

142 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Duke Energy Carolinas LLC and
Carolina Power and Light Company

Docket Nos. ER13-83-000

Alcoa Power Generating, Inc.

ER13-88-000

ORDER ON COMPLIANCE FILINGS

(Issued February 21, 2013)

1. On October 11, 2012, Duke Energy Carolinas LLC and Carolina Power and Light Company, d/b/a Progress Energy Carolinas, (Duke-Progress) and Alcoa Power Generating, Inc. (Yadkin) submitted, pursuant to section 206 of the Federal Power Act (FPA),¹ revisions to Duke-Progress's Attachment N-1 and Yadkin's Attachment K of their respective Open Access Transmission Tariffs (OATT) to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.² In this order, we reject the Duke-Progress Compliance Filing and the Yadkin Compliance Filing, and we direct Duke-Progress and Yadkin to submit new compliance filings, as discussed below.³

¹ 16 U.S.C. § 824e (2006).

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

³ The discussion in this order refers to the Duke-Progress Compliance Filing and to the Yadkin Compliance Filing. The Yadkin Compliance Filing explains that it is

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I. Background

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890⁴ to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

3. Order No. 1000's cost allocation reforms require that each public utility transmission provider participate in a regional transmission planning process that has: (1) a regional cost allocation method or methods for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation; and (2) an interregional cost allocation method or methods for the cost of new transmission facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission coordination procedures required by Order No. 1000. Order No. 1000 also requires that each cost allocation method satisfy six cost allocation principles.

4. The Commission acknowledged in Order No. 1000 that each transmission planning region has unique characteristics, and, therefore, Order No. 1000 accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate regional differences.⁵ Order No. 1000 does not prescribe the exact manner in which public utility transmission providers

incorporating by reference the Duke-Progress Compliance Filing. Yadkin Compliance Filing at 4.

⁴ *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

must fulfill the regional transmission planning requirements.⁶ Similarly, because the Commission did not want to prescribe a uniform method of cost allocation for every transmission planning region, Order No. 1000 adopts the use of cost allocation principles.⁷ The Commission stated that it was acting to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential, and it acknowledged that public utility transmission providers in some regions may already meet or exceed some requirements of Order No. 1000.⁸

II. Compliance Filings

5. Duke-Progress filed amendments to Attachment N-1 of its Joint OATT to incorporate revisions to satisfy Order No. 1000's local and regional transmission planning and cost allocation requirements. Yadkin, a public utility transmission provider that owns and operates 21 miles of transmission facilities to serve its hydroelectric generating facility, states that it intends to join the North Carolina Transmission Planning Collaborative (NCTPC). Accordingly, Yadkin filed a revision to its Attachment K to incorporate, by reference, Duke-Progress's Attachment N-1. Duke-Progress and Yadkin seek an effective date for their compliance filings of the start of the planning year following Commission acceptance of their compliance filings.

III. Notice of Filing and Responsive Pleadings

6. Notice of the Duke-Progress and Yadkin Compliance Filings were published in the *Federal Register*, 77 Fed. Reg. 64,502 (2012), with interventions and protests due on or before November 26, 2012.⁹

⁶ *Id.* P 157.

⁷ *Id.*P 604.

⁸ *Id.*P 13.

⁹ LS Power Transmission LLC, American Wind Energy Association, Independent Power Producers of New York, Inc., Public Interest Organizations, and Colorado Public Utilities Commission submitted motions to extend the November 9, 2012 deadline to submit comments, protests and interventions in response to Order No. 1000 compliance filings submitted on October 11, 2012. On October 22, 2012, Pattern Transmission LP submitted an answer in support of an extension of time. On November 1, 2012, the

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7. In Docket No. ER13-83-000, American Wind Energy Association, American Electric Power Service Corporation, and Iberdrola Renewables, LLC, filed motions to intervene. North Carolina Utilities Commission filed a notice of intervention and the Public Staff of the North Carolina Utilities Commission filed a motion to intervene, with supporting comments. North Carolina Electric Membership Corporation (North Carolina EMC) filed a motion to intervene and protest and LS Power Transmission, LLC, (LS Power) filed a motion to intervene, protest and comments. In Docket No. ER13-88-000, American Wind Energy Association filed a motion to intervene.

8. On January 10, 2013, Duke-Progress filed an answer to comments and protests.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answer filed in this proceeding because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

11. We find that the Duke-Progress and Yadkin Compliance Filings do not comply with Order No. 1000 because Duke-Progress and Yadkin have failed to form a compliant transmission planning region, as discussed below. Accordingly, we will reject their compliance filings. We direct Duke-Progress and Yadkin to file revised compliance filings within 90 days of the date of issuance of this order. As a result of Duke-Progress's and Yadkin's failure to form a transmission planning region that satisfies the requirements of Order No. 1000, we will not address other aspects of the Compliance Filings, as noted below. In the absence of a compliant transmission planning region, it is not possible to evaluate other components of the Compliance Filings.

Commission granted the motions and extended the comment period for filings submitted on October 11, 2012 to November 26, 2012.

1. Regional Transmission Planning Requirements

12. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that complies with the identified transmission planning principles of Order No. 890 and that, in consultation with stakeholders, results in the development of a regional transmission plan.¹⁰ The regional transmission plan will identify transmission facilities that meet the region's reliability, economic, and public policy requirements-related needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.¹¹ A primary objective of the reforms in Order No. 1000 is to ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet a transmission planning region's needs more efficiently and cost-effectively.¹²

a. Transmission Planning Region

13. Order No. 1000 specifies that a transmission planning region is one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate for purposes of regional transmission planning and development of a single regional transmission plan.¹³ The scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.¹⁴ However, an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements of Order No. 1000.¹⁵

14. In addition, Order No. 1000 requires that public utility transmission providers explain in their compliance filings how they will determine which transmission facilities evaluated in their local and regional transmission planning processes will be subject to

¹⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

¹¹ *Id.* PP 11, 148.

¹² *Id.* PP 4, 6.

¹³ *Id.* P 160.

¹⁴ *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

¹⁵ *Id.*

the requirements of Order No. 1000.¹⁶ Order No. 1000's requirements are intended to apply to new transmission facilities, which are those transmission facilities that are subject to evaluation, or reevaluation as the case may be, within a public utility transmission provider's local or regional transmission planning process after the effective date of the public utility transmission provider's compliance filing.¹⁷ Each region must determine at what point a previously approved project is no longer subject to reevaluation and, as a result, whether it is subject to these requirements.¹⁸

15. Order No. 1000-A states that public utility transmission providers in each transmission planning region must have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region.¹⁹ Each public utility transmission provider (or regional transmission planning entity acting for all of the public utility transmission providers in its transmission planning region) must include in its OATT a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region.²⁰ A non-public utility transmission provider will not be considered to have made the choice to join a transmission planning region and thus be eligible to be allocated costs under the regional cost allocation method until it has enrolled in the transmission planning region.²¹

i. Duke-Progress's Filing

16. In 2005, Duke and Progress formed the single-state NCTPC. The Commission subsequently accepted NCTPC as an Order No. 890-compliant planning region.²² At that time, Duke and Progress were NCTPC's only public utility transmission provider members. NCTPC also included two non-public utility members: ElectriCities of North Carolina and North Carolina Electric Membership Corporation – neither of which is a

¹⁶ *Id.* PP 65, 162.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

²⁰ *Id.*

²¹ *Id.* PP 276-277.

²² *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267 (2008).

transmission provider.²³ Duke and Progress own and operate all of the bulk transmission system (i.e., above 100 kV and not radial) in NCTPC. On June 8, 2012, the Commission conditionally approved a merger between Duke and Progress.²⁴ The merger was consummated on July 2, 2012, which resulted in Progress becoming a wholly-owned subsidiary of Duke Energy Corporation.

17. Duke-Progress asserts that the NCTPC region should qualify as an Order No. 1000-compliant transmission planning region. In support of its assertions, Duke-Progress argues that the addition of Yadkin mitigates any concern the Commission might have regarding the scope of NCTPC, as Order No. 1000's minimum requirement on regional scope was that a region could not constitute only a single public utility transmission provider. However, even if Yadkin had not joined, Duke-Progress argues that NCTPC would still be compliant with Order No. 1000 because despite the merger, Duke and Progress remain separate transmission providers. Duke-Progress argues that each entity separately satisfies the definition of "transmission provider," as set forth in 18 C.F.R Part 37, which defines the term as a "public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce."²⁵ Additionally, Duke-Progress contends that the Duke-Progress Joint OATT, which has been accepted by the Commission, includes a revised definition of "transmission provider" defining Duke and Progress as separate transmission providers.²⁶

18. Duke-Progress also argues that Duke and Progress are individual public utilities because they: (1) have separate Company IDs; (2) have separate NERC registration; (3) operate separate Balancing Authority Areas; (4) maintain separate OASIS sites; (5) file separate FERC Form 1s, and other forms; and (6) treat each other as separate companies for interlocking director purposes. Additionally, Duke-Progress argues that their approach to providing transmission service is different than other corporate families where service is provided over the entire footprint, using one OASIS and reservation system, and where the term "transmission provider" is defined collectively.²⁷

²³ ElectriCities and North Carolina Electric Membership Corporation are non-jurisdictional distribution cooperatives.

²⁴ *Duke Energy Corp.*, 139 FERC ¶ 61,193 (2012).

²⁵ Duke-Progress Compliance Filing at 5 (citing 18 C.F.R. Part 37 (2012)).

²⁶ *Id.* at 5-6.

²⁷ *Id.* at 6.

19. Duke-Progress also contends that maintaining NCTPC as a region allows it to fulfill a merger commitment it made to certain municipal customers that Duke-Progress would continue participating in NCTPC.²⁸ Joining another region would, according to Duke-Progress, be detrimental to the interests of these municipals, whose members represent most of the network customers on the Duke-Progress system and include the largest such customers. Duke-Progress asserts that the only two neighboring regions that they could join – the Southeastern Regional Transmission Planning Process (SERTP) or the South Carolina Regional Transmission Planning Process (SCRTP) – would not provide these municipals as much decision-making authority because, unlike NCTPC, SERTP and SCRTP allow load-serving entities that are not transmission providers to participate only as stakeholders, not as decision-makers with a seat at the planning table.²⁹

20. Finally, Duke-Progress argues that the geographic and electric scope of NCTPC is similar to several other regions, such as New York Independent System Operator (NYISO) and ISO New England (ISO-NE).³⁰

ii. Comments

21. North Carolina Utilities Commission and Public Staff agree that Duke and Progress are legally two separate, individual public utilities and that the NCTPC process meets the requirements in Order No. 1000. North Carolina Utilities Commission and Public Staff explain that it regulates Duke and Progress as two separate entities, with separate service territories, separate tariffs, and separate rate schedules, and it argues that the two utilities' transmission systems in North Carolina and South Carolina—along with that of Yadkin—comprise a transmission planning “region” that fully complies with

²⁸ Duke-Progress states that the following commitment to the North Carolina Municipal Power Agency Number 1 and Piedmont Municipal Power Agency (members of ElectriCities) was made: Duke shall continue to participate in NCTPC and shall amend the NCTPC Participation Agreement to state that neither Duke nor Progress shall have the right to withdraw unless required by law, or by order or rule of a federal or state regulatory agency. *Id.*

²⁹ *Id.* at 7.

³⁰ Duke-Progress argues that the State of New York is about 54,000 square miles and NYISO has a peak load of about 33,000 MW, while the NCTPC region is about 58,000 square miles and has a peak load of about 37,000 MW – larger in both respects. Duke-Progress also states that ISO-NE serves an area of about 68,000 square miles and has a peak load of about 28,000 MW, which is quite similar in size and scope to the NCTPC Region. *Id.*

Order No. 1000. Moreover, North Carolina Utilities Commission and Public Staff argue that, since NCTPC's formation in 2005, the scope and scale of NCTPC has supported meaningful and efficient stakeholder involvement and dialogue. North Carolina Utilities Commission and Public Staff contend that they can state unequivocally that non-transmission owning load-serving entities play a leadership role in the NCTPC planning process, that suggestions for study scenarios from stakeholders are welcomed and thoroughly addressed by the NCTPC transmission planning process, that the scope and scale of the existing NCTPC region allows participants to propose realistic and aspirational transmission projects and generation scenarios, and both types of projects have been proposed and studied, and that participants are able to provide meaningful feedback to the transmission planning process. Therefore, North Carolina Utilities Commission and Public Staff state that they fully support Duke-Progress's proposal to comply with Order No. 1000 by evolving, rather than jettisoning, the existing NCTPC effort in favor of any alternative regional planning footprint.³¹

22. North Carolina EMC asserts that the NCTPC region satisfies the scope and size requirements for regional planning under Order No. 1000. North Carolina EMC notes that the Commission approved NCTPC as an appropriately sized region to satisfy the regional planning obligations under Order No. 890. Furthermore, North Carolina EMC argues that NCTPC exceeded its Order No. 890 obligations by planning on a regional basis prior to Order No. 1000. North Carolina EMC argues that Order No. 1000 did not change the criteria governing the size and scope of a transmission planning region. North Carolina EMC states that the NCTPC region currently includes three public utility transmission providers – Duke, Progress, and Yadkin – and that these systems are interconnected, are not subject to retail choice, serve an area in which utilities remain vertically integrated and are subject to the same reliability obligations under the SERC Reliability Corporation.³²

23. North Carolina EMC also contends that the NCTPC region is supported by the State of North Carolina and all relevant stakeholders. However, if the Commission does not approve the NCTPC region as Order No. 1000 compliant, North Carolina EMC states that the Commission should retain the current NCTPC process for those projects not requesting Order No. 1000 regional cost allocation.³³

³¹ North Carolina Utilities Commission Comments at 4.

³² North Carolina EMC Protest at 5-7.

³³ *Id.* at 67.

24. North Carolina EMC asserts that it is a transmission-dependent utility that relies on the transmission system in North Carolina to serve the needs of its member systems and their retail customers, and that it supports the need for additional investment in efficient and cost-effective transmission infrastructure.³⁴ LS Power asserts that it develops new transmission projects, and that it can bring consumer benefits when it is permitted to compete for the development of transmission infrastructure.³⁵

25. LS Power states that the question of whether the NCTPC region reflects a region that is of sufficient scope under Order No. 1000 is open for debate. LS Power states that, post-merger, Duke-Progress's economic interests are singular which could impact the transmission planning and decision making process. LS Power is concerned that as currently proposed the NCTPC region will lack the openness to allow new entrants to compete in the region with new transmission projects and ideas. LS Power does agree, however, that Duke and Progress have separate and distinct retail distribution service territories.³⁶ Nevertheless, LS Power is concerned that Duke and Progress's compliance filing simply maintains the status quo, and states that without a level playing field, nonincumbent transmission providers will not risk their resources by participating in the planning process.³⁷ LS Power claims that the "sheer size" of the NCTPC region of 58,000 square miles and a peak load of 37,000 MW reinforces the importance of enforcing the mandates in Order No. 1000. LS Power claims that a company will not risk its resources, whether they be people or money, unless it believes that it has a fair opportunity for success and the "deck is not stacked against it" from the beginning. As stated by LS Power:

Order No. 1000's goal can only be achieved, however, if the regional transmission planning process sends the clear message to all viable prospective transmission developers, incumbent and non-incumbent alike, that their ideas are sought, that they should invest their time, effort and money to submit projects into the regional planning process, and that if they have the best, most efficient or cost effective idea, they will be selected to construct, own and operate the proposed transmission facilities.

³⁴ *Id.* at 3-4.

³⁵ LS Power Protest at 3.

³⁶ *Id.* at 7-8.

³⁷ *Id.* at 5.

LS Power states that if the process appears to favor incumbent transmission owners, then the best projects may not be built because of the absence of competitors.³⁸

iii. Commission Determination

26. We find the merger of Duke and Progress changed the circumstances under which the Commission had examined NCTPC for compliance with Order No. 890. We further find that the scope of the transmission planning region specified in the Duke-Progress Compliance Filing and the Yadkin Compliance Filing does not comply with the requirements of Order No. 1000 for the reasons described below. First, we find that Duke and Progress are not separate transmission providers. Next, we find that the addition of Yadkin under either circumstance does not cure the deficiency because Yadkin owns and operates so few transmission facilities.

(a) Duke and Progress Are Not Separate Transmission Providers

27. The notion that a compliant transmission planning region can be comprised of two “transmission providers” that report to the same senior management, board of directors, and shareholders runs counter to Order No. 1000’s requirement that transmission planning occur on a regional rather than on an individual utility level, and would undermine the very reforms the Commission intended to achieve in Order No. 1000.³⁹ The distinctions articulated in the Duke-Progress Compliance Filing, such as the maintenance of separate OASIS sites, separate NERC registrations, and the filing of separate FERC forms, does not cure this structural problem. The fact that Duke-Progress made the decision to maintain separate zonal rates, which may necessitate some of the distinctions noted above, does not mean that Duke-Progress complies with Order No. 1000’s requirement that a transmission planning region cannot be comprised of an individual public utility transmission provider. Similarly, while Duke and Progress may, as North Carolina Utilities Commission and Public Staff point out, be regulated as separate entities by the North Carolina Utilities Commission, that is not dispositive as to whether Duke and Progress are separate transmission providers for purposes of Order No. 1000. Moreover, while Duke and Progress may have distinct retail distribution territories, as stated by LS Power, that too does not control whether Duke and Progress are separate transmission providers for purposes of Order No. 1000 compliance.

³⁸ *Id.* at 5-6.

³⁹ *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 78-84, 146-148 (explaining the need for Order No. 1000’s requirement for regional transmission planning).

28. Specifically, a key purpose of Order No. 1000 was to expand the current regional transmission planning processes by requiring multiple transmission providers to collaborate in regional transmission planning. By requiring a transmission planning region to include more than one transmission provider, the Commission established a regional planning process which required transmission providers in the region to develop and approve a regional transmission plan and cost allocation method.⁴⁰ The success of the regional transmission planning process depends on the consideration of a wider set of needs and interests than is currently being considered in each individual transmission provider's local transmission planning process.⁴¹ Even if Duke and Progress act in some respects as separate entities, as described above, they still report to the same senior management, board of directors, and shareholders.

29. Moreover, and as discussed more fully below, we note that the Joint OATT eliminates rate pancaking between the Duke and Progress zones. Thus, while Duke-Progress will have separate zonal rates, the elimination of pancaked rates between the two zones signals increasing integration and efficiencies between the Duke and Progress transmission systems, which is consistent with a decision to merge operations and act as a single transmission provider. Additionally, as also highlighted below, Duke-Progress represented in their merger applications that they would more closely coordinate activities, again indicating a unity of operations rather than continued separation.

30. The merger applications that Duke and Progress submitted to this Commission under section 203 of the FPA and to the North Carolina Utilities Commission provide additional details as to how the merged company would operate. In particular, those merger applications represented that Duke and Progress would engage in closer

⁴⁰ See, e.g., Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 81 (stating that, in the absence of Order No. 1000's regional transmission planning reforms, "we are concerned that public utility transmission providers may not adequately assess the potential benefits of alternative transmission solutions at the regional level.... For example, *proactive cooperation* among public utility transmission providers within a transmission planning region could better identify transmission solutions to more efficiently or cost-effectively meet the reliability needs of public utility transmission providers in the region....") (emphasis added). See also *id.* ("[T]he development of transmission facilities that span the service territories of *multiple* public utility transmission providers may obviate the need for transmission facilities identified in multiple local transmission plans while simultaneously reducing congestion across the region.") (emphasis added).

⁴¹ See, e.g., *id.*

coordination. Specifically, Duke and Progress explained in the merger application they filed with the Commission:

Although the merged company will be large compared to other U.S. electric utilities, this size enables the merged company to achieve important scale and scope efficiencies. It is a fact that the U.S. electric utility industry, for historic reasons, has been highly fragmented. Utilities in other parts of the world that have not been subject to similar constraints are significantly larger than the largest U.S. utilities, including the combined Duke/Progress . . . These foreign utilities and their customers have benefited from the economies of scale made possible by their size. The Transaction will make it possible for the Applicants and their customers to realize similar benefits.⁴²

31. The merger application also noted that:

It is anticipated that upon the actual integration of Duke Energy and Progress Energy and their service companies, additional cost savings opportunities will be created. The transition to integration is a significant undertaking and these savings will occur over time as a result of the combination and assimilation of the companies' information technology systems, supply chain functions, generation operations, corporate and administrative programs, and inventories.⁴³

32. Duke and Progress made similar representations in their merger application to the North Carolina Utilities Commission. There, they stated that “[a]lthough [Progress] and [Duke] will not be combined into a single legal entity at the time of the merger, the parties anticipate that there will be significant coordination of the operations of [Progress] and [Duke] beginning upon the merger closing.”⁴⁴ Further, Duke and Progress explained

⁴² Application for Authorization of Disposition of Jurisdictional Assets and Merger Under Sections 203(a)(1) and 203(a)(2) of the Federal Power Act at 3, Docket No. EC11-60-000 (April 4, 2011).

⁴³ *Id.* at 2.

⁴⁴ Application of Duke Energy Corporation and Progress Energy, Inc. to Engage in a Business Combination Transaction and Address Regulatory Conditions and Code of Conduct at 8, Docket No. E-2, Sub 998 and Docket No. E-7, Sub 986 (April 4, 2011).

that they would engage in joint dispatch of generating facilities and eliminate pancaked rates, which would “reduce the transaction costs associated with the energy exchanges between [Progress] and [Duke], and will also allow wholesale customers to move power between and through [Progress’s] and [Duke’s] service territories with only a single transmission charge.”⁴⁵ Finally, Duke and Progress represented to the North Carolina Utilities Commission:

Additional savings are expected from the two utilities being able to reduce their reserve margins once they are affiliated. Although [Progress] and [Duke] each will continue to develop and file annual integrated resource plans, upon consummation of the merger, the planning of the two systems will be coordinated to a greater extent. Just as the combined dispatch and operation of the two generation systems will produce significant fuel savings, greater coordination of the two companies’ resource plans should result in a reduction in the amount of generating reserves necessary to serve the two systems on an ongoing basis. The expected reduction in overall reserves, which reflects increased reliability of the much larger combined systems, is made possible by the creation of a larger supply pool that reduces the possibility of having insufficient resources to meet peak demand following a contingency....⁴⁶

33. The claims Duke and Progress set forth in their federal and state merger applications indicate that Duke and Progress had fully intended to achieve closer coordination and are effectively acting as a single company, regardless of whether they each individually meet the definition of “transmission provider” under the C.F.R. and regardless of whether they will continue to perform specified functions separately for the foreseeable future, as argued in the Duke-Progress Compliance Filing. Two utilities that had previously been operating separately, and which had separate corporate interests, are now closely coordinating in a number of different ways, as described in both the Commission and North Carolina Utilities Commission merger applications, and now report to the same senior management, board of directors, and shareholders. In addition, as the North Carolina Utilities Commission merger application expressly noted, Duke and Progress would more closely coordinate planning efforts, even as they file separate

⁴⁵ *Id.* at 9-10.

⁴⁶ *Id.* at 11-12.

resource plans. We thus find that the merger has changed the way in which facilities in NCTPC are used and how they will be planned for in the future, such that the Duke-Progress transmission system is in many respects planned as if the two operating companies were a single entity.

34. Duke-Progress attempts to rely on the definition of “transmission provider” included in the Commission-accepted Joint OATT, which distinguishes between Duke and Progress. We find that Duke-Progress’s reliance on the definition of “Transmission Provider” in the Joint OATT is misplaced. While we accepted the Joint OATT in connection with the merger of Duke and Progress, the issue of whether the definition of “transmission provider” in the Joint OATT would compel a finding with respect to Order No. 1000 was not before us. Moreover, the Commission did not make any finding (nor did Duke-Progress make any argument) that the Joint OATT’s definition of “Transmission Provider” was consistent with the definition of “transmission provider” in Part 37 of the C.F.R., or that the proposed change to the *pro forma* definition of transmission provider would satisfy the C.F.R. definition. That issue, too, was not squarely before the Commission. With respect to contentions advanced in the Duke-Progress Compliance Filing regarding the definition of “transmission provider” in the C.F.R. and the Joint OATT, these arguments undermine the reasons why the Commission issued Order No. 1000, namely, to require public utility transmission providers to engage in regional transmission planning to identify more efficient or cost-effective transmission solutions, and thus we reject them.

35. For the reasons set forth above, we conclude that Duke-Progress is a single transmission provider for determining compliance with the regional planning requirements of purposes of Order No. 1000. Accordingly, NCTPC is not a compliant Order No. 1000 transmission planning region.

(b) The Addition of Yadkin Does Not Cure the Deficiency of NCTPC as a Compliant Transmission Planning Region

36. Duke-Progress and North Carolina Utilities Commission and Public Staff claim that the presence of Yadkin in NCTPC means that NCTPC satisfies the requirements of Order No. 1000 because there is more than one public utility transmission provider, even assuming the Commission finds that Duke and Progress are a single transmission provider. We disagree.

37. Given that Yadkin owns limited transmission facilities that only serve its own hydroelectric plant, Yadkin’s addition to NCTPC is not sufficient to qualify NCTPC as a transmission planning region for purposes of Order No. 1000. Yadkin owns and

operates approximately 21 miles of 13.8 kV and 100 kV transmission lines that interconnect its hydroelectric facility with Duke-Progress.⁴⁷ Moreover, as the Duke-Progress Compliance Filing notes, Yadkin's load consists of a single customer (its own production facility) with a typical peak demand of under 5 MW.⁴⁸

38. In this case, we find that a public utility transmission provider cannot satisfy Order No. 1000's regional scope requirement simply by adding to its proposed transmission planning region an entity such as Yadkin, which has only very limited transmission facilities that serve its own hydroelectric facility.⁴⁹ In requiring that a compliant transmission planning region consist of more than a single transmission provider, and that scope of a particular transmission planning region should also be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting the individual regions, we mean to ensure that there are at least two transmission providers for which transmission planning is an important and necessary function in each transmission planning region.⁵⁰ Based on the limited nature of Yadkin's transmission facilities, it does not appear that Yadkin has a need to plan for transmission on a scale comparable to how Duke-Progress or other public utility transmission providers with a number of customers would need to plan. Order No. 1000 requires, as discussed above, proactive cooperation among public utility transmission providers to better identify solutions that more efficiently or cost-effectively meet the region's needs. It is unclear to the Commission how the inclusion of Yadkin in the transmission planning region, in the absence of any other public utility transmission providers other than Duke-Progress, advances this objective. Given the limited role that Yadkin would necessarily play in the regional transmission planning process, we conclude that its inclusion in the NCTPC would not satisfy Order No. 1000's regional scope requirement.

⁴⁷ See Yadkin Compliance Filing at 2.

⁴⁸ Duke-Progress Compliance Filing at n.5.

⁴⁹ We note that Duke-Progress states that "Yadkin may not need to take any specific action to fulfill" the responsibilities set forth in the Duke-Progress tariff. *See Id.* at n.17.

⁵⁰ Notwithstanding this discussion, Yadkin was obligated to submit a compliance filing in light of the fact that it is a public utility transmission provider. We note that Yadkin's statement that it is participating in the regional transmission planning process of another public utility transmission provider is not sufficient to comply with Order No. 1000.

(c) **Contentions Regarding Accepting NCTPC as a Compliant Transmission Planning Region**

39. The Duke-Progress Compliance Filing also raises other rationales for accepting NCTPC as a compliant transmission planning region. We are not persuaded by these arguments. Regarding Duke-Progress's contention that Duke-Progress has made a commitment to municipal entities to retain the NCTPC region and that NCTPC provides these load-serving entities with more authority than they would have in neighboring transmission planning regions, Duke-Progress is not prevented from maintaining NCTPC as part of its local transmission planning process. Thus, even though we find that Duke-Progress's participation in NCTPC is not sufficient for Duke-Progress to comply with Order No. 1000's requirement that each public utility transmission provider participate in a regional transmission planning process, we are not concluding that the NCTPC is an unacceptable local transmission planning process. Thus, regardless of whether Duke-Progress's argument that the role of the North Carolina load-serving entities will be diminished if it has to join a larger transmission planning region for purposes of regional transmission planning under Order No. 1000 has any merit (although it is not clear that would be the case), the North Carolina load-serving entities can still have the same role they have now under the NCTPC, even if the NCTPC would be considered part of the Duke-Progress local transmission planning process.

40. We find that Duke-Progress's argument that NCTPC has a geographic and electric scope that is similar to or greater than that of other regions, such as ISO-NE and NYISO, misses the point. It is not that NCTPC is too small geographically or that it does not serve enough load to comply with Order No. 1000. Rather, it is that the proposed NCTPC transmission planning region will consist of only a single public utility transmission provider of a significant size (i.e., the combined Duke-Progress), coupled with a public utility transmission provider with limited transmission facilities that only serve its own hydroelectric plant (i.e., Yadkin). Without ruling on whether the transmission planning regions proposed by ISO New England, Inc. (ISO-NE) and New York Independent System Operator Inc. (NYISO) are sufficient to comply with Order No. 1000, both of those regions consist of a number of public utility transmission providers.⁵¹

41. In the proposed NCTPC transmission planning region, by contrast, a nonincumbent transmission developer seeking to propose transmission solutions within NCTPC would be facing a region dominated by a single transmission provider. At best, a

⁵¹ As stated in their compliance filings, ISO-NE asserts that it consists of thirteen transmission providers, and NYISO asserts it consists of seven providers. ISO-NE Order No. 1000 Compliance Filing at 2; NYISO Order No. 1000 Compliance Filing at 1.

transmission planning region comprised of a single transmission provider creates a perception that only the views of that single transmission provider will be further considered in the regional transmission planning process. As stated by LS Power, a nonincumbent transmission developer will not be encouraged to invest its resources without believing that it has a fair opportunity for success.⁵² This result would be at odds with Order No. 1000, which is intended to encourage nonincumbent transmission developer participation in regional transmission planning processes.

42. Accordingly, for the foregoing reasons, we reject the Duke-Progress and Yadkin Compliance Filings, and we direct Duke-Progress and Yadkin to file, within 90 days of the date of issuance of this order, a further compliance filing that, at a minimum, includes another transmission provider(s) of sufficient scope, as discussed above, to allow the public utility transmission provider in a transmission planning region to meet the Order No. 1000 requirements or that indicates Duke-Progress and Yadkin have joined an Order No. 1000-compliant transmission planning region. As noted herein, we will not address other aspects of the Duke-Progress and Yadkin Compliance Filings, as they have failed to satisfy the threshold requirement of forming a compliant transmission planning region. Therefore, we also will not address comments on other aspects of the Duke-Progress Compliance Filing submitted by North Carolina Utilities Commission and Public Staff, North Carolina EMC, or LS Power.

The Commission orders:

(A) Duke-Progress and Yadkin's compliance filings are hereby rejected, as discussed in the body of this order.

(B) Duke-Progress and Yadkin are hereby directed to submit new compliance filings, within 90 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller is concurring with a statement attached.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵² LS Power Protest at 5.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Carolinas LLC and
Carolina Power and Light Company

Docket Nos. ER13-83-000

Alcoa Power Generating, Inc.

ER13-88-000

(Issued February 21, 2013)

MOELLER, Commissioner, *concurring*:

When Order No. 1000 was first proposed three years ago, I promised “to do my part to ensure that this Commission does not lose sight of the ultimate goal: a final rule that results in needed capital investment.”¹ As my top policy priority, a “[r]obust electric transmission infrastructure is the ultimate “enabling” energy technology, as it can provide a more efficient electric system, enhanced reliability, increased access to less expensive and often cleaner resources, and the ability to harness location-constrained renewable resources.”² In contrast, “the lack of adequate transmission investments often disproportionately raises consumer rates due to congestion, threatens the reliability of the nation’s bulk power system, and increases reliance on older and dirtier generating resources.”³

When Order No. 1000 was adopted, I dissented in part, based upon a concern that “instead of encouraging more regional cooperation, the rule could ultimately discourage such cooperation.”⁴ Yet a region with only one transmission owner obviously cannot cooperate with another transmission owner in that region. While some special-purpose companies do own transmission, if that company would never have a need to build long-distance transmission lines, that company does not convert a region with one

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,660 (2010), *Commissioner Moeller, concurring*.

² *Id.*

³ *Id.*

⁴ Order No. 1000, *Commissioner Moeller, dissenting in part*.

transmission owner into a region with two competitors. Competition drives prices lower and increases efficiencies, and two or more companies competing to design and build the best transmission system will tend to build better projects at lower cost than a single company.

Today's order is our first major order on compliance with Order No. 1000. As we consider issues on compliance, "the Commission recognizes that each transmission planning region has unique characteristics and, therefore, [Order No. 1000] accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate these regional differences."⁵ As stated in Order No. 1000, "[w]e have stressed throughout this proceeding that we intend to be flexible and are open to a variety of approaches to compliance."⁶ Moreover, we recognize that regional flexibility is not "an empty offer":

The Commission recognizes and intends that several approaches to cost allocation may satisfy the principles adopted in this Final Rule. If it were otherwise, the offer of regional flexibility would be an empty offer.⁷

Thus, flexibility will be a hallmark of the manner in which we address the mandates of Order No. 1000 on compliance.

Yet the matter before us is a clear case of non-compliance with a basic element of Order No. 1000, so this is not a decision that requires us to grant the flexibility that is obligated by the provisions of Order No. 1000.

Accordingly, I respectfully concur.

Philip D. Moeller
Commissioner

⁵ Order No. 1000 at P 61. Also see statements about flexibility at PP 108, 149, 157, 158, 208, 220, 227, 259, 322, 324, 441, 444, 445, 447, 448, 449, 561, 604, 624, 705, 714, and 745. For additional statements on flexibility, see the transcript of the Commission's open meeting on July 21, 2011.

⁶ *Id.* at P 561.

⁷ Order No. 1000 at P 714.