

128 FERC ¶ 61,264  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Big Rivers Electric Corporation

Docket No. NJ09-3-000

ORDER CONDITIONALLY GRANTING  
PETITION FOR DECLARATORY ORDER  
AND GRANTING WAIVERS

(Issued September 17, 2009)

1. On April 22, 2009, pursuant to section 35.28(e) of the Commission's regulations,<sup>1</sup> Big Rivers Electric Corporation (Big Rivers), a non-public utility, submitted a petition for a declaratory order requesting: (1) a finding that its updated "safe harbor" open access transmission tariff (OATT or tariff) satisfies the Commission's comparability standards and is an acceptable reciprocity tariff; (2) a determination that the accompanying Attachment K for the transmission planning process satisfies the requirements of Order No. 890;<sup>2</sup> and (3) a finding that its revised Standards of Conduct are consistent with the requirements of Order No. 717<sup>3</sup> (April 22 Filing). Additionally, Big Rivers requests waiver of the Commission's filing fee applicable to a petition for declaratory order, and an effective date for the tariff that is the later of the issuance date of the Commission's order in this proceeding or the closing date of Big Rivers' lease termination negotiations with E.ON U.S., LLC (E.ON).

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<sup>1</sup> 18 C.F.R. § 35.28(e) (2009).

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

<sup>3</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, 73 Fed. Reg. 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008).

2. We will grant Big Rivers' petition concerning its revised tariff, subject to the modifications required below. In addition, we will waive the filing fee and grant the requested effective date for the tariff, as discussed below.

### **I. Background**

3. Big Rivers is an electric generation and transmission cooperative located in western Kentucky and is owned by three member distribution cooperatives (Members). Financed by the Rural Utilities Service (RUS) of the U.S. Department of Agriculture, Big Rivers is not subject to the Commission's jurisdiction except with respect to sections 211 and 212 of the Federal Power Act (FPA).<sup>4</sup> Big Rivers purchases, transmits, and sells electric energy at wholesale to its Members under rates set by the Kentucky Public Service Commission (Kentucky Commission). Big Rivers owns seven coal-fired generating units with a total net capacity of 1,379 MW and one oil/gas-fired combustion turbine unit with a net capacity of 65 MW. As discussed below, these generating plants were leased to E.ON subsidiaries Western Kentucky Energy Corporation (Kentucky Energy) and LG&E Energy Marketing, Inc. (LG&E Marketing) and were the subject of the negotiations regarding the early termination of the lease.

4. 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.<sup>5</sup> Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability (ATC), open and coordinated planning of transmission systems and the standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

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<sup>4</sup> 16 U.S.C. §§ 824i-824j (2006).

<sup>5</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 26-61.

5. In Order No. 888,<sup>6</sup> the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.<sup>7</sup> Under this procedure, non-public utilities may voluntarily submit to the Commission a reciprocity tariff and a petition for declaratory order requesting a finding that the reciprocity tariff meets the Commission's comparability (non-discrimination) standards. If the Commission finds that such a reciprocity tariff contains terms and conditions that substantially conform or are superior to those in the *pro forma* tariff contained in Order No. 888, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open access transmission service upon request to that particular non-public utility.<sup>8</sup> In 1998, Big Rivers sought and obtained a determination by the Commission that its tariff satisfied the Commission's comparability standards and was an acceptable reciprocity tariff.<sup>9</sup>

## II. Big Rivers' Updated Reciprocity Tariff Filing

6. Big Rivers' updated reciprocity tariff proposes changes that reflect certain fundamental changes in its operations. Big Rivers is restructuring in connection with terminating the lease of its generation facilities to Kentucky Energy and LG&E Marketing. The restructuring requires removal of references to LG&E Marketing as the supplier of certain ancillary services and implementation of rates for such services based on Big Rivers' restored operation of its generating units. Big Rivers states that the Kentucky Commission conditionally approved the lease termination transaction on

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<sup>6</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>7</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760; Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,281-87.

<sup>8</sup> In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with Open Access Same-time Information System (OASIS) and standards of conduct requirements or obtain waiver of them. Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

<sup>9</sup> Big Rivers Elec. Corp., Docket No. NJ98-5-000 (September 18, 1998) (unpublished letter order).

March 6, 2009.<sup>10</sup> On July 24, 2009, Big Rivers filed a letter with the Kentucky Commission indicating that the lease termination transaction closed on July 16, 2009.<sup>11</sup>

7. Big Rivers has revised its tariff to: (1) incorporate language reflecting that it is not a public utility; (2) incorporate provisions relating to: (i) assessment of unreserved use penalties such that the total charge for service plus the penalty for unreserved service cannot exceed 200 percent of the maximum hourly applicable rate for firm point-to-point transmission service (sections 13.7(c), 14.5, 28.6, and 30.4); (ii) distribution of late study penalty revenues; and (iii) distribution of unreserved use and imbalance penalties; (3) revise the term “Native Load Customers” to specifically include Big Rivers’ three Members; (4) omit section 5 of the *pro forma* OATT dealing with local furnishing bonds because the section is inapplicable to Big Rivers; (5) modify Attachment C (Methodology to Assess Available Transmission Capability), Attachment J (Procedures for Addressing Parallel Flows), and Attachment L (Creditworthiness Procedures); and (6) include Attachment K (Transmission Planning Process) as required by the planning-related requirements of Order No. 890.

### **III. Notice of Filing**

8. Notice of Big Rivers’ April 22, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 20,479 (2009), with interventions and protests due on or before May 15, 2009. None were filed.

### **IV. Discussion**

9. We find that, with certain modifications, as discussed below, Big Rivers’ updated reciprocity tariff substantially conforms or is superior to the requirements of the *pro forma* OATT. Big Rivers’ updated reciprocity tariff will not be a safe harbor tariff until Big Rivers incorporates the modifications discussed below.

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<sup>10</sup> See *In re* The Applications of Big River Electric Corporation for: (1) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (2) Approval of Transactions, (3) Approval to Issue Evidences of Indebtedness, and (4) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc. for Approval of Transactions, Case No. 2007-00455 (Ky. Pub. Serv. Commission, March 6, 2009) (Kentucky Order). The Kentucky Commission also conditionally approved the rate and tariff changes filed in support of the lease termination transaction. Kentucky Order at 44.

<sup>11</sup> Big Rivers Letter and Report to Kentucky Commission, In the Matter of the Applications of Big River Electric Corporation, E.ON U.S., LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc., Case No. 2007-00455 (Ky. Pub. Serv. Commission, July 24, 2009).

**A. Updated Reciprocity Tariff****1. Unreserved Use Penalties**

10. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its tariff.<sup>12</sup> In addition, the Commission established a rebuttable presumption that unreserved use penalties no greater than twice the firm point-to-point transmission service rate for the penalty period are just and reasonable, provided that the penalty rates are consistent with certain principles articulated in Order No. 890.<sup>13</sup> The Commission explained that the transmission customer should face a penalty in excess of the firm point-to-point transmission service charge it avoids through an unreserved use of transmission service, otherwise the transmission customer will have no incentive to reserve the appropriate amount of service.<sup>14</sup> As earlier clarified in *Midwest Indep. Transmission Sys. Operator, Inc.*, the Commission's 200 percent penalty charge for unreserved use is subject to a cap of 200 percent of the standard rate.<sup>15</sup> That is, the "penalty" charge for unauthorized use is actually the standard rate that would apply plus a penalty of 100 percent of the standard rate.

**a. Big Rivers' Proposal**

11. Big Rivers revises tariff sections 13.7(c) (Classification of Firm Point-To-Point Transmission Service) and 14.5 (Classification of Non-Firm Point-To-Point Transmission Service) to change the penalties for unreserved use of firm and non-firm point-to-point transmission service. Big Rivers also revises tariff sections 28.6 (Restrictions On Use of Service) and 30.4 (Operation of Network Resources) to include the same penalty language as proposed in sections 13.7(c) and 14.5.

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<sup>12</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848. The Commission stated that this retains its policy that the unreserved penalty rate may not be greater than twice the firm point-to-point rate for the period of unreserved use, citing *Allegheny Power System, Inc.*, 80 FERC ¶ 61,143 at 61,545-46 (1997), *order on reh'g*, 85 FERC ¶ 61,235 (1998).

<sup>13</sup> *Id.* P 846, 848.

<sup>14</sup> *Id.* P 848.

<sup>15</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,282, at P 22-24, *reh'g denied*, 105 FERC ¶ 61,111 (2003) (*Midwest ISO*).

12. The penalty provisions in these sections apply to a transmission customer, including Big Rivers, which exceeds its firm reserved capacity or uses transmission service that it has not reserved. The provisions require the transmission customer to pay, in addition to the otherwise applicable charge for the transmission service, a penalty (or charge) on the excess amount of transmission service taken. Big Rivers proposes to derive the penalties as follows:

(1) For single or multiple instances of unreserved use within a single day, the penalty shall be 200 percent of the maximum applicable daily rate (on-peak or off-peak, depending upon the day in which the unreserved use occurred) for firm point-to-point transmission service, based on the hour during the day in which the unreserved use was the highest. (2) For instances of unreserved use on two or more separate days within a single week, the penalty shall be 200 percent of the maximum weekly rate for firm point-to-point transmission service, based on the hour during the week in which the unreserved use was highest. (3) For instances of unreserved use on two or more separate days within two or more separate weeks within a calendar month, the penalty shall be 200 percent of the maximum monthly rate for firm point-to-point transmission service, based on the hour during the month in which the unreserved use was highest. The 200% amount charged for unreserved service shall comprise the charge for the service taken and is not additive.<sup>16</sup>

**b. Commission Determination**

13. We note that Big Rivers states in its transmittal letter, “Big Rivers has specified that the total charge for service plus the penalty for unreserved service cannot exceed 200% of the applicable charge for service had it been reserved properly.”<sup>17</sup> We read Big Rivers’ use of “penalty,” in the quoted tariff section, to mean “penalty rate” such that the total charge to the transmission customer during the period of unreserved service or excess capacity use is 200 percent of the applicable firm point-to-point transmission service rate. As such, we find that Big Rivers’ penalty provisions substantially conform to the Commission’s requirements and are an acceptable part of a reciprocity tariff.

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<sup>16</sup> Big Rivers Electric Corporation, First Revised and Restated Open Access Transmission Tariff, Exh. B in April 22 Filing (Exhibit B), at Original Sheet No. 89. *See also* Original Sheet Nos. 44-45, 49, and 101-102.

<sup>17</sup> Big Rivers, April 22 Filing, Transmittal Letter at 5.

## 2. Distribution of Operational Penalties

14. In Order No. 890, the Commission required transmission providers to make a compliance filing proposing a mechanism to identify non-offending transmission customers and a method for distributing the unreserved use penalties to such non-offending transmission customers, whether or not affiliated with the transmission provider. It also required all late study penalties to be distributed to non-affiliates.<sup>18</sup>

15. The Commission clarified in Order No. 890-A that the imbalance penalty revenues received in a given hour should be distributed to those non-offending customers in that hour.<sup>19</sup> The Commission further clarified that non-offending customers would include “those customers to whom the penalty component did not apply in the hour,” and that “customers that were out of balance, but within the first tier, should therefore be included in the distribution.”<sup>20</sup>

### a. Big Rivers’ Proposal

16. Big Rivers has revised section 15.8 (Distribution of Unreserved Use Penalties), schedule 4 (Energy Imbalance Service) and schedule 9 (Generator Imbalance Service) of its updated reciprocity tariff to include a mechanism for distributing the revenue received from unreserved use and imbalance penalties to non-offending transmission customers. Big Rivers states that unreserved use penalty revenues shall be calculated and distributed to those transmission customers (including the transmission provider for third-party sales and native load customers) on a monthly basis for each hour in which an unreserved use penalty is assessed, based upon the ratio of the transmission service revenues from each transmission customer that did not incur unreserved use penalties to the aggregate transmission service revenues from all such transmission customers that did not incur unreserved use penalties in that hour. Furthermore, Big Rivers states that it will retain 50 percent of any unreserved use penalties to reflect the base firm point-to-point transmission service charge for the unreserved use. Big Rivers explains that distribution will be accomplished via a credit to the transmission customers bill(s).<sup>21</sup> Big Rivers also will apply this same mechanism to the distribution of imbalance penalties under schedules 4 and 9 of its proposed tariff.<sup>22</sup>

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<sup>18</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 861.

<sup>19</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 333.

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

<sup>21</sup> Exhibit B at Original Sheet Nos. 56-58.

<sup>22</sup> Exhibit B at Original Sheet Nos. 126-128 and 138-139, respectively.

17. In the event that Big Rivers incurs unreserved use penalties, Big Rivers is disqualified from receiving distribution of unreserved use penalties for the hour in question. Nonetheless, it retains the portion of any unreserved use penalties that reflects the base firm point-to-point transmission service charge for the unreserved use.<sup>23</sup> In the event that Big Rivers incurs imbalance penalties, Big Rivers is disqualified from receiving distribution of imbalance penalties for the hour in question. Nonetheless, Big Rivers will retain its incremental cost of providing imbalance energy.<sup>24</sup>

18. Concerning late study penalties, proposed section 19.9 (Penalties for Failure to Meet Study Deadlines) of the tariff provides, at sub-sections iii and iv,<sup>25</sup> that any operational penalties assessed against Big Rivers each month shall be distributed by Big Rivers in the following month, proportionally among the eligible customers whose System Impact Studies or Facilities Studies were delayed in that month, in accordance with the days of delay experienced by each customer.<sup>26</sup>

**b. Commission Determination**

19. We find that Big Rivers' proposed distribution mechanism for unreserved use penalty revenue substantially conforms to the Commission's requirements and thus is an acceptable part of a reciprocity tariff. We also find that Big Rivers' late study penalty distribution methodology is reasonable because those customers harmed by the failure of Big Rivers to complete a study on time will receive a proportionate share of the penalty revenues.

20. We are concerned, however, that although it appears Big Rivers intends to use the same distribution mechanism for imbalance penalty revenues collected under both schedule 4 and schedule 9, there are minor differences in the language that Big Rivers proposes in those sections. For example, schedule 4 states, correctly, that energy imbalance penalty revenues "shall be calculated on an hourly basis and distributed on a monthly basis," but schedule 9 states that generator imbalance penalty revenues "shall be calculated and distributed on a monthly basis." Yet, both schedules use identical language to describe how these penalty revenues will be calculated on an hourly basis

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<sup>23</sup> *Id.* at Original Sheet No. 57.

<sup>24</sup> *Id.* at Original Sheet Nos. 149 and 161.

<sup>25</sup> Section 19.9(iii) and section 19.9(iv) provide that, under specified circumstances, Big Rivers is subject to an operational penalty of \$500 a day when it is late in completing system impact studies and facilities studies for non-affiliates. Exhibit B at Original Sheet Nos. 76-77.

<sup>26</sup> Exhibit B at Original Sheet No. 77.

and distributed to customers that did not incur imbalance penalties in the particular hour (as required in Order No. 890 and Order No. 890-A). Therefore, to avoid confusion, and to maintain its safe harbor status, within 90 days of the date of this order, Big Rivers must replace the language “shall be calculated and distributed on a monthly basis” in schedule 9 of its updated reciprocity tariff with the language “shall be calculated on an hourly basis and distributed on a monthly basis” from schedule 4 to consistently describe its penalty revenue distribution mechanism.

21. In addition, under Order No. 890, Big Rivers is required to make annual filings providing a summary of penalty revenue credits provided to transmission customers, total penalty revenues collected from affiliates, total penalty revenues collected from non-affiliates, a description of the costs incurred as a result of the offending behavior, and a summary of the portion of the unreserved use penalty revenue retained by the transmission provider.<sup>27</sup> The Commission explained in Order No. 890-A that the annual compliance report must be submitted on or before the deadline for submitting FERC Form-1, as established by the Commission’s Office of Enforcement each year.<sup>28</sup>

### **3. Cluster Study Provisions**

22. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers’ obligations when they have joined a cluster.<sup>29</sup> In addition, the Commission gave each transmission provider discretion to develop its clustering procedures because the transmission provider is in the best position to determine the clustering procedures that it can accommodate and that will prevent a customer from strategically participating in clusters to avoid costs for needed transmission system upgrades.<sup>30</sup>

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<sup>27</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 864.

<sup>28</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

<sup>29</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

<sup>30</sup> *Id.*; see, e.g., *East Kentucky*, 125 FERC ¶ 61,077 at P 50 (2008); *U.S. Dept. of Energy – Bonneville Power Admin.*, 128 FRC ¶ 61,057 at P 61 (2009); *Cleco Power LLC*, 123 FERC ¶ 61,212 at P 45-49 (2008).

23. Big Rivers did not include provisions relating to clustering in its tariff filing and has not provided any details regarding how clustered studies will be addressed, if requested. If Big Rivers wishes to maintain its safe harbor status, it must revise its tariff filing, within 90 days of the date of this order, to include information on how it will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.

#### **4. Creditworthiness Procedures**

24. In Order No. 890, the Commission required transmission providers to amend their tariffs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. The creditworthiness provisions must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.<sup>31</sup> Big Rivers proposes its creditworthiness procedures in Attachment L of its proposed tariff.<sup>32</sup>

25. We find that Big Rivers' proposed creditworthiness procedures in Attachment L insufficiently address all the elements required by Order No. 890. In order to maintain its safe harbor status, Big Rivers must submit, within 90 days of the date of this order, a filing that: (1) includes more information on how Big Rivers evaluates a customer that does not have an investment grade rating; (2) explains how it calculates the collateral requirement for customers that it deems are not creditworthy; (3) provides a list of acceptable types of collateral or security; (4) includes a procedure for providing customers with reasonable notice of changes in credit levels and collateral requirements; (5) includes a procedure for providing customers a written explanation for any change in credit levels or collateral requirements; (6) provides a reasonable opportunity to contest determinations of credit levels or collateral requirements; and (7) provides a reasonable opportunity for customers to post additional collateral.<sup>33</sup>

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<sup>31</sup> *Id.* P 1656-61.

<sup>32</sup> Exhibit B at Original Sheet Nos. 177-178.

<sup>33</sup> *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1657.

## 5. Methodology to Assess Available Transfer Capability

### a. ATC Methodology

26. In Order No. 890, as clarified by Order No. 890-A, the Commission required transmission providers to amend their tariffs to include an Attachment C to set forth the methodology that would be used to calculate ATC. The Commission required a transmission provider to clearly identify which methodology it employs (e.g., contract path, network available transfer capability, or network available flowgate capacity). The transmission provider also must describe in detail the specific mathematical algorithms used to calculate firm and non-firm available transfer capability (and available flowgate capacity, if applicable) for its scheduling, operating, and planning horizons<sup>34</sup> and provide a detailed explanation of the available transfer capability components.<sup>35</sup> The Commission further required that the actual mathematical algorithms must be posted on the transmission provider's website, with the link noted in the transmission provider's Attachment C.<sup>36</sup>

27. Big Rivers proposes in Attachment C to assess the capability of its transmission system to provide the requested service using the criteria and process detailed in the document, *AFC/ATC Calculation Procedures*, available on its OASIS.<sup>37</sup>

28. Specifically, Big Rivers will assess the capability of its transmission system to provide the service requested using the criteria and the process detailed in the Tennessee Valley Authority's (TVA) procedures entitled, "TVA Available Flowgate Capability Methodology."<sup>38</sup> TVA, as Big Rivers' reliability coordinator, calculates and coordinates available flowgate capability and ATC values for itself and Big Rivers. Big Rivers retrieves the TTC and ATC values from a TVA website and posts these values to the Big Rivers OASIS.

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<sup>34</sup> *Id.* at *pro forma* OATT, Attachment C and P 323.

<sup>35</sup> The ATC components are total transfer capability (TTC), existing transmission commitments, capacity benefit margin, and transmission reserve margin.

<sup>36</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 325, 328.

<sup>37</sup> ATC/AFC Calculation Procedures, PL-MOD-1, Effective Date: 7/7/09 (ATC/AFC Calculation Procedures), available at [http://www.oatioasis.com/BREC/BRECdocs/PL-MOD-1\\_ATC-AFC\\_3\\_.pdf](http://www.oatioasis.com/BREC/BRECdocs/PL-MOD-1_ATC-AFC_3_.pdf) (last accessed July 15, 2009).

<sup>38</sup> This TVA document is included in Big Rivers' ATC/AFC Calculation Procedures, note 37, *supra*.

29. We find that Big Rivers' proposed Attachment C and its proposed methodology to assess ATC comply with the requirements of Order No. 890.

**b. Process Flow Diagram**

30. In Order No. 890, the Commission required a transmission provider to include in Attachment C a process flow diagram that illustrates the various steps through which ATC/AFC is calculated.<sup>39</sup>

31. Big Rivers' revised Attachment C does not contain a process flow diagram. If Big Rivers wishes to maintain its safe harbor status, it must revise its tariff filing, within 90 days of the date of this order, to include a process flow diagram in its Attachment C.

**6. Procedures for Addressing Parallel Flows**

32. The *pro forma* OATT adopted in Order No. 890 includes a blank Attachment J, entitled "Procedures for Addressing Parallel Flows," that is to be "filed by the Transmission Provider." In *North American Electric Reliability Council*,<sup>40</sup> the Commission amended the *pro forma* OATT to incorporate the North American Reliability Corporation's (NERC)<sup>41</sup> Transmission Loading Relief (TLR) procedures. The Commission also required that every transmission operating public utility adopting NERC TLR procedures file with the Commission a notice that its tariff shall be considered so modified to reflect the use of such procedures. That order addressed the NERC TLR procedures for public utilities in the Eastern Interconnection. Later, in Order No. 693,<sup>42</sup> the Commission approved, as mandatory and enforceable, the IRO-006-3 Reliability Coordination -- Transmission Loading Relief Reliability Standard, which includes the NERC TLR procedures and, by reference, the equivalent Interconnection-wide congestion management methods used in the Joint Reliability Coordinating Agreement (JRCA) among the Midwest Independent Transmission System Operator

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<sup>39</sup>Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 323 and *pro forma* OATT, Att. C.

<sup>40</sup> *North American Elec. Reliability Council*, 85 FERC ¶ 61,353, at 62,362, Ordering Paragraph (B) (1998).

<sup>41</sup> Until March 28, 2006, the organization was known as the North American Electric Reliability Council.

<sup>42</sup> *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

(Midwest ISO) and the PJM Interconnection, L.L.C. (PJM).<sup>43</sup> As a result, all transmission providers must complete Attachment J by incorporating the NERC TLR procedures and must provide a link to the applicable procedures.

33. We find that although Big Rivers' proposed Attachment J references the JRCA and NERC Standard IRO-006-3 as the governing procedures for addressing parallel flows, Big Rivers fails to incorporate such procedures into its tariff or to provide the necessary Uniform Resource Locator (URL) link to those procedures. In order to maintain its safe harbor status, Big Rivers' must modify its Attachment J, within 90 days of the date of this order, to include the following language:

The North American Electric Reliability Corporation's (NERC)'s TLR Procedures originally filed March 18, 1998, which are now the mandatory Reliability Standards that address TLR, and any amendments thereto, on file and accepted by the Commission, are hereby incorporated and made part of this tariff. See [www.nerc.com](http://www.nerc.com) for the current version of the NERC's TLR Procedures.

## 7. LGIA and LGIP Provisions

34. In Order No. 2003,<sup>44</sup> the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append the *pro forma* Large Generator Interconnection Agreement (LGIA) and Large Generation Interconnection Procedures (LGIP) to their tariffs. Order No. 2003 states that a non-public utility that has a safe harbor tariff may add to its tariff an interconnection

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<sup>43</sup> Joint Reliability Coordination Agreement Among and Between Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and Tennessee Valley Authority, dated April 22, 2005 (JRCA). Available at: <http://www.pjm.com/documents/agreements/~media/documents/agreements/20090626-miso-pjm-tva-baseline-cmp.ashx>. Under this agreement, Midwest ISO, PJM, and TVA coordinate planning and congestion management over their systems to ensure reliability and market liquidity in the Eastern Interconnection. See "Regional Participation," section V.A.7.b, *infra*.

<sup>44</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 826 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); see also Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

agreement and interconnection procedures that substantially conform or are superior to the *pro forma* LGIA and LGIP if it wishes to continue to qualify for safe harbor status.

35. Big Rivers' updated reciprocity tariff does not include an LGIA or an LGIP, and Big Rivers did not explain why they were not included. We find that to have an acceptable reciprocity tariff, Big Rivers must include a *pro forma* LGIA and related LGIP as part of its tariff. Accordingly, to maintain its safe harbor status, Big Rivers must file, within 90 days of the date of this order, a proposed *pro forma* LGIA and LGIP that comply with Order No. 2003.

### **B. Miscellaneous OATT Provisions**

36. Big Rivers continues, in the proposed reciprocity tariff, various deviations from the *pro forma* OATT that were accepted in its earlier tariff. In sections 3, 9, 11, 12.4, 12.5, 15.6, 26, 29.5, and 34.5, Big Rivers incorporates language reflecting that it is not a public utility required to file rates, terms and conditions of service with the Commission. In section 7 (Billing and Payment), Big Rivers incorporates its standard billing procedures and practices. Big Rivers replaces the standard Commission interest rate on payments with the applicable U.S. Treasury Bill interest rate. Big Rivers also omits section 5 of the *pro forma* OATT, which deals with local furnishing bonds, stating that these bonds are inapplicable to Big Rivers.<sup>45</sup>

37. We find that these previously accepted deviations from the *pro forma* OATT are acceptable as part of Big Rivers' proposed tariff. Among other things, these deviations reflect the fact that Big Rivers is not a public utility subject to the filing and other requirements of sections 205 and 206 of the FPA, and has different operational and accounting procedures.

### **C. Rates**

38. Big Rivers updates its revenue requirement for network integration transmission service in Attachment H of its proposed tariff. Big Rivers states that it has updated its rates in a fair, just, and reasonable fashion, and that the rates treat third-parties comparably. Further, these rates have been submitted to and approved by the Kentucky Commission. Big Rivers states that it will not change these rates absent oversight and review by the Kentucky Commission. Big Rivers states that it generally followed methods used by cooperatives within the Midwest ISO region, under Attachment O (Rate Formulae) of the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Midwest ISO Tariff), and that inputs to these calculations were taken from Big Rivers' RUS Form 12 and underlying Big Rivers accounting data. Big Rivers states that ancillary service rates were derived by calculating the annual carrying

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<sup>45</sup> Big Rivers, April 22 Filing, Transmittal Letter at 5.

costs rate for the Big Rivers' generating units and applying that rate to the share of these units needed to provide each service. The proposed tariff now includes rates based on Big Rivers' costs instead of Kentucky Energy's rates.<sup>46</sup>

39. The Commission has previously explained that the review standard for reciprocity tariff rates is that the non-public utility must provide sufficient information to support a conclusion that its rates are comparable to the rates that it charges itself.<sup>47</sup> Big Rivers' proposed rates would apply to all of its customers, including its Members. We find that Big Rivers has provided sufficient information to conclude that Big Rivers' revised rates are comparable to the rates it charges itself. Accordingly, we find that the proposed rates meet the standard for a reciprocity tariff.

## V. Transmission Planning

40. 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 potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop transmission planning processes that satisfy nine principles (discussed below) and to clearly describe those processes in a new attachment (Attachment K) to their tariffs.

41. The Commission required that each transmission provider's transmission planning process satisfy the following nine principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation and to build on transmission planning efforts and processes already underway in many regions of the country. However, 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 all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules must be specific and clear to

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<sup>46</sup> *Id.* at 5-6.

<sup>47</sup> *See, e.g.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,761; Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89; *Long Island Power Authority*, 84 FERC ¶ 61,280, at 62,333 (1998); *Salt River Project Agricultural Improvement and Power District*, 83 FERC ¶ 61,280, at 62,162 (1998).

facilitate compliance by transmission providers and place customers on notice of their rights and obligations.<sup>48</sup>

42. We find that, with the revisions described below, Big Rivers' Attachment K will satisfy each of the nine planning principles and other planning requirements in Order No. 890.

43. Although we find that Big Rivers' Attachment K will satisfy each of the nine planning principles and other planning requirements in Order No. 890, subject to certain revisions, 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 is convening regional technical conferences this September to determine if further refinements to these processes are necessary.<sup>49</sup> 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 deployment of inter-regional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy sources.

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<sup>48</sup> As the Commission explained in Order No. 890, not all rules and practices related to transmission service, or planning activities in particular, need to be codified in the transmission provider's tariff. Rules, standards, and practices that relate to, but do not significantly affect, transmission service may be placed on the transmission providers' websites, provided there is a link to those business practices on their OASIS sites. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55. Therefore, transmission providers can use a combination of tariff language in the Attachment K, and a reference to planning manuals on the website, to satisfy their planning obligations under Order No. 890.

<sup>49</sup> Transmission Planning Processes Under Order No. 890, Docket No. AD09-8-000, *Notice of Technical Conferences*, 74 Fed. Reg. 32,912 (2009), *Supplemental Notice of Technical Conferences*, 74 Fed. Reg. 40,182 (2009).

**A. Compliance With Order No. 890's Planning Principles**

**1. Coordination**

**a. Order No. 890**

44. In order to satisfy the coordination principle, transmission providers must provide customers and other stakeholders the opportunity to participate fully in the planning process. The purpose of the coordination requirement, as stated in Order No. 890, is to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. The planning process must provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans, allowing customers and other stakeholders to participate in the early stages of development. In its planning process, each transmission provider must clearly identify the details of how its planning process will be coordinated with interested parties.<sup>50</sup>

**b. Big Rivers' Proposal**

45. Big Rivers' proposed Attachment K states that coordination with retail customers is achieved through periodic meetings with each Member distribution cooperative and the involvement of each cooperative in the expansion planning process. As an expansion of this effort, Attachment K states that Big Rivers and its neighboring public power companies, Associated Electric Cooperative, East Kentucky Public Cooperative, and TVA, have formed the Central Public Power Participants (CPP Participants) and the CPP Participants regional stakeholder group (Regional Stakeholder Group) for purposes of coordinating transmission planning. The Regional Stakeholder Group is open to all transmission customers, including full service distribution and industrial customers, neighboring utilities and Regional Transmission Organizations (RTOs), regulatory agencies, and generation owner/development companies. An annual cycle of Regional Stakeholder Group meetings is scheduled on a recurring basis to provide stakeholders with opportunities for participation and contributions, including alternative solutions.

46. The first meeting in the annual cycle is used to provide base data cases and to review planning criteria and assumptions to be used in studies. At the second meeting, the CPP Participants assess potential reliability problems and present preliminary solutions. Advanced solutions, including those provided by stakeholders, are reviewed at the third meeting. Opportunities for stakeholder input are open up to the point of

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<sup>50</sup>Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 451-54.

final project selection. Big Rivers includes a process flow chart<sup>51</sup> in its Attachment K, outlining the CPP Participants study process and interaction with the Regional Stakeholder Group.

47. Through postings on its OASIS, Big Rivers provides the minutes for Regional Stakeholder Group meetings and access to data, assumptions, notifications, and proposals regarding studies, meeting and study schedules, study results, stakeholder group processes, and minutes and similar records. Big Rivers states that it will establish additional web-based locations beyond postings on its OASIS site, as required.

**c. Commission Determination**

48. We find that Big Rivers' proposed Attachment K partially satisfies the coordination principle stated in Order No. 890.<sup>52</sup> Big Rivers provides transmission customers (as defined by Big Rivers) with the opportunity to participate in the development of planning studies performed by the CPP Participants, including the ability to review and comment on reliability assessments and the identification of potential solutions. In addition, Big Rivers will place CPP Participants planning-related data and analyses on its OASIS. However, Big Rivers fails to explain how stakeholders can participate in Big Rivers' planning activities beyond participating in the specific studies performed by the CPP Participants. If Big Rivers wishes to maintain its safe harbor status, it must revise its proposed transmission planning process, within 90 days of the date of this order, to address how its local planning meets the coordination principle.

**2. Openness**

**a. Order No. 890**

49. The openness principle requires that transmission planning meetings be open to all affected parties, including, but not limited to, all transmission and interconnection customers, state authorities, and other stakeholders. Although the Commission recognized in Order No. 890 that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties, such as a particular meeting of a sub-regional group, the Commission emphasized that the overall development of the

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<sup>51</sup> CPP Participants Regional Transmission Development Plan Participation Process Diagram, Figure 1 in Exhibit B at Original Sheet No. 170.

<sup>52</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 451-54.

transmission plan and the planning process must remain open.<sup>53</sup> Transmission providers, in consultation with affected parties, must also develop mechanisms to manage confidentiality and Critical Energy Infrastructure Information (CEII) concerns, such as confidentiality agreements and password protected access to information.

**b. Big Rivers' Proposal**

50. Big Rivers states that all members of the Regional Stakeholder Group have the opportunity to access the Big Rivers transmission planning process through posted documents and stakeholder meetings. As Big Rivers describes under Principle 1, Coordination, its information is shared through easily accessible systems, subject to standard security and confidentiality measures. Meeting schedules for Regional Stakeholder Group will be posted on Big Rivers' OASIS.

51. Big Rivers states that some business-related information may be considered confidential and will not be shared, as is the case with CEII data. Big Rivers notes that its CEII data is filed with the Commission as Form No. 715, and that this data can be obtained by filing a CEII request, using the Commission's established procedures (Form No. 715 Request). For other CEII information or other commercially-sensitive information requests, Big Rivers will consider providing this information under a nondisclosure agreement where there is legitimate need. Big Rivers will periodically review confidentiality provisions to ensure that stakeholders have access to sufficient data to enable them to perform their own reliability and economic planning studies or replicate existing studies.

**c. Commission Determination**

52. We find that Big Rivers' proposed Attachment K partially satisfies the openness principle stated in Order No. 890. As stated above, under Principle 1, "Coordination," Big Rivers fails to explain how stakeholders can participate in Big Rivers' planning activities beyond participating in the specific studies performed by the CPP Participants. As a result, it is unclear whether Big Rivers has ensured that all of its planning activities are open to all interested parties. With regard to studies performed by the CPP Participants, we are also concerned that the Regional Stakeholder Group will be open only to transmission customers, neighboring utilities and RTOs, regulatory agencies, and generation owners/developers. This may exclude certain interested parties, such as developers of merchant transmission or demand resources. Big Rivers must provide

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<sup>53</sup> The Commission stated in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

for meaningful input in the transmission planning process from all interested parties. If Big Rivers wishes to maintain its safe harbor status, it must revise its tariff, within 90 days of the date of this order, to make clear that its planning activities and those of CPP Participants are open to all interested parties.

53. Additionally, as discussed below, we find that requiring stakeholders to file a Form No. 715 Request with the Commission to receive the CEII-protected version of Big Rivers Form No. 715 data is unnecessarily burdensome and restrictive in the context of CEII or non-CEII confidential information needed for the transmission planning process.

54. In Order No. 890, the Commission acknowledged its responsibility to protect CEII data and recognized that those with a legitimate need for CEII information must be able to obtain it on a timely basis. The Commission specified the measures that transmission providers can use to protect CEII data, but did not require stakeholders to receive authorization from the Commission to access CEII data, as would be the case under Big Rivers' proposal. 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 log-in 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.<sup>54</sup>

55. 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, to manage confidentiality and CEII concerns.<sup>55</sup>

56. Nothing in the Commission's regulations or precedent would support Big Rivers' proposal to require a Form No. 715 Request to obtain its CEII data. To the contrary, in

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<sup>54</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 404.

<sup>55</sup> *Id.* P 460.

Order No. 643,<sup>56</sup> the Commission amended its CEII regulations and noted that nothing in the revisions nor 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 arrangements. Nothing in the CEII regulations would, for example, prevent a regional council from obtaining data from member companies or from sharing the data with both member and non-member companies.<sup>57</sup>

57. The Commission has also previously stated, when addressing a proposed tariff provision similar to Big Rivers' proposed Form No. 715 Request requirement, that the limitation 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, to manage confidentiality and CEII concerns.<sup>58</sup> Finally, if a dispute does arise with respect to providing confidential and CEII information, the dispute may be brought to the Commission for resolution.

58. For these reasons, we find that Big Rivers' proposed Form No. 715 Request requirement must be removed from the tariff. Therefore, if Big Rivers wishes to maintain its safe harbor status, it must submit a filing, within 90 days of the date of this order, to modify the relevant tariff provisions to remove the Form No. 715 Request requirement and to establish a standard disclosure procedure for CEII information.

59. In addition, Big Rivers must provide reasonable access to confidential information used in the planning process that is not CEII. Big Rivers' Attachment K states that Big Rivers will share planning information, subject to standard security and confidentiality measures, such as a nondisclosure agreement, where there is a legitimate need. However, Big Rivers does not explain how stakeholders can satisfy these standard security and confidentiality measures. If Big Rivers wishes its tariff to maintain its safe

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<sup>56</sup> *Amendments to Conform Regulations with Order No. 630* (Critical Energy Infrastructure Information Final Rule), Order No. 643, FERC Stats. & Regs. ¶ 31,149, (2003).

<sup>57</sup> *Id.* P 16.

<sup>58</sup> *See Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267, at P 23 (2008), *order accepting tariff amendments*, 126 FERC ¶ 61,226, *order accepting compliance filing as modified*, 127 FERC ¶ 61,281 (2009).

harbor status, it must submit a filing, within 90 days of the date of this order, to provide a standard mechanism to manage access to confidential information that is not deemed CEII.

### **3. Transparency**

#### **a. Order No. 890**

60. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans, including how they treat retail native loads, to ensure that standards are consistently applied. To that end, each transmission provider must describe in its planning process the method(s) it will use to disclose the criteria, assumptions and data that underlie its transmission system plans.<sup>59</sup> The Commission specifically found that simple reliance on Form Nos. 714 and 715 failed to provide sufficient information to provide transparency in planning because those forms were designed for different purposes. Transmission providers also were directed to provide information regarding the status of upgrades identified in the transmission plan.

61. The Commission explained that sufficient information should be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained in Order No. 890 that simultaneous disclosure of transmission planning information should alleviate Standards of Conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand resources in transmission planning. Where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis.<sup>60</sup>

#### **b. Big Rivers' Proposal**

62. Big Rivers' Attachment K states that data, study methodology, basic criteria, and assumptions that underlie transmission system plans will be made available each year to stakeholders through postings supported by discussions and presentations at scheduled

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<sup>59</sup> In Order No. 890-A, the Commission stated that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to adequately understand the results reached in a transmission plan. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 199.

<sup>60</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-79.

meetings. The base data cases will be those used by CPP Participants for their reliability studies. Big Rivers states that it uses the study methodology, basic criteria, and assumptions that ensure compliance with NERC Standards. Big Rivers' Attachment K also states that Big Rivers will periodically review confidentiality provisions to ensure that stakeholders will have access to sufficient data to enable them to perform their own reliability and economic planning studies or replicate existing studies.

**c. Commission Determination**

63. We find that Big Rivers' proposed Attachment K partially complies with the transparency principle stated in Order No. 890. Big Rivers states that stakeholders will have access to sufficient data they need to replicate planning studies through "postings supported by discussions and presentations at scheduled stakeholder meetings." However, it is not clear where Big Rivers will post the criteria, assumptions and data that underlie its transmission system plans or at what stakeholder meetings that information will be discussed. Specifically, Big Rivers must revise its Attachment K to more fully describe the methods it will use to disclose the criteria, data and assumptions that underlie its transmission system plans. The information must be of sufficient detail to allow a customer to replicate the results of planning studies. If Big Rivers wishes to maintain its safe harbor status, it must revise its proposed transmission planning process to address these concerns within 90 days of the date of this order.

**4. Information Exchange**

**a. Order No. 890**

64. The information exchange principle requires network customers to submit information on their projected loads and resources on a comparable basis (e.g., planning horizon and format) as used by transmission providers in planning for their native load. Point-to-point transmission service customers are required to submit any projections of their needs for service over the planning horizon and at what receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as a proxy for actual reservations.<sup>61</sup> Transmission providers, in consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

65. The Commission also provided that, to the extent applicable, transmission customers should provide information on existing and planned demand resources and their impacts on demand and peak demand. Stakeholders, in turn, should provide proposed demand resources if they wish to have them considered in the development of

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<sup>61</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 207.

the transmission plan. The Commission stressed that information collected by transmission providers to provide transmission service to their native load customers must be transparent, and equivalent information must be provided by transmission customers to ensure effective planning and comparability. In Order No. 890-A, the Commission made clear that customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer, and that the transmission provider must maintain the confidentiality of this information. To this end, transmission providers must clearly define in their Attachment K the information sharing obligations placed on customers in the context of economic planning.<sup>62</sup>

66. The Commission emphasized that transmission planning is not intended to be limited to the mere exchange of information and after the fact review of transmission provider plans. The planning process is instead intended to provide a meaningful opportunity for customers and stakeholders to engage in planning along with their transmission providers. To that end, the Commission clarified that information exchange relates to planning, not to other studies performed in response to interconnection or transmission service requests.<sup>63</sup>

**b. Big Rivers' Proposal**

67. Big Rivers' Attachment K requires network customers to provide information regarding projected loads and resources on a comparable basis to the information that Big Rivers provides on behalf of its native load customers for planning purposes. Point-to-point transmission service customers must provide information about their utilization of the transmission system, including capacity, duration, and delivery points, as outlined in Big Rivers' updated reciprocity tariff. Also required is information regarding planned generator additions or upgrades, including status and expected in-service date, planned retirements, and environmental restrictions. Big Rivers includes this information in its base case models so that its transmission expansion plan can address the needs of transmission customers. Additional information or changes to previously submitted information can be submitted throughout the planning process and will be incorporated into the planning process wherever possible.

**c. Commission Determination**

68. The Commission finds that Big Rivers' proposed Attachment K partially satisfies the information exchange principle stated in Order No. 890. In Order No. 890, the Commission found that information collected by transmission providers to provide

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<sup>62</sup> *Id.* P 206.

<sup>63</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 486-88.

transmission service to their native load customers must be transparent and, to that end, equivalent information must be provided by transmission customers to ensure effective planning and comparability. Big Rivers' Attachment K lacks guidelines and a schedule for the submittal of customer and other stakeholder information. If Big Rivers wishes to maintain its safe harbor status, it must revise, within 90 days of the date of this order, its proposed transmission planning process to state guidelines for submittal by customers and other stakeholders of planning-related information, including projections of need for service and information on existing and planned transmission, generation and demand resources, to the extent applicable. Alternatively, Big Rivers may, within 90 days of the date of this order, post these guidelines on Big Rivers' website, provided that they have been developed in consultation with stakeholders.

## 5. Comparability

### a. Order No. 890

69. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop transmission system plans that meet the specific service requests of their transmission customers and otherwise treat similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. In Order No. 890, the Commission expressed concern that transmission providers have historically planned their transmission systems to address their own interests without regard to, or ahead of, the interests of their customers. Through the comparability principle, the Commission required that the interests of transmission providers and their similarly-situated customers be treated on a comparable basis during the planning process. The Commission also explained that demand resources should be considered, where appropriate, on a comparable basis to the service provided by comparable generation resources.<sup>64</sup> In Order No. 890-A, the Commission clarified that, to meet the comparability principle, each transmission provider must also identify how it will treat resources on a comparable basis and must identify how it will determine comparability for purposes of transmission planning.<sup>65</sup>

### b. Big Rivers' Proposal

70. Big Rivers' Attachment K states that it develops transmission plans that meet the specific service requests of its transmission customers and otherwise treats similarly-situated customers comparably in transmission system planning. Big Rivers explains that

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<sup>64</sup> *Id.* P 494-95.

<sup>65</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

customer demand resources are considered on a comparable basis with generation resources.

**c. Commission Determination**

71. We find that Big Rivers' Attachment K partially complies with the requirements related to the comparability principle. Big Rivers will, as a general matter, treat similarly situated customers comparably. However, Big Rivers does not clearly identify where and when in the planning process sponsors of transmission, generation and demand resources have an opportunity to provide their input regarding base-line assumptions and models used by Big Rivers in transmission planning activities. Big Rivers also does not affirmatively state that, once needs on its system are identified, sponsors of transmission, generation, and demand resources can propose alternative solutions to those identified needs. In addition, Big Rivers fails to identify how it will evaluate alternative solutions when determining what facilities will be included in its transmission plan.

72. If Big Rivers wishes to maintain its safe harbor status, it must revise its proposed transmission planning process to address this concern, within 90 days of the date of this order, to satisfy the comparability requirements of Order No. 890. Specifically, Big Rivers must revise its Attachment K to identify where and when in its transmission planning process sponsors of transmission, generation and demand resources can provide information for use in developing base-line assumptions and models and can propose alternative solutions to any needs identified on the Big Rivers' system. Big Rivers must also revise its updated reciprocity tariff to state how it will evaluate, and select from, competing solutions such that all types of resources are considered on a comparable basis.<sup>66</sup>

**6. Dispute Resolution**

**a. Order No. 890**

73. The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise from the planning process. The Commission explained that an existing dispute resolution process may be utilized, but that transmission providers seeking to rely on an existing dispute resolution process must specifically address how its procedures will address matters related to transmission

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<sup>66</sup> 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.

planning. The Commission encouraged transmission providers, customers, and other stakeholders to utilize the Commission's Dispute Resolution Service to help develop a three-step dispute resolution process, consisting of negotiation, mediation, and arbitration. In order to facilitate resolution of all disputes related to planning activities, a transmission provider's dispute resolution process must be available to address both procedural and substantive planning issues. The Commission made clear, however, that all affected parties retain any rights they may have under section 206 of the FPA<sup>67</sup> to file complaints with the Commission.<sup>68</sup>

**b. Big Rivers' Proposal**

74. Big Rivers states that for disputes arising under Attachment K, the parties will attempt to settle the dispute through informal negotiation. The dispute resolution process will progress to discussions and meetings with Big Rivers' senior management.

**c. Commission Determination**

75. We find that Big Rivers' proposed Attachment K does not satisfy the dispute resolution principle stated in Order No. 890. Big Rivers' statement that it will have informal negotiations with parties and that those negotiations can progress to involve Big Rivers' senior management is not a sufficient dispute resolution process. It provides no information or detail on how this informal process will be used to manage both procedural and substantive disputes that arise from the planning process. If Big Rivers wishes to maintain its safe harbor status, it must revise, within 90 days of the date of this order, its proposed transmission planning process to address the dispute resolution principle of Order No. 890.

**7. Regional Participation**

**a. Order No. 890**

76. The regional participation principle provides that, in addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider must coordinate with interconnected systems to: (1) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data; and (2) identify system enhancements that could relieve congestion or integrate new resources. In Order No. 890, the Commission stated that the specific features of the regional planning effort should take account of and accommodate, where appropriate, existing institutions, as well as the physical characteristics of the

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<sup>67</sup> 16 U.S.C. § 824e (2006).

<sup>68</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-03.

region and historical practices. The Commission declined to mandate the geographic scope of particular planning regions, instead stating that the geographic scope of a planning process should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and sub-regions. The Commission also made clear that reliance on existing NERC planning processes may not be sufficient to meet the requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations. To the extent a transmission provider's implementation of the NERC processes is not appropriate for such economic issues, individual regions or sub-regions must develop alternative processes.<sup>69</sup>

77. In Order No. 890-A, the Commission clarified that while the obligation to engage in regional coordination is directed to transmission providers, participation in such processes is not limited to transmission providers and should be open to all interested customers and stakeholders.<sup>70</sup> The Commission also emphasized that effective regional planning should include coordination among regions and sub-regions as necessary, in order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.<sup>71</sup>

**b. Big Rivers' Proposal**

78. Big Rivers states that it participates in regional and interregional planning as a CPP Participant (as described above under Principle 1, Coordination). In addition, Big Rivers participates in interregional planning through four relationships: (1) the Southeastern Interregional Planning Group (SIRPP)<sup>72</sup> via the CPP Participants; (2) the Joint Reliability Coordination Agreement (JRCA);<sup>73</sup> (3) as a member of the Southeastern Electric Reliability Council (SERC); and (4) participation in the Eastern Interconnection Reliability and Assessment Group (ERAG).

79. Big Rivers states that the SIRPP plan defines an inter-regional process among regional transmission owners and TVA. The process will be used to collect data, coordinate planning assumptions, and address stakeholder study requests. Data and

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<sup>69</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-28.

<sup>70</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

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

<sup>72</sup> Because previous orders have consistently referred to this organization as SIRPP, we shall continue the practice in this Order.

<sup>73</sup> *See* note 43, *supra*.

assumptions developed at the regional level will be consolidated and used in the development of models for use in the planning process. In addition to performing stakeholder requested studies, the interregional planning process provides a means for the participating transmission providers and stakeholders to review the data, assumptions, and assessments being performed on an inter-regional basis.

80. Big Rivers states that the JRCA provides for the exchange of information. It provides also for the implementation of reliability and efficiency protocols that address the equitable and economical management of congestion on flowgates affected by flows of Big Rivers, TVA, PJM, and Midwest ISO, and for third parties to use the congestion management procedures on flowgates affected by the flows of any party that binds itself to the agreements' congestion management procedures. The JRCA also addresses coordination of the parties' systems. The entities' joint planning activities are being used as the basis for the development of combined stakeholder participation, and for coordination of responses to stakeholder interregional study requests. Each entity has its own stakeholder group.

81. Big Rivers states that its planning personnel participate in a number of committees, groups and task forces within SERC to ensure regional coordination in transmission planning. The SERC planning processes and its relationship to the local planning processes of the SERC member systems are described in the SERC reference document, "Regional Transmission Assessment Study Processes within SERC."<sup>74</sup> In general, all members, including Big Rivers, conduct regional reliability studies within the SERC framework of intra-regional near-term and long-term studies. Member system models are combined annually into a SERC reliability study model. SERC members couple local transmission assessment activities with regional coordinated transmission study processes. Joint study efforts involving two or more parties are used to maintain coordination among systems and along system interfaces.

82. Big Rivers states that ERAG comprises the six NERC regions composing the Eastern Interconnection for the purpose of augmenting reliability of the bulk power system in the joint areas. Each season, it develops a single master study base case covering the entire Eastern Interconnection. Big Rivers participates in ERAG activities through its SERC membership.

**c. Commission Determination**

83. We find that Big Rivers' proposed Attachment K partially satisfies the regional participation principle stated in Order No. 890. Although Big Rivers' Attachment K generally describes processes that can be used to coordinate regional reliability planning,

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<sup>74</sup> SERC Reliability Corporation, "SERC Reference Document: Regional Transmission Assessment Study Process within SERC," Revision 1, (September 2007).

Big Rivers' has not provided sufficient detail to allow customers and other interested stakeholders to understand how its local planning activities will be integrated into those regional processes. Big Rivers does not identify the particular regional planning activities performed by TVA, Midwest ISO, and PJM, nor how Big Rivers' will participate in those activities. For example, Big Rivers' does not identify the timelines and milestones for the coordination of models and system plans by SERC, including opportunities for stakeholders to provide input and comment in each process. It is also unclear how each of the regional and inter-regional processes will interact with each other when coordinated with Big Rivers' own planning activities

84. Furthermore, as discussed above, Big Rivers does not adequately distinguish between the planning activities it performs independently and those performed on a regional basis through coordination with the CPP Participants. If Big Rivers intends to rely on SERC documentation for these purposes, it should provide direct links (i.e., URLs) to the appropriate documents on the SERC website. Big Rivers also refers to joint planning activities and studies performed with interconnected systems, but its Attachment K provides no details regarding those activities or studies, such as how they are integrated into Big Rivers' planning process or the ability of stakeholders to be involved. It is unclear how each of these regional planning activities will interact with each other when coordinated with Big Rivers' planning activities. Additionally, Big Rivers fails to describe in detail its process for coordinating with interconnected systems to share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and identify system enhancements that could relieve congestion or integrate new resources.

85. Big Rivers also fails to explain its process for coordinating economic studies on a regional basis. In its Attachment K, Big Rivers appears to reference participation in SIRRP planning studies performed through the SIRPP. However, Big Rivers provides no additional information regarding its commitment to coordinate with other transmission providers to perform economic planning studies. It is also unclear how each of the regional and inter-regional processes will interact with each other when coordinated with planning activities.

86. To the extent Big Rivers intends to participate in the SIRPP process and to coordinate economic studies on a regional basis, it should state that commitment in its Attachment K and provide sufficient detail for customers to understand how they can request that economic upgrades be studied on a regional basis. If Big Rivers wishes to maintain its safe harbor status, Big Rivers must revise its proposed transmission planning proposal, within 90 days of the date of this order, to provide an alternative process to coordinate economic studies on a regional basis.

## **8. Economic Planning Studies**

### **a. Order No. 890**

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

88. All transmission providers were directed in Order No. 890 to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies would be recovered as a part of the transmission provider's overall tariff cost of service, while the cost of additional studies would be borne by the stakeholder(s) requesting the study.<sup>75</sup>

89. In Order No. 890-A, the Commission made clear that the transmission provider's planning process must clearly describe the process by which economic planning studies can be requested and how they will be prioritized.<sup>76</sup> The Commission also made clear in Order No. 890-A that a transmission provider's affiliates must be treated like any other stakeholder and, therefore, their requests for studies must be considered comparably, pursuant to the process outlined in the transmission provider's planning process.<sup>77</sup>

### **b. Big Rivers' Proposal**

90. Big Rivers states that it will continue to perform planning studies to identify transmission congestion within Big Rivers and between Big Rivers and other balancing areas, with integration of new resources, including options suggested by stakeholders or load customers on an aggregated basis. Big Rivers states that it will use reliability and economic studies whenever feasible to improve efficiency and lower costs. It will

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<sup>75</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 542-51.

<sup>76</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

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

consider economic benefits related to congestion and integration of new transmission uses when addressing reliability issues. Study reports will identify congestion on Big Rivers' transmission system and will be posted on the Big Rivers OASIS.

91. Big Rivers states that it does not use locational marginal prices as the basis for its economic analysis of congestion. Reliability studies are directed towards elimination of congestion to allow optimal economic dispatch.

92. Big Rivers states that through the CPP Participants planning process, a reasonable number of economic studies will be completed. All stakeholder requests will be posted on the Big Rivers OASIS, and all economic project requests will be considered as alternatives for reliability problem solutions. Big Rivers requires that requests for economic studies be supported by provision of the necessary data, such as generator models and transaction patterns. Depending on confidentiality considerations, use of more generic industry data may be deemed acceptable.

**c. Commission Determination**

93. We find that Big Rivers' proposed Attachment K partially satisfies the economic planning studies principle stated in Order No. 890. Stakeholders may request that Big Rivers perform economic planning studies related to congestion or the integration of new resources on its system. Big Rivers will prioritize those requests in consultation with stakeholders, seeking data as necessary from stakeholders requesting a study.

94. With regard to economic planning on a regional basis, we accept Big Rivers' commitment to participate in the SIRPP. As discussed above in the Regional Participation section, Big Rivers failed to file with the Commission a sufficient description of its participation in the SIRPP. Therefore, in making our findings regarding the SIRPP and the economic planning studies principle, we have relied on information provided by other utilities participating in the SIRPP.<sup>78</sup>

95. We find that the SIRPP, an inter-regional process created to conduct stakeholder requested economic planning studies across multiple interconnected systems, is an open and coordinated process that generally satisfies the requirements of the economic

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<sup>78</sup> See filings in Docket Nos. OA08-37-000 (Southern Company), OA08-46-000 (South Carolina Electric & Gas Company), OA08-59-000 (Entergy Services, Inc.) and OA08-50-000 and OA08-51-000 (Duke Energy Carolinas, LLC/Progress Energy Carolinas, Inc.). This summary also can be found on the SIRPP's website at <http://www.southeastirpp.com/>.

planning studies principle as it relates to those entities that participate in the SIRPP.<sup>79</sup> The SIRPP consolidates the data and assumptions developed at the participating transmission owners' planning level to use in the development of inter-regional models, which ensures consistency throughout the regional and inter-regional economic planning processes. There will be three specific meetings with stakeholders, although stakeholders also will be able to comment and provide input throughout the process. Participating transmission owners will perform up to five inter-regional economic planning studies annually, as selected by stakeholders at the first annual meeting, and the study coordination team will coordinate with stakeholders throughout the process regarding study assumptions, initial analysis and final draft reports. In addition, the SIRPP calls for the formation of a SIRPP stakeholder group to provide a structure to facilitate the stakeholders' participation in the inter-regional process and to work with the participating transmission owners.

96. While Big Rivers refers to participation in an economic study process being developed by the CPP Participants and appears to reference participation in inter-regional economic studies performed by the SIRPP, it provides no detail regarding either of those processes or how stakeholders can be involved. In Order No. 890, the Commission required transmission providers to develop a process for studying the alleviation of congestion through integration of new supply and demand resources into the regional transmission grid or expanding the regional transmission grid in a manner that can benefit large numbers of customers, such as by evaluating transmission upgrades necessary to connect major new areas of generation resources.<sup>80</sup>

97. Big Rivers also does not provide in Attachment K for stakeholders to request economic studies for the Big Rivers system separate from the CPP Participants process. In addition, Big Rivers does not specifically identify a certain number of high priority studies that it will conduct annually and a means to cluster or batch requests to streamline processing, nor does it describe how it will prioritize any requests for economic studies in consultation with stakeholders, as required by the Commission.<sup>81</sup> Stakeholders should

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<sup>79</sup> In the Attachment K-related compliance filings by other transmission providers in the southeast region, the Commission directed specific changes to the SIRPP process to comply with the requirements of Order No. 890. *See, e.g., Southern Company Services, Inc.*, 124 FERC ¶ 61,265 at P 93-98 (2008), *order on reh'g and compliance*, 127 FERC ¶ 61,282 at P 50-53 (2009); *Entergy Services, Inc.*, 124 FERC ¶ 61,268 at P 132-136 (2008); *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267 at P 78-85 (2008), *order accepting compliance filing*, 127 FERC ¶ 61,281 at P 74-77 (2009).

<sup>80</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 549.

<sup>81</sup> *Id.* P 547; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

also be able to request that Big Rivers, as the transmission provider, study potential upgrades or other investments, whether transmission, generation, or demand resources, that the stakeholder identifies.

98. To the extent that Big Rivers is relying on the regional processes under the CPP Participants, SIRPP, JRCA, SERC, and ERAG, it should provide sufficient detail for customers to understand how stakeholders can request that economic upgrades be studied on a regional basis, what will be included in those economic planning studies, and how solutions and solution criteria will be determined. Big Rivers must also provide sufficient detail to allow customers and other interested stakeholders to understand how their own planning activities will be integrated into and coordinated with these regional processes. It must identify the particular regional planning activities performed by TVA, Midwest ISO, and PJM, along with how Big Rivers will participate in those activities. If Big Rivers' wishes to maintain its safe harbor status, Big Rivers must revise its transmission planning proposal, within 90 days of the date of this order, to provide additional detail regarding the economic planning processes implemented by the CPP Participants and its participation in the inter-regional economic planning process through the SIRPP.

## **9. Cost Allocation**

### **a. Order No. 890**

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

100. The Commission suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them reiterated each

time a project is proposed.<sup>82</sup> In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.<sup>83</sup>

**b. Big Rivers' Proposal**

101. Big Rivers states that the costs of transmission system upgrades are recovered through Big Rivers' rates for transmission service. Where existing rate structures do not apply, such as for regional projects involving several transmission owners or projects identified through economic planning studies, costs will be allocated to the customer or customers requesting that the project be built. Where a project crosses regional boundaries, each regional transmission owner will be responsible for allocating its share of the costs. If a party requests that Big Rivers accelerate or modify a project already planned for implementation, the requesting party will be responsible for the incremental costs. If Big Rivers or another party elects to enhance a requested project, the requesting party will be responsible only for the cost of the project at the level that party requested.

102. In applying these cost allocation principles, Big Rivers will identify the benefits that a requested project may provide to Big Rivers, such as deferral of other transmission projects or a reduction in energy losses. Costs assigned to a requesting party will be a net value, recognizing the value of any such benefits.

**c. Commission Determination**

103. We find that Big Rivers' proposed Attachment K satisfies the cost allocation principle stated in Order No. 890.

**10. Recovery of Planning Costs**

**a. Order No. 890**

104. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically addressing that issue after discussing the nine principles that govern the planning process. The Commission directed transmission providers to work with other participants in the planning process to develop cost recovery proposals to determine whether all relevant parties, including state agencies, can recover the costs of participating in the planning process. The Commission also suggested that transmission

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<sup>82</sup> Order No.890, FERC Stats. & Regs. ¶ 31,241 at P 557-61.

<sup>83</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

providers consider whether mechanisms for regional cost recovery may be appropriate, such as through agreements (formal or informal) to incur and allocate costs jointly.<sup>84</sup>

**b. Big Rivers' Proposal**

105. Big Rivers does not propose a cost recovery mechanism for its planning-related costs.

**c. Commission Determination**

106. If Big Rivers wishes to maintain its safe harbor status, Big Rivers must revise its transmission planning proposal, within 90 days of the date of this order, to provide detail regarding how planning-related costs will be recovered.

**B. Standards of Conduct**

107. Big Rivers' filing includes its November 26, 2008 Standards of Conduct.<sup>85</sup> Big Rivers states that these standards are consistent with the Commission's requirements in Order No. 717, and with the standards required of public utilities.

108. In 2003, the Commission revised its regulations concerning the filing of Standards of Conduct in Order No. 2004.<sup>86</sup> The Commission deleted the provision requiring

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<sup>84</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586.

<sup>85</sup> The Commission found that Big Rivers' earlier standards of conduct complied with the requirements of Order No. 889. *Open-Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997). *See Big Rivers Elec. Corp.*, 84 FERC ¶ 61,257 (1998), *order on compliance*, 86 FERC ¶ 61,150, *order on compliance*, 87 FERC ¶ 61,275 (1999).

<sup>86</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 381 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

transmission providers to file with the Commission written procedures implementing the Standards of Conduct contained in the former 18 C.F.R. § 37.4(c). Instead, the Commission required transmission providers to post their written procedures on the relevant OASIS or Internet web site.<sup>87</sup> In Order No. 2004-A, the Commission gave guidance on acceptable implementation of these standards and reiterated that transmission providers are not required to file their written procedures implementing the Standards of Conduct.<sup>88</sup> In Order No. 717, the Commission amended and clarified the Standards of Conduct, but did not modify the posting requirement for written procedures other than to relocate it in section 358.7(d) of the Commission's regulations.<sup>89</sup> Consistent with Order Nos. 2004-A and 717, the Commission is not addressing the merits of Big Rivers' Standards of Conduct written procedures, but notes that Big Rivers has complied with the requirement to post its November 26, 2008 Standards of Conduct on its website.<sup>90</sup>

### C. Filing Fee Waiver

109. Based on its non-jurisdictional status, Big Rivers requests waiver of the filing fee applicable to petitions for declaratory orders otherwise required by section 35.0 of the Commission's regulations.<sup>91</sup> We grant Big Rivers' request. As the Commission stated in Order No. 888, "[Commission] regulations specifically exempt states, municipalities, and anyone who is engaged in the official business of the Federal Government from filing fees. Because of the nature of the safe harbor and waiver provisions, we will also waive the filing fee for declaratory orders for all other non-public utilities in these circumstances."<sup>92</sup>

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<sup>87</sup> Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 135 (posting the procedures to implement the Standards of Conduct gives users immediate access to the information and does not create administrative burdens for the Commission; filing the standards is unnecessary because the Commission already has sufficient mechanisms to address problems and for staff to monitor compliance).

<sup>88</sup> Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 at P 176 & n.97.

<sup>89</sup> Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 213.

<sup>90</sup> See [http://www.oatioasis.com/BREC/BRECdocs/Standards\\_of\\_Conduct.pdf](http://www.oatioasis.com/BREC/BRECdocs/Standards_of_Conduct.pdf) (last accessed July 9, 2009).

<sup>91</sup> 18 C.F.R. § 35.0 (2009).

<sup>92</sup> Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89 (footnote omitted).

**D. Effective Date**

110. We grant Big Rivers' request that the effective date of its tariff be the later of the date of this order or the closing date of the lease termination transaction.<sup>93</sup> As discussed above, on July 24, 2009, Big Rivers filed a letter with the Kentucky Commission indicating that the lease termination transaction closed on July 16, 2009.<sup>94</sup> To date, the Commission has not received a filing confirming this fact. To the extent necessary, we waive the notice requirements of section 35.3(a) of our regulations<sup>95</sup> to permit an effective date more than one hundred-twenty days after Big Rivers tendered its petition for declaratory order. We will, however, require Big Rivers to notify the Commission of the closing date of the lease termination transaction and to file new tariff sheets that include the effective date (which shall be the date of the issuance of this order).

**The Commission orders:**

(A) Big Rivers' petition for declaratory order regarding its updated reciprocity tariff is hereby conditionally granted, as discussed in the body of this order.

(B) Big Rivers' request for waiver of the Commission's filing fee is hereby granted.

(C) Big Rivers' request that the Commission make the updated reciprocity tariff effective as of the later of the date of this order or the closing of Big Rivers' lease termination transaction is hereby granted, conditioned upon Big Rivers notifying the Commission of the date that the lease termination closed and submitting a filing with tariff sheets that include the effective date, which shall be the date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>93</sup> Section 35.2(f) of the Commission's regulations, 18 C.F.R. § 35.2(f) (2009), states that the effective date of a filed rate schedule shall be 60 days after the filing date, or such other date as may be specified by the Commission.

<sup>94</sup> See note 11, *supra*.

<sup>95</sup> 18 C.F.R. § 35.3(a) (2009).