests for bulk power transfers and/or to evaluate potential upgrades or other

³⁵ *Id.* section 1.2.4 (Annual Transmission Planning Summit and Assumptions Input).

³⁶ *Id.* section 1.2.4.2 (Assumptions Input Session); section 3.5 (Transparency Provided Through the Annual Transmission Planning Meetings).

³⁷ *Id.* section 3.5.2 (Presentation of Preliminary Modeling Assumptions).

³⁸ 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.

investments on the transmission system that could reduce congestion or integrate new resources.³⁹

31. Further, Southern states that stakeholders who have transmission expansion plan/enhancement alternatives that they would like Southern and other sponsors to consider, the stakeholders must perform an analysis prior to, and provide any such analysis at the Regional Planning Stakeholder's Group meetings. However, Southern does not explain or provide in its Attachment K when the stakeholders will receive the transmission plan to which they are given an opportunity to propose alternatives, and if it is posted on their transmission planning website. Therefore, we will direct Southern, in a compliance filing to be made within 60 days of the date of this order, to explain when the stakeholders will receive the transmission plan and if it is posted on their transmission planning website.

32. In addition, Southern states that "to the extent similarly situated" it will treat stakeholder submitted demand resource projects on a comparable basis for transmission planning purposes.⁴⁰ Southern does not explain how it defines "to the extent similarly situated." Therefore, we will direct Southern to explain the requirement in its compliance filing.

E. Dispute Resolution

33. The Commission generally accepted Southern's Initial Compliance Filing proposal for dispute resolution in the September 18 Order. However, the Commission required revisions on two points. First, noting that parties may agree to use dispute resolution procedures other than the Commission's dispute resolution process, the Commission directed Southern to revise its Attachment K to provide that it will post on the regional planning website when parties agree to use dispute resolution procedures other than those of the Commission.⁴¹ Second, the Commission found that Southern's Initial Compliance Filing did not include dispute resolution procedures for transmission planning activities

³⁹ Current Compliance Filing, Attachment K, section 7.2 (Parameters of Economic Planning Studies). This issue will be discussed further in the section on economic planning studies.

⁴⁰ We will interpret Southern's statement that it will treat stakeholders that submitted demand resource projects on a comparable basis for transmission planning purposes to mean that it will compare generation and demand resources to transmission in order to select a solution.

⁴¹ September 18 Order, 124 FERC ¶ 61,265 at P 53.

outside of the SERTP, such as for SIRPP. Accordingly, the Commission directed Southern to include such procedures in its Attachment K.⁴²

1. Southern's Compliance

34. Southern proposes to add language to section 5.2 of Attachment K, stating that it will post a notice on the regional planning website when parties agree to use any dispute resolution process. Southern also proposes revisions to section 5.1 to include the SIRPP under the dispute resolution procedures in its OATT.

2. Commission Determination

35. In addition to the Commission dispute resolution process, Southern proposes to add "or other dispute resolution procedure" to the provisions in section 5.2 that provide for stakeholder notice via website posting and email notification. This clarifies the concern that the Commission raised in the September 18 Order that notice would only be given if the Commission's dispute resolution process was to be used; therefore, we accept the revision. The September 18 Order also directed Southern to provide that disputes arising outside of the SERTP be covered by the dispute resolution provisions and cited SIRPP as an example. Southern's revisions to section 5.1 add that the dispute resolution procedures are also applicable to disputes arising from the SIRPP. However by providing the example of SIRPP, the Commission did not intend to limit the dispute resolution procedures to only SIRPP. Accordingly, Southern should also specify what dispute resolution procedures apply to transmission planning activities outside of the SERTP other than SIRPP. Therefore, we will direct Southern to file modifications to these provisions within 60 days from the date of this order to apply these provisions to disputes arising from the Attachment K transmission planning process generally and to not limit the origin of the dispute. As discussed later under Economic Planning Studies, Southern adds provisions to Exhibit K-2 that provide dispute resolution guidelines as part of the SIRPP.

F. Regional Participation

36. In the September 18 Order, the Commission directed Southern to amend its Attachment K to describe in detail its process for coordinating with interconnected systems to ensure simultaneous feasibility, consistent assumptions, and data and to identify system enhancements to relieve congestion or integrate new resources.⁴³ The Commission found that Southern specified neither the other transmission owners with which it intended to coordinate nor the details of the activities that will be coordinated.

⁴² *Id.* P 54.

⁴³ *Id.* P 70.

For example, Southern did not identify the other Southeast Reliability Corporation (SERC) transmission providers with which it will coordinate and did not provide details regarding the method it will use to determine simultaneous feasibility. Further, Southern only generally described its exchange of information with the Florida Reliability Coordination Council (FRCC) and did not provide details regarding the process, such as timelines and milestones and the coordination of models and system plans with FRCC or SERC. The Commission also noted that the Initial Compliance Filing did not provide a description of how the processes will interact with each other and with Southern's own planning activities.

1. Southern's Compliance

37. The revisions proposed by Southern state that the regional planning website will identify other transmission owners with whom Southern will coordinate planning activities, as well as the meetings, communications, and information exchanges.⁴⁴ Further, as discussed below, section 6 details the specific activities that will be coordinated, including the annual preparation of the 10-year transmission expansion plan and the economic planning studies.

38. Section 6.5 now provides additional details regarding the coordination with other transmission owners in the FRCC, including: the coordination of generation and transmission system planning, construction, operation and protection to maintain maximum reliability, coordination of interconnection lines and facilities for emergency assistance, initiation of joint studies and investigations pertaining to reliability, coordination of maintenance schedules, development of communication, coordination of load relief measures and restoration procedures, coordination of spinning reserve, reactive power, and other reliability requirements, and exchange of information including load forecasts, generating capabilities, capacity additions, capability of interchange facilities, plant system emergencies, unit outages, and line outages.

39. Section 6.6 (Reliability Planning Process) describes stakeholder participation in the reliability planning process and the interaction of these processes among regional entities. Section 6.6.2 describes the interaction among processes; i.e., the transmission provider (Southern) incorporates the results of the FRCC activities into its 10-year transmission expansion plan which is then used as input to develop the SERC regional model. The 10-year reliability plan developed by each regional transmission provider, such as for the SERTP, must satisfy load, resources, and transmission service commitments throughout the 10-year period and includes base case transmission models that incorporate the transmission expansion plan, load projections, resource assumptions (for generation, demand resources, and imports), and transmission service commitments.

⁴⁴ Current Compliance Filing, Attachment K, sections 6.2, 6.3, and 6.4.

At a minimum, the transmission models must also incorporate the corresponding regional models of SERC. Additionally, reliability planning criteria will be evaluated and regional level concerns that are identified will be used to determine enhancements to the transmission expansion plan. The transmission owner will also determine whether a reliability concern impacts a neighboring planning process and an inter-regional coordinated study will be conducted and any enhancements will be incorporated into the transmission expansion plans.

40. Section 6.6.2 also details SERC inter-regional activities. The regional transmission models are compiled to develop a SERC-wide long-term reliability assessment to determine simultaneous feasibility, and to ensure consistency among models and data. The SERC-wide assessment will be used to reassess the need for additional inter-regional joint studies. Results of such additional studies will then be incorporated into the regional 10-year expansion plan as a reliability project.

41. Section 6.6.4 describes stakeholder participation in these processes. In accordance with section 1.2, stakeholders are provided the opportunity to propose alternatives and enhancements to the transmission provider's preliminary transmission expansion plan which is the input into the SERC regional model,⁴⁵ FRCC coordination, and other *ad hoc* activities at the preliminary RPSG meeting. At the second RPSG meeting, stakeholders receive feedback regarding alternatives submitted at the initial meeting and are provided with an overview of the ongoing regional activities including SERC and FRCC. Stakeholders are also provided an overview of the 10-year transmission expansion plan and the results of the regional coordination study activities at the annual transmission planning summit and assumptions input section. Additionally, the revisions state that stakeholders are provided an open forum for data and assumptions for the next 10-year plan development. Section 6.3 also states that, as part of the SIRPP, stakeholders are able to review data and assumptions at the inter-regional stakeholder meetings. Lastly, Southern refers to the flowchart in Exhibit K-3 to provide timelines and milestones for the activities performed under the three planning processes, SIRPP, SERC, and the SERTP.

2. Commission Determination

42. In the Current Compliance Filing, Southern provides additional details regarding its regional coordination activities with FRCC and with SERC. This includes the type of information that will be exchanged regionally such as forecasts, capacity additions, and outage schedules for reliability planning. Also, the revisions provide additional details

⁴⁵ Current Compliance Filing, Attachment K, section 6.4(a)(iii) directs stakeholders interested in direct participation in SERC process, including membership, to the SERC website.

regarding the inter-regional coordination of planning activities including joint studies and investigations and communication. Southern also describes how it will incorporate the results of the inter-regional coordination process into its 10-year planning process and ensure that the reliability assessments are completed on a regional basis. Moreover, the SIRPP provisions build upon the processes and data and assumptions developed by Southern⁴⁶ and provide that information to be discussed at each SIRPP meeting will be disseminated to stakeholders via web posting or electronic mail at least 10 days prior to the meeting.⁴⁷ At these meetings stakeholders will have the opportunity to comment and discuss assumptions and study results. The revisions also provide stakeholders with the process to participate in the inter-regional planning. We find that this additional detail satisfies the directives of the September 18 Order.

43. Although Southern proposes significant revisions regarding the coordination of activities among FRCC transmission owners and SERC transmission owners, these provisions do not specifically identify that all solutions will be considered in regional studies conducted to improve the reliability of the bulk power system. Accordingly, the Commission will direct Southern to make a compliance filing within 60 days from the date of this order revising section 6 to provide that all transmission, generation and demand resource solutions will be considered in regional studies conducted to improve the reliability of the bulk power system and that this information will be shared among the regional entities.

G. Economic Planning Studies

44. Southern's Initial Compliance Filing contained limitations on the economic studies to those for bulk power transfers that are at least five years in the future. In the September 18 Order, the Commission stated that limiting studies in this manner could exclude economic studies related to other facilities Southern uses to provide service under its OATT. The Commission further stated that Order No. 890 allowed customers to request studies that evaluate potential upgrades or investments without limiting the types of resources to be studied. Accordingly, the Commission directed Southern to modify its Attachment K to provide the opportunity for stakeholders to request studies that evaluate all potential upgrades or other investments on Southern's transmission system that could reduce congestion or integrate new resources.⁴⁸

⁴⁶ Current Compliance Filing, Southern Operating Companies, FERC Electric Tariff Fourth Revised Volume No. 5, First Revised Sheet No. 154A.45.

⁴⁷ *Id.* First Revised Sheet No. 154A.46.

⁴⁸ September 18 Order, 124 FERC ¶ 61,265 at P 91.

45. In the September 18 Order, the Commission also directed Southern to revise its Exhibit K-2 to address issues related to the inter-regional studies among SIRPP stakeholders. The Commission directed Southern to provide for participation by any interested party in the SIRPP stakeholder group, the distribution of discussion information in advance of stakeholder meetings to ensure meaningful discussion, and the ability of the SIRPP to cluster requests for economic studies.⁴⁹ The Commission also directed Southern to revise the SIRPP in Exhibit K-2 to allow stakeholders to obtain non-CEII confidential information in a less restrictive process.⁵⁰

46. The Commission also directed Southern to demonstrate how the dispute resolution provisions in its Attachment K can be used to address and resolve disputes related to SIRPP activities, or in the alternative to propose different provisions.⁵¹ The Commission also reiterated its earlier finding that SIRPP should coordinate with FRCC in the performance of economic studies.⁵²

1. Southern's Compliance

47. Southern proposes revisions to section 7.2 of Attachment K to state that economic planning studies will be confined to sensitivity requests for bulk power transfers and/or upgrades or other investments that could reduce congestion or integrate new resources. Southern also proposes to revise the definition of SIRPP membership to include any interested party.⁵³ Southern proposes to further clarify that information to be discussed at the inter-regional stakeholder meetings will be made available in final draft form for stakeholder review, using reasonable efforts to make the information available at least 10 calendar days prior to each meeting.⁵⁴ In response to the Commission's clustering directive, Southern proposes to revise Exhibit K-2 to state that the SIRPP stakeholder group should consider clustering similar economic study requests in consultation with the

⁴⁹ *Id.* P 94.

⁵⁰ *Id.* P 95.

⁵¹ *Id.* P 97.

⁵² *Id.* P 98.

⁵³ Current Compliance Filing, Southern Operating Companies, FERC Electric Tariff, Fourth Revised Volume No. 5, First Revised Sheet No. 154A.49. Southern also states that it makes this compliance revision under protest pending the request for rehearing on this issue. Current Compliance Filing at 10. As discussed above, we deny Southern's rehearing request.

⁵⁴ Current Compliance Filing, Southern Operating Companies, FERC Electric Tariff, Fourth Revised Volume No. 5, First Revised Sheet No. 154A.46.

participating transmission owners.⁵⁵ Southern also proposes to add provisions in Exhibit K-2 for confidential information that is non-CEII that mirror the revisions to section 2.5 of Attachment K discussed above. Finally, Southern proposes to add provisions to Exhibit K-2 that govern dispute resolution under SIRPP. The proposed revisions provide that disputes with a transmission owner arising from SIRPP will be addressed under the respective regional dispute resolution procedures, encourages the use of the Commission's dispute resolution process for disputes among stakeholders that do not involve a participating transmission owner, and addresses the consolidation of disputes.⁵⁶

2. Commission Determination

48. By removing the limitations on the types of studies contained in section 7.2 and stating that economic studies could include bulk power transfers as well as system upgrades or other investments that reduce congestion or integrate new resources, we find that Southern satisfactorily addresses the Commission's directives in the September 18 Order. Therefore, we will accept these changes.

49. Further, Southern proposes to revise the requirements for membership in SIRPP by stating that membership is open to any interested party.⁵⁷ As discussed earlier under coordination, we will accept this revision as satisfying the requirements of Order No. 890.

50. We also find Southern's other proposed revisions to its Exhibit K-2 regarding the SIRPP inter-regional economic studies process as in compliance with the September 18 Order. For example, the revised Exhibit K-2 requires that Participating Transmission Owners use reasonable efforts to make information available at least 10 days prior to a meeting.

51. Southern also revised its Exhibit K-2 to provide a role for the SIRPP Stakeholder Group in clustering similar economic planning study requests. For example, Southern's Exhibit K-2 provides 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.

⁵⁵ *Id.* First Revised Sheet No. 154A.48.

⁵⁶ *Id.* Original Sheet No. 154A.50a.

⁵⁷ *Id.* First Revised Sheet No. 154A.49.

52. Additionally, the revised Exhibit K-2 clarifies how disputes involving a Southern stakeholder and other SIRPP stakeholders would be addressed and resolved if Southern was not a party to the dispute.

53. However, we note that Southern's compliance filing did not include language addressing the Commission's concerns regarding SIRPP coordinating with the FRCC in the performance of economic studies. Therefore, we direct Southern to demonstrate how SIRPP will coordinate with the FRCC in the performance of economic studies as part of the compliance filing due within 60 days of the date of this order.

54. In addition, 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 (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.

55. 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.⁵⁸

56. 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

⁵⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 404.

agreements and password-protected access to information, in order to manage confidentiality and CEII concerns.⁵⁹

57. 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. 643,⁶⁰ the Commission amended its CEII regulations and noted that nothing in the revisions it was making or 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.⁶¹

58. In addition, the Commission has 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.⁶² Finally, if a dispute does arise with respect to providing confidential and CEII information, that dispute may be brought to the Commission for resolution.

59. For these reasons, we find that the Form 715 Requirement as proposed by Southern 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 Southern, 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.⁶³

⁵⁹ *Id.* P 460.

⁶⁰ *Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)*, Order No. 643, FERC Stats. & Regs. ¶ 31,149 (2003).

⁶¹ Order No. 643, FERC Stats. & Regs. ¶ 31,149 at P 16.

⁶² *See Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267, at P 23 (2008).

⁶³ Exhibit K-1 (CEII Confidentiality Agreement) section 4 (Conditions of Access) and Exhibit K-2 (SIRPP) of Southern's Attachment K.

60. Further, we find that the SIRPP provision that forbids Participating Transmission Owners to disclose certain resource-specific data unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP.⁶⁴ 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 also not clear why all such data must be exempt from disclosure, even under appropriate confidentiality protections already provided in the tariff. Moreover, this provision conflicts with the transparency principle requirement that stakeholders have sufficient information to replicate all transmission planning studies,⁶⁵ and it can be unduly discriminatory. Therefore, we will direct Southern to revise the provision, within 60 days of the date of this order, to require that resource-specific data provided in the planning process must be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and to replicate transmission planning studies.⁶⁶

61. As noted above in the section on the Openness principle, section 2.5.4 of Southern's Attachment K includes a similar provision that forbids it from disclosing to stakeholders certain resource-specific data. For the same reasons discussed above regarding the similar SIRPP provision, we find that section 2.5.4 unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by the planning process. Accordingly, we will direct Southern to revise section

⁶⁴ Exhibit K-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.

⁶⁵ 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.

⁶⁶ 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).

2.5.4, within 60 days of the date of this order, to require that resource-specific data provided in the planning process must be disclosed to stakeholders, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and to replicate transmission planning studies.

62. Lastly, as discussed above in the openness section, we have also required that the SIRPP information disclosure provisions ensure 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.

H. Cost Allocation

63. In the September 18 Order, the Commission found that Southern's Attachment K was not clear regarding the cost allocation for economic upgrades if the cumulative responsibility exceeded 100 percent; therefore, the Commission directed Southern to clarify these provisions.⁶⁷ In addition, noting that Order No. 890 directed each region to define the details of its cost allocation method, the Commission directed Southern to address the allocation of costs for upgrades identified through the SIRPP economic planning process.⁶⁸

1. Southern's Compliance

64. Southern proposes revisions to section 8.2.3 of Attachment K to clarify that, should the requested cost responsibility amounts exceed 100 percent, the requestors' cost responsibility will be adjusted on a *pro rata* basis. Southern provides an example as to how this provision would be applied should the requested amounts exceed 100 percent. Using three requestors who each request 50 percent of an economic upgrade, each would be assigned one third cost responsibility.⁶⁹

65. Southern also proposes revisions to Exhibit K-2 that provide additional details regarding inter-regional cost allocation. Specifically, the proposed language clarifies the original proposal and states that cost allocation for economic upgrades would be based upon the tariff provisions of each transmission owner where each portion of the upgrade

⁶⁷ September 18 Order at P 113.

⁶⁸ *Id.* P 114.

⁶⁹ Current Compliance Filing at 13.

construction would be located. The cost allocation method of each SIRPP transmission owner will be posted on the SIRPP website.⁷⁰

2. Commission Determination

66. We find that Southern's proposed revisions to section 8.2.3 clarify the issue of cost responsibility in a manner that satisfies the directive of the September 18 Order; and therefore, we will accept it. In addition, we will accept the revisions to the inter-regional cost allocation provisions of Exhibit K-2 because they add the required clarity and definition we directed in the September 18 Order.

The Commission orders:

(A) The request for rehearing of the September 18 Order is hereby denied.

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

(C) Southern's compliance filing is hereby accepted, as modified in accordance with Ordering Paragraph (B), to be effective December 7, 2007, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷⁰ *Id.*, Southern Operating Companies, FERC Electric Tariff Fourth Revised Volume No. 5, First Revised Sheet No. 154A.47.