

150 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

South Carolina Gas & Electric Company

Docket Nos. ER13-107-006
ER13-107-007

ORDER ON REHEARING AND COMPLIANCE

(Issued January 22, 2015)

1. On May 15, 2014, the Commission issued an order accepting, in part, and rejecting in part,¹ the second compliance filing that South Carolina Electric & Gas (SCE&G) made to comply with the directives of the First Compliance Order² and the local and regional transmission planning and cost allocation requirements of Order No. 1000.³ The Commission also granted in part and denied in part requests for rehearing of the First Compliance Order.
2. On June 13, 2014, and June 16, 2014, LS Power Transmission LLC and LS Power Holdings, LLC (together, LS Power) and SCE&G, respectively, submitted requests for rehearing and clarification of the Second Compliance Order.

¹ *So. Carolina Elec. & Gas Co.*, 147 FERC ¶ 61,126 (2014) (Second Compliance Order).

² *So. Carolina Elec. & Gas Co.*, 143 FERC ¶ 61,058 (2013) (First Compliance Order).

³ *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 and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

3. On July 17, 2014, SCE&G submitted, pursuant to section 206 of the Federal Power Act (FPA),⁴ revisions to Attachment K of its Open Access Transmission Tariff (OATT) to comply with the Second Compliance Order. For the reasons discussed below, we deny the requests for rehearing. We also accept in part, and reject in part, SCE&G's proposed OATT revisions, subject to conditions, and direct SCE&G to submit further revisions to its OATT in a further compliance filing due within 30 days of the date of issuance of this order.

I. Background

4. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed 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. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890⁵ to 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; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

5. The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its OATT a method, or set of methods, for allocating the costs of new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. Order No. 1000 also required that each cost allocation method adhere to six cost allocation principles.

6. On October 11, 2012, SCE&G submitted revisions to Attachment K of its OATT to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000. On April 18, 2013, in the First Compliance Order, the Commission accepted SCE&G's compliance filing, effective April 19, 2013, subject to further modifications.

⁴ 16 U.S.C. § 824e (2012).

⁵ *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).

7. On October 16, 2013, SCE&G submitted revisions to Attachment K of its OATT to comply with the directives in the First Compliance Order and the local and regional transmission planning and cost allocation requirements of Order No. 1000. On May 15 2014, in the Second Compliance Order, the Commission accepted in part, and rejected in part, SCE&G's compliance filing, effective April 19, 2013, and directed a further compliance filing.

II. Requests for Rehearing or Clarification

8. On June 13, 2014, LS Power submitted a timely request for rehearing and clarification of the Second Compliance Order. On June 16, 2014, SCE&G filed a request for clarification, or in the alternative rehearing, of the Second Compliance Order. On June 30, 2014, SCE&G filed a response to LS Power's request for rehearing.

III. Compliance Filing

9. In response to the Second Compliance Order, SCE&G submitted further revisions to its local and regional transmission planning processes in its OATT to comply with the Commission's directives, including modifications relating to the regional transmission planning requirements, consideration of transmission needs driven by public policy requirements, nonincumbent transmission developer reforms, evaluation and cost allocation. SCE&G continues to coordinate with the South Carolina Public Service Authority (Santee Cooper), a non-public utility transmission provider, for purposes of regional transmission planning and has enrolled as a transmission provider in the South Carolina Regional Transmission Planning (SCRTP) process.⁶

10. Notice of SCE&G's compliance filing was published in the *Federal Register*, 79 Fed. Reg. 43,463 (2014), with interventions and protests due on or before August 7, 2014. On August 7, 2014, LS Power filed a protest. On August 22, 2014, SCE&G filed an answer to LS Power's protest.

IV. Discussion

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept SCE&G's answer because it has provided information that assisted us in our decision-making process.

⁶ See SCE&G OATT Att. K § Appendix K-7. For purposes of this order, references to SCE&G's regional transmission planning process refer to the combined regional transmission planning process of SCE&G and Santee Cooper. SCE&G's OATT collectively refers to SCE&G and Santee Cooper as the Transmission Providers.

12. We deny SCE&G and LS Power's requests for rehearing, as discussed more fully below. We find that SCE&G's compliance filing partially complies with the directives in the Second Compliance Order. Accordingly, we accept SCE&G's compliance filing to be effective April 19, 2013, subject to a further compliance filing due within 30 days of the date of issuance of this order. Specifically, as discussed below, we require SCE&G to revise its OATT to: (1) state that a transmission project will be deemed materially different as compared to another transmission alternative(s) under consideration if the proposal contains significant geographic or electrical differences in the alternative's proposed interconnection point(s) *or* transmission line routing; (2) state that an entity enrolled in the SCRTP region must withdraw from the region prior to a transmission project being selected in the regional transmission plan for the purposes of cost allocation in order to avoid being allocated costs for that transmission project; (3) provide that both incumbent transmission providers and nonincumbent transmission developers may request regional cost allocation in accordance with Order No. 1000 for an unsponsored transmission project that the transmission providers have identified through their regional analysis as a more efficient or cost-effective solution to address transmission needs; and (4) explain how the SCRTP region will identify the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region.

A. Transmission Planning Region

1. Second Compliance Order

13. In the Second Compliance Order, the Commission accepted SCE&G's proposed OATT provision governing the withdrawal of enrolled transmission providers from the SCRTP region as consistent with the directives in the First Compliance Order and Order No. 1000. The Commission found that the proposed provision establishes that an enrolled transmission provider that wishes to terminate its enrollment in the SCRTP region must provide at least 60 days written notice before the withdrawal becomes effective, and that to avoid the allocation of costs, the enrollee must withdraw before the execution of a Coordination Agreement where that enrollee has been identified as a beneficiary of the project.⁷ The Commission found that the "proposed withdrawal provision will provide certainty to stakeholders and transmission developers of when an enrolled transmission provider's withdrawal from the SCRTP region will become

⁷ As originally proposed, the Coordination Agreement had to be executed prior to a proposed transmission project being selected in the regional transmission plan for purposes of cost allocation. *See* Second Compliance Order, 147 FERC ¶ 61,126 at P 198. We discuss SCE&G's proposal to remove the requirement to execute a Coordination Agreement below in the Coordination Agreement section of this order.

effective and, in turn, how such withdrawal affects the allocation of costs for transmission facilities selected in the regional transmission plan for purposes of cost allocation.”⁸

14. In addition, in the Second Compliance Order, the Commission rejected SCE&G’s newly proposed effective date of January 1 of the year following the Commission’s acceptance of its compliance filing as inconsistent with the April 19, 2013 effective date the Commission accepted in the First Compliance Order. The Commission directed SCE&G to submit revisions to its OATT in a further compliance filing to reestablish the April 19, 2013 effective date.⁹

2. Request for Rehearing and Clarification

15. LS Power asserts that the provision governing the withdrawal of enrolled transmission providers from the SCRTP region does not include a limitation on an enrollee withdrawing to avoid a cost allocation of a transmission facility in one planning year, only to re-enroll immediately thereafter. Therefore, LS Power requests clarification that upon the withdrawal of an enrolled transmission provider from the SCRTP region, there be a minimum period of at least three years during which the exiting enrollee cannot re-enroll.¹⁰

16. LS Power also states that if the SCRTP region remains a two party, single-state region, the withdrawal of an enrollee would result in SCE&G not being compliant with Order No. 1000.¹¹ Therefore, LS Power also requests clarification that upon withdrawal, SCE&G must be a participant in an Order No. 1000-compliant transmission planning region within 60 days of the withdrawal of an enrollee. LS Power states that, alternatively, the Commission should require that the withdrawal notice provision provide that withdrawal is effective at the later of 60 days or the date on which SCE&G is enrolled in another Order No. 1000-compliant planning region.¹²

⁸ Second Compliance Order, 147 FERC ¶ 61,126 at P 34.

⁹ *Id.* P 36.

¹⁰ LS Power Request for Clarification and Rehearing at 2-3.

¹¹ *Id.* at 1-2.

¹² *Id.* at 2.

3. Third Compliance Filing

17. In the third compliance filing, SCE&G proposes to reestablish the originally proposed effective date of April 19, 2013.

4. Commission Determination

18. We deny LS Power's request for rehearing. As the Commission stated in response to a similar request by LS Power in the SERTP Second Compliance Order, we do not require withdrawal provisions to include a minimum waiting period for an entity that has elected to withdraw from re-enrolling.¹³ LS Power's concern about an enrollee withdrawing to avoid a cost allocation of a transmission facility in one planning year, only to re-enroll immediately thereafter, is speculative, as there is no evidence that transmission providers that elect to enroll in a region will use withdrawal provisions in such a manner to undermine regional transmission planning efforts.¹⁴ However, we note that, as discussed below in the Coordination Agreement section of this order we find that a revision SCE&G proposes to the withdrawal provision is ambiguous and direct SCE&G to revise the withdrawal provision so that it provides a clear and definitive point in the process by which an enrollee must withdraw to avoid cost allocation and clarify what costs the withdrawing enrollee must continue to pay and what costs the withdrawing enrollee will not be required to pay.

19. In response to LS Power's concern about whether SCE&G will be in compliance with Order No. 1000 if the other transmission provider in the SCRTP region withdraws, we note that Order No. 1000 requires that public utility transmission providers include in their OATTs a list of public utility and non-public utility transmission providers that have enrolled as transmission providers in the region.¹⁵ As such, upon the withdrawal of any entity from the SCRTP region, SCE&G will have to submit changes to its OATT to the Commission pursuant to section 205 of the FPA, which will then be reviewed to ensure continued compliance with the scope requirements of Order No. 1000. Any impact of a withdrawing transmission provider on the scope of the regional transmission planning region will be addressed at that time.¹⁶ Further, we note that if SCE&G, as a public utility transmission provider, ceases to be enrolled in the SCRTP region it must make a

¹³ *Duke Energy Carolinas, LLC*, 144 FERC ¶ 61,054 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,241, at P 49 (2014) (SERTP Second Compliance Order).

¹⁴ *Id.*

¹⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

¹⁶ *See* SERTP Second Compliance Order, 147 FERC ¶ 61,241 at P 49.

filing with the Commission to demonstrate how it complies with the requirements of Order No. 1000.

20. With respect to the effective date, we find that SCE&G's proposal to adopt an April 19, 2013 effective date complies with the directive in the Second Compliance Order.

B. Affirmative Obligation to Plan

1. Second Compliance Order

21. In the Second Compliance Order, the Commission found that SCE&G's proposed definition of "Transmission Needs" (a new term) unreasonably limited the universe of transmission projects that could be considered to address regional transmission needs to those associated with a long-term commitment for transmission service.¹⁷ The Commission determined that the proposed definition of "Transmission Needs" was inconsistent with Order No. 1000 because a commitment for long-term firm transmission service should not be a prerequisite for consideration of a transmission need.¹⁸

22. Furthermore, the Commission stated that Order No. 890 addressed arguments regarding the adequacy of addressing individual requests for service under the OATT. There, the Commission noted that the process addressing individual requests for service under the OATT is adequate for customers who request specific transmission rights to purchase power from a particular resource in a particular location during a defined time period. The Commission found, however, that such a process does not provide an opportunity for customers to consider whether potential upgrades or other investments could reduce congestion costs or otherwise integrate new resources on an aggregated or regional basis outside of a specific request for interconnection or transmission service.¹⁹

¹⁷ Second Compliance Order, 147 FERC ¶ 61,126 at P 71. SCE&G proposed to define Transmission Needs as:

Physical transmission capacity required to fulfill a long-term (i.e., one year or more) firm transmission commitment(s) associated with reliability, economics, or Public Policy Requirements. Such commitments consist of Transmission Customers' long-term Service Agreements under the Tariff and the transmission service required to serve the needs of Native Load Customers.

¹⁸ *Id.*

¹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 543.

The Commission therefore rejected the proposed definition of “Transmission Needs” and directed SCE&G to remove it from its OATT.²⁰

2. Request for Rehearing

a. Summary of Request For Rehearing

23. SCE&G requests clarification, or, in the alternative, rehearing of the Second Compliance Order’s requirement to remove the defined term “Transmission Need” in its entirety from SCE&G’s OATT.²¹ SCE&G notes that the Commission did not permit SCE&G to explain the defined term or amend its usage and therefore requests clarification that as long as properly proposed regional transmission solutions are evaluated under the initial screening criteria of the regional transmission planning process, SCE&G may limit those projects that are selected in the regional transmission plan for purposes of cost allocation to those projects that meet a “Transmission Need.”²²

24. SCE&G states that its Order No. 1000 process includes a two phase analysis of proposed regional transmission projects. First, SCE&G will review the proposed transmission project to determine whether it meets the initial screening criteria, and if so, the qualified developer can request cost allocation. Second, the enrolled transmission providers will determine whether to include the proposed transmission project in the regional transmission plan for purposes of cost allocation. SCE&G argues that the Commission should clarify that SCE&G may revise its OATT to remove the requirement that a proposed transmission project must meet a “Transmission Need” from the initial screening stage, and to instead only use the term in the more limited context where projects are submitted for cost allocation and are, therefore, to be evaluated for inclusion in the regional transmission plan – i.e., in the second phase of evaluation.²³ SCE&G states that such clarification will ensure that proposed regional transmission projects that do not meet “Transmission Needs” can still be evaluated by the enrolled transmission providers (and stakeholders) in the initial evaluation stage, but only transmission projects that meet a “Transmission Need” would be eligible to be included in the regional transmission plan for purposes of cost allocation.

²⁰ Second Compliance Order, 147 FERC ¶ 61,126 at P 71.

²¹ SCE&G Request for Rehearing at 3.

²² *Id.* at 3-4.

²³ *Id.* at 4.

25. In the alternative, SCE&G requests rehearing, arguing that the Commission's justification for rejecting the proposed defined term is vague, lacks clarity and is, therefore, arbitrary and capricious as unsupported by substantial evidence.²⁴ SCE&G asserts that nothing in its Order No. 1000 processes (including the addition of the term "Transmission Need") is intended to amend its Order No. 890 processes, which allow any stakeholder to propose alternative transmission solutions at any time to reduce congestion including upgrades and other investments, and which SCE&G considers in accordance with the Order No. 890 planning principles.²⁵ SCE&G states that the Commission provides only a general reference to Order No. 890 as its basis for rejecting SCE&G's proposed definition and the portion of Order No. 890 upon which the Commission relies makes clear that such hypothetical evaluation or planning is distinct from a planning process that dictates cost responsibility.²⁶

26. SCE&G states that if the Commission is adding to the requirements of the economic planning principle by now requiring something more than that principle's requisite economic planning studies by generically applying the principle to include the development of the regional planning models, then the Commission has amended Order Nos. 890 and 1000 without a notice and comment rulemaking process.²⁷ Further, SCE&G asserts that the Commission acted inconsistently with Order No. 1000 by not providing the regional flexibility afforded by that Order, as it would have nullified perhaps the most fundamental aspect of SCE&G's physical transmission market: that transmission is planned and constructed in response to customer demand to move generation to load.²⁸

27. SCE&G states that it plans and develops its transmission system based upon demands from its customers, whether long-term point-to-point, network, or native load, and that congestion payments do not exist in the SCRTP region.²⁹ SCE&G states that the

²⁴ *Id.* at 5.

²⁵ *Id.* at 6.

²⁶ *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 544, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), Order No. 890-B, 123 FERC ¶ 61,299 (2008), Order No. 890-C, 126 FERC ¶ 61,228, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

²⁷ *Id.* at 7.

²⁸ *Id.*

²⁹ *Id.*

transmission system is planned and expanded to address congestion in advance of the existence of congestion. To the extent forecasts for firm load growth demonstrate that particular regional transmission facilities will become congested in the future, “Transmission Needs” are then identified by these forecasting and planning activities, and solutions to address these needs may be proposed for purposes of cost allocation.³⁰ In contrast, SCE&G states that, in the case of a proposed transmission project providing transmission to connect new generation for transportation, where such transmission did not previously exist and there is no firm transmission commitment, a “Transmission Need” does not exist. Should a stakeholder propose such a project, SCE&G could evaluate it through its existing Order No. 890 economic planning studies, or through the first phase of its Order No. 1000 process; but, absent a firm transmission commitment, SCE&G would not evaluate the proposal for inclusion in the regional transmission plan for purposes of cost allocation.³¹ SCE&G asserts that a requirement that SCE&G must plan for and expand its transmission system for non-firm transmission service purposes goes far beyond the requirements of Order Nos. 890 and 1000.³²

b. Commission Determination

28. We deny SCE&G’s request to clarify that it may keep its proposed defined term “Transmission Needs” if it uses it only to exclude a transmission project from being eligible to be selected in the SCRTP regional transmission plan for purposes of cost allocation rather than to exclude a transmission project from being considered at all in the regional transmission planning process. This proposal does not comply with the requirements of Order No. 1000.³³ The Commission explained in the First Compliance Order that SCE&G may not unreasonably preclude transmission projects from being considered to address transmission needs.³⁴

29. We also deny SCE&G’s request for rehearing of the requirement in the Second Compliance Order that the definition of the term “Transmission Needs” must be removed from SCE&G’s OATT.³⁵ We affirm the finding in the Second Compliance Order that the

³⁰ *Id.* at 7-8.

³¹ *Id.* at 8.

³² *Id.*

³³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

³⁴ First Compliance Order, 143 FERC ¶ 61,058 at PP 117-120.

³⁵ Second Compliance Order, 147 FERC ¶ 61,126 at P 65.

proposed definition of “Transmission Needs” unreasonably limits the universe of transmission projects that could be considered to address regional transmission needs and is inconsistent with Order No. 1000 because a commitment for long-term firm transmission service should not be a prerequisite for consideration of a transmission need.³⁶ While the process addressing individual requests for service under the OATT is adequate for customers who request specific transmission rights to purchase power from a particular resource in a particular location during a defined time period, such a process does not provide an opportunity for customers to consider whether potential upgrades or other investments could reduce congestion costs or otherwise integrate new resources on an aggregated or regional basis outside of a specific request for interconnection or transmission service.³⁷ The regional transmission planning process required by Order No. 1000 provides the opportunity for public utility transmission providers, transmission customers, and stakeholders to identify transmission needs on a regional level, which may or may not be addressed by individual transmission service requests.

30. In addition, contrary to SCE&G’s claim, the Commission is not requiring it to expand its transmission system for non-firm transmission service. As an initial matter, as the Commission has made clear, nothing in Order No. 1000 requires a transmission facility that is selected in the regional transmission plan for purposes of cost allocation to be built, nor does it give any entity permission to build a transmission facility.³⁸ Further, SCE&G acknowledges that it already considers transmission projects that are not associated with any request for transmission service (either firm or non-firm) as part of its regional transmission planning process, but argues that it does so under its Order No. 890-compliant transmission planning process and that it does not intend its Order No. 1000 transmission planning process to amend its Order No. 890 process.³⁹ However, our understanding of the SCRTP process, as outlined in SCE&G’s OATT, is that it is a single regional transmission planning process and not separate Order No. 890 and Order No. 1000 processes. In any event, the Commission concluded in Order No. 1000 that the existing requirements of Order No. 890 were inadequate because public utility transmission providers had no affirmative obligation to develop a regional transmission

³⁶ *Id.* P 71.

³⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 543.

³⁸ *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 66; Order No. 1000-A, 139 FERC ¶ 61,132 at P 191.

³⁹ SCE&G Request for Rehearing at 6. For example, SCE&G considers transmission projects that could reduce congestion costs or otherwise integrate new resources on an aggregated or regional basis outside a specific request for transmission service.

plan that reflects the evaluation of whether alternative regional transmission solutions may be more efficient or cost-effective than solutions identified in local transmission planning processes.⁴⁰ The fact that SCE&G's transmission planning process complied with Order No. 890 is not a sufficient basis to conclude that it also complies with all the requirements of Order No. 1000. For the same reason, we find that SCE&G's proposal that a proposed transmission facility would be evaluated for selection in the regional transmission plan for purposes of cost allocation only if it is associated with a long-term firm commitment for transmission service does not comply with Order No. 1000.

3. Compliance

a. Third Compliance Filing

31. In its third compliance filing, SCE&G proposes to revise its OATT to remove the definition of the term "Transmission Need" and replace all references to "Transmission Needs" with the undefined term "transmission needs."

b. Protests and Answers

32. LS Power agrees with the Commission's finding that the defined term "Transmission Needs" unreasonably limits the universe of transmission projects that could be considered to address regional transmission needs. However, LS Power is concerned that SCE&G's proposal to replace the defined term "Transmission Needs" with the undefined term "transmission needs" will lead to the same result. LS Power states that, while the phrase is no longer a defined term, it must be defined somehow in order for the transmission providers in the SCRTP region to evaluate whether a project meets the "transmission need." LS Power therefore requests that the Commission require SCE&G to explicitly identify how it will determine a "transmission need" for purposes of determining whether a transmission project can be proposed to meet that need and whether a proposed project meets that need. Without such information, according to LS Power, the SCRTP regional transmission planning process is unreasonably vague.⁴¹

33. In its answer, SCE&G argues that LS Power's protest of SCE&G's removal of the definition of the capitalized term "Transmission Need" ignores the fact that the Commission uses the same term "transmission need" 148 times in Order No. 1000 without using it as a defined term.⁴² SCE&G claims that any concern regarding

⁴⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 3, 12.

⁴¹ LS Power Protest at 11-12.

⁴² SCE&G Answer at 9.

“transmission need” as an undefined term should have been raised in its request for rehearing of Order No. 1000,⁴³ and that the un-capitalized use of “transmission needs” in the SCE&G tariff is consistent with that of the Commission.

c. Commission Determination

34. We find that SCE&G’s removal of the definition for Transmission Needs, as discussed above, complies with the directives in the Second Compliance Order. We reject LS Power’s argument that leaving the term “transmission need” undefined in the SCE&G OATT causes confusion and will lead to the same results as the capitalized, defined term. We accept SCE&G’s use of the undefined term with the understanding that, as SCE&G suggests,⁴⁴ it uses the undefined term, “transmission need,” in the same way the Commission repeatedly used the term in Order No. 1000 itself.⁴⁵ We find that the term transmission needs is a broad term that allows transmission providers flexibility to meet the transmission needs specific to the region, and as noted above, cannot be used in a way that narrows the universe of possible transmission projects in a way that is inconsistent with Order No. 1000. In particular, SCE&G may not limit “transmission needs” to only those needs associated with long-term firm transmission service commitments. Furthermore, since Order No. 1000 did not define transmission needs, nor did it require transmission providers to include a definition in its tariffs, we dismiss LS Power’s protest. As required by Order No. 1000, SCE&G has established a process for evaluating transmission needs.⁴⁶

35. Similarly, we deny LS Power’s request that SCE&G explicitly identify how it will determine a “transmission need” for purposes of determining whether a transmission project can be proposed to meet that need and whether a proposed project meets that need. Order No. 1000 allows flexibility for public utility transmission providers to meet the minimum requirements of Order No. 1000 by developing procedures appropriate for

⁴³ LS Power Transmission, LLC, August 22, 2011 Request for Clarification, or in the Alternative, Rehearing of Order No. 1000, Docket No. RM10-23-000.

⁴⁴ SCE&G Answer at 9.

⁴⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 2-8, 21, 28, 63, 65, 68, 74, 82-83, 109-112, 114, 116, 137, 148, 166, 169, 189, 203-224, 226, 229, 253, 270, 321, 331, 369-370, 375, 394, 399, 401, 405, 415, 465, 502, 545-546, 688 and 690 (2011), Order No. 1000-A, 139 FERC ¶ 61,132; Order No. 1000-B, 141 FERC ¶ 61,044 at PP 148, 224, 226, 229 (2012).

⁴⁶ Second Compliance Order, 147 FERC ¶ 61,126, at P 158.

their local and regional transmission planning processes.⁴⁷ SCE&G's tariff requires that in both the regional and local transmission planning processes, "Transmission Providers will evaluate proposed [t]ransmission [n]eeds based upon the following factors: (1) the feasibility of addressing the potential need; (2) the extent to which addressing the potential need would also address other potential needs; and (3) the factual basis supporting the potential need."⁴⁸ SCE&G's tariff also requires that it use coordinated models, assumptions, power flow, transient stability, power transfer and short circuit studies and stakeholder comments to evaluate proposed transmission projects in the local transmission planning process.⁴⁹ In addition, SCE&G is required to evaluate proposed transmission projects against all federal, state and regional reliability standards.⁵⁰

C. Definition of Local and Regional Projects

1. Second Compliance Order

36. In the Second Compliance Order, the Commission accepted SCE&G's proposal limiting regional transmission projects to those that benefit both transmission providers in the region (i.e., SCE&G and Santee Cooper) but noted that if another transmission provider were to enroll in the SCRTP region, SCE&G would have to revise the requirement so that a selected transmission project must benefit any two (rather than "both") transmission providers in the SCRTP region.⁵¹ In addition, the Commission directed SCE&G to revise its OATT to make clear that a transmission developer is not responsible for determining whether a regional transmission project benefits both transmission providers currently enrolled in the SCRTP region and that the SCRTP process will determine the beneficiaries of any proposed transmission project.⁵²

37. The Commission also found that SCE&G's proposed provision restricting regional transmission projects to those that are materially different from projects currently in the regional or local transmission plans partially complied with Order No. 1000 and the directives in the First Compliance Order. To fully comply, the Commission directed

⁴⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 61.

⁴⁸ SCE&G OATT Att. K §§ VI, VII.B.

⁴⁹ *Id.* § VI.

⁵⁰ *Id.*

⁵¹ Second Compliance Order, 147 FERC ¶ 61,126 at P 87.

⁵² *Id.*

SCE&G to revise its OATT to: (1) clarify how it will determine whether a proposed transmission project is materially different from a transmission project currently in the local or regional transmission plans; and (2) require a posting be made for stakeholders in the SCRTP process of any determinations made by the transmission providers that a proposed transmission project is not materially different, which also may include an explanation regarding cost estimates.⁵³

2. Third Compliance Filing

38. To address the compliance directives in the Second Compliance Order, SCE&G proposes to revise its OATT to state that a transmission developer is not responsible for determining whether a regional transmission project benefits more than one transmission provider currently enrolled in the SCE&G region and that the SCRTP process will determine the beneficiaries of any proposed transmission project.⁵⁴ In addition, in response to the Commission's finding in the Second Compliance Order that, if another transmission provider were to enroll in the SCRTP region, SCE&G would have to revise its OATT so that a selected transmission project must benefit any two (rather than "both") transmission providers in the SCRTP region, SCE&G proposes to revise its OATT to state that a proposed transmission project must be beneficial to "more than one" transmission provider, as opposed to "both" transmission providers.⁵⁵ Regarding the materially different provision, SCE&G proposed to revise its OATT to state that "[a] project will be deemed materially different, as compared to another transmission alternative(s) under consideration, if the proposal consists of significant geographical or electrical differences in the alternative's proposed interconnection point(s) and transmission line routing."⁵⁶ SCE&G states that this language is consistent with language the Commission accepted in SERTP Second Compliance Order.⁵⁷ Finally, SCE&G proposes to revise its OATT to state that, should the transmission providers determine that a proposed regional transmission project is not materially different from projects that are currently in the regional transmission plan or current local transmission plan, the

⁵³ *Id.* P 89.

⁵⁴ SCE&G OATT Att. K § VII.A n.5.

⁵⁵ *Id.* § VII.A.

⁵⁶ *Id.* § VII.A.e.

⁵⁷ SCE&G Transmittal at 4 (citing SERTP Second Compliance Order, 147 FERC ¶ 61,241 at 146.)

transmission providers shall post such determination for stakeholders on the SCRTP website.⁵⁸

3. Protests and Answers

39. LS Power states that it agrees that transmission projects that have “significant geographic or electrical differences” from projects already under consideration are “materially different,” but argues that projects with legitimate cost differences can also be materially different. LS Power requests that the Commission confirm, consistent with its mandate under the Federal Power Act, that “materially different” for purposes of the SCE&G competitive process includes projects that are geographically or electrically similar but for which there are material cost or rate impact differences.⁵⁹ LS Power states that it is not suggesting that cost estimates, which are largely subject to debate, equate to a materially different project. LS Power asserts that, rather, in order to be just and reasonable, the provision explaining what is considered “materially different” must account for verifiable cost differences such as fixed price arrangements, cost caps or caps on return on equity.⁶⁰ According to LS Power, even if an entity sponsors an electrically and geographically similar transmission project, the agreement to a cost cap or other cost containment provision is “materially different” than an entity that is unwilling to agree to such containment commitment.⁶¹ Likewise, LS Power states that a proposal agreeing to cap return on equity in any section 205 filing is materially different than a project sponsor that has no such return on equity cap, or even Commission review of its return on equity.⁶²

40. In its reply, SCE&G argues that LS Power’s protest is effectively protesting the Commission’s decision in the SERTP Second Compliance Order.⁶³ SCE&G asserts that the Commission’s holding in the SERTP Second Compliance Order precludes LS Power’s argument that the “materially different” definition should take into account cost differences between two different projects.

⁵⁸ SCE&G Att. K § VII.A.e.

⁵⁹ LS Power Protest at 9.

⁶⁰ *Id.* at 8.

⁶¹ *Id.* at 8-9.

⁶² *Id.* at 9.

⁶³ SCE&G Answer at 8 (citing SERTP Second Compliance Order, 147 FERC ¶ 61,241 at P 146).

4. Commission Determination

41. We find that SCE&G's proposed revisions to its OATT related to transmission developers not being responsible for determining who benefits from a regional transmission project comply with the directives in the Second Compliance Order. We also accept SCE&G's proposal to revise its OATT to state that a proposed transmission project must be beneficial to "more than one" transmission provider, as opposed to "both" transmission providers in the SCRTP region. We find this change is consistent with the Commission's finding in the Second Compliance Order on this issue.

42. In addition, we find that SCE&G's proposed revisions related to how it will consider whether a transmission project is "materially different" partially comply with the directives in the Second Compliance Order. SCE&G's proposed modifications generally ensure that the proposal does not improperly limit the scope of transmission proposals that could be considered in the regional transmission planning process. However, SCE&G's current proposal states that a transmission project "will be deemed materially different, as compared to another transmission alternative(s) under consideration, if the proposal consists of significant geographical or electrical differences in the alternative's proposed interconnection point(s) *and* transmission line routing."⁶⁴ Therefore, unless a transmission developer's proposed project had significant geographical or electrical differences in both interconnection points *and* route, it would be ineligible for consideration regardless of whether it is materially different in other respects and would be the more efficient or cost-effective transmission project, or whether it would provide regional benefits. This aspect of SCE&G's proposal could unreasonably restrict transmission projects that may, in fact, be significantly different than transmission projects already under consideration in the regional transmission planning process. Therefore, we direct SCE&G to file, within 30 days of the date of issuance of this order, a further compliance filing to revise its OATT to state that a transmission project will be deemed materially different as compared to another transmission alternative(s) under consideration if the proposal contains significant geographic or electrical differences in the alternative's proposed interconnection point(s) *or* transmission line routing.⁶⁵

43. We reject LS Power's request to clarify that "materially different" for purposes of the SCE&G competitive process includes transmission projects that are geographically or

⁶⁴ SCE&G Att. K § 15.3 (emphasis added).

⁶⁵ SCE&G notes that it based its proposed "materially different" provision on a provision proposed in another transmission planning region, and the Commission imposed a similar compliance directive there. *See* SERTP Second Compliance Order, 147 FERC ¶ 61,241 at P 148.

electrically similar but for which there are material cost or rate impact differences. The compliance directive and proposed revision that LS Power protests are related to whether a transmission project is materially different than transmission projects currently in the regional or local transmission plans, and LS Power itself states that cost estimates do not equate to a materially different project.⁶⁶ Therefore, LS Power's request is outside the scope of this compliance directive.

44. Finally, we find that SCE&G's proposed revisions to its OATT related to posting determinations for proposed regional transmission projects that are not materially different from projects that are currently in the regional transmission plan or current local transmission plan comply with the directives in the Second Compliance Order.⁶⁷

D. Federal Rights of First Refusal

1. Second Compliance Order

45. In the Second Compliance Order, the Commission granted rehearing and reversed its earlier finding that SCE&G's proposal to require that only transmission projects that do not alter the transmission providers' use or control of rights-of-way could be considered for selection in the regional transmission plan for purposes of cost allocation. The Commission found, upon further consideration, that the provision merely recognized state laws and regulations and did not create a federal right of first refusal.⁶⁸

46. The Commission continued to require the elimination of federal rights of first refusal from Commission-jurisdictional tariffs or agreements. Here, however, the Commission found that it was addressing the question of "whether it is appropriate for the Commission to prohibit SCE&G from recognizing state or local laws or regulations relating to 'the use and control of rights-of-way' when deciding whether to consider a proposed transmission project for selection in the regional transmission plan for purposes of cost allocation."⁶⁹ The Commission concluded that, on balance, it should not prohibit SCE&G from recognizing state or local laws and regulations as a threshold issue.⁷⁰

⁶⁶ LS Power Protest at 8.

⁶⁷ SCE&G Att. K § VII.A.e.

⁶⁸ Second Compliance Order, 147 FERC ¶ 61,126 at P 125.

⁶⁹ *Id.* P 127 (quoting SCE&G, Third Revised Vol. No. 5, Att. K § VII.C.g.).

⁷⁰ *Id.*

47. The Commission found that requiring SCE&G to remove the provision from its OATT would result in a regional transmission planning process that does not efficiently account for the existence of state or local laws or regulations that impact the siting, permitting, and construction of transmission facilities, and would require SCE&G's regional transmission planning process to expend time and resources to evaluate potential transmission projects that, under state or local laws or regulations, cannot be developed by a nonincumbent transmission developer.⁷¹ The Commission found that requiring such consideration would create unnecessary inefficiencies and delays.⁷² Therefore, it granted rehearing and found that SCE&G may retain its proposed provisions providing that only transmission projects that do not alter the transmission providers' use or control of rights-of-way will be considered for selection in the regional transmission plan for purposes of cost allocation.⁷³

2. Request for Rehearing

48. LS Power argues that the Commission erred in reinstating SCE&G's provision preventing a proposed transmission project from being submitted for selection in the regional transmission plan for purposes of cost allocation if the project alters the transmission provider's use and control of its rights-of-way.⁷⁴ LS Power asserts that "use and control" of rights-of-ways is a purely state issue and by prohibiting submission of projects that are likely to be contentious, whether or not a particular project "alters the transmission provider's use and control of its right of way," the Commission is taking state law issues and making them a federal exclusion to regional cost allocation.⁷⁵ According to LS Power, the First Compliance Order appropriately separated federal and state jurisdictional issues, and now by allowing SCE&G to exclude projects from consideration in the federal transmission planning process based on SCE&G's determination of whether the project will alter its own right-of-way or that of its enrollee under state law, the Commission has created a federal right of first refusal based on state law issues.⁷⁶

⁷¹ *Id.* P 128.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ LS Power Request for Clarification and Rehearing at 2.

⁷⁵ *Id.* at 2-3.

⁷⁶ *Id.* at 3.

49. LS Power claims that the Commission's ruling shifts the decision of real property issues from state courts or agencies to SCE&G, and if disputed, the Commission.⁷⁷ LS Power states that there would be no issue if it were determined by an appropriate state entity with jurisdiction that the project infringed the property rights of SCE&G or another enrolled transmission provider in a manner that could not be mitigated, rather than SCE&G itself.⁷⁸ LS Power asserts that the provision makes SCE&G the sole decider, thus allowing SCE&G to exclude a project from consideration for Commission jurisdictional regional cost allocation based on SCE&G's interpretation of state property laws.⁷⁹

50. In addition, LS Power notes that the decision by SCE&G to reject a project for consideration is reviewed by the Commission, given that its decision was made in a Commission jurisdictional regional transmission planning process determining the right to regional cost allocation, rather than by the appropriate state authorities.⁸⁰ Thus, LS Power asserts that the Commission will be put in the middle of the state issues that concerned the parties initially seeking rehearing. LS Power states that, in circumstances where there are no federal restrictions, projects should not be precluded from being submitted to the plan. Moreover, while SCE&G may believe that a particular project cannot ultimately be built under state law because it infringes property rights, such determination should be made by the appropriate state jurisdictional entity.⁸¹

3. Commission Determination

51. We deny LS Power's request for rehearing of the decision to allow SCE&G to retain the provision that requires the SCRTP region to only consider transmission projects that do not alter the transmission provider's use or control of rights-of-way for selection in the regional transmission plan for purposes of cost allocation.⁸²

52. In denying rehearing, we confirm the Commission's finding in the Second Compliance Order that it is appropriate for SCE&G to recognize state or local laws or

⁷⁷ *Id.* at 4.

⁷⁸ *Id.* at 3.

⁷⁹ *Id.* at 4.

⁸⁰ *Id.* at 5.

⁸¹ *Id.*

⁸² *Id.* at 2-5.

regulations relating to the use and control of rights-of-way as a threshold matter in the regional transmission planning process. As the Commission stated in the Second Compliance Order and we reiterate here, Order No. 1000's focus is on federal right of first refusal provisions in Commission-jurisdictional tariffs and Order No. 1000 does not require removal from Commission-jurisdictional tariffs or agreements of references to state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.⁸³

53. Order No. 1000 defines the phrase "federal right of first refusal" to refer only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements.⁸⁴ In particular, Order No. 1000 explained that a federal right of first refusal in a region's Commission-jurisdictional tariffs or agreements would operate, at the federal level, to "prevent [nonincumbent] entities from constructing and owning new transmission facilities located in that region."⁸⁵ However, in the Second Compliance Order, the Commission explained that "ignoring state or local laws or regulations at the outset of the regional transmission planning process would be counterproductive and inefficient, as it would require SCE&G's regional transmission planning process to expend time and resources to evaluate potential transmission projects that, under state or local laws or regulations, cannot be developed by a nonincumbent transmission developer."⁸⁶ LS Power has not demonstrated how SCE&G's provisions go beyond what the Commission found as permissible references to state and local laws or regulations.

54. Regarding LS Power's argument that SCE&G's proposal places SCE&G and the Commission in the position of arbiters of state or local law, we acknowledge that while SCE&G will be responsible for the transmission planning decisions, we expect the states will provide input regarding their state or local laws or regulations. As the Commission stated in Order No. 1000-A, "our expectation is that state regulators should play a strong

⁸³ Second Compliance Order, 147 FERC ¶ 61,126 at P 128; *see* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 253 377, & n.231.

⁸⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

⁸⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 261.

⁸⁶ *See* Second Compliance Order, 147 FERC ¶ 61,126 at P 128; Order No. 1000-A, 139 FERC ¶ 61,132 at P 381 (A right of first refusal "based on a state or local law or regulation would still exist under state or local law even if removed from the Commission-jurisdictional tariff or agreement and nothing in Order No. 1000 changes that law or regulation, for Order No. 1000 is clear that nothing therein is 'intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities.'").

role and that public utility transmission providers will consult closely with state regulators to ensure that their respective transmission planning processes are consistent with state requirements.”⁸⁷ We anticipate that SCE&G will work closely with the states throughout the transmission planning process and that SCE&G’s procedures will provide transparency regarding any state or local laws or regulations it uses in its decision-making process.

4. Third Compliance Filing

55. In its third compliance filing, SCE&G proposes to restore the provisions regarding rights-of-way.⁸⁸ Accordingly, we find that SCE&G has complied with the directives in the Second Compliance Order.

E. Alternative Projects in Evaluation Process

1. Second Compliance Order

56. Regarding SCE&G’s proposed alternative projects provision, the Commission found that SCE&G was unclear as to how the transmission providers would identify alternative local or regional transmission projects that would be required in lieu of a proposed regional transmission project for purposes of calculating the benefits of the proposed project.⁸⁹ The Commission found that such information is necessary to ensure that the process for evaluating whether to select a proposed regional transmission project in the regional transmission plan for purposes of cost allocation is transparent and not unduly discriminatory. The Commission further stated that in the absence of a clear process for identifying such alternative projects, it was concerned that transmission developers and other stakeholders will be unable to determine how the benefits of a proposed transmission project would be calculated, given that SCE&G will consider the costs of such alternative projects when calculating the benefits of a proposed regional transmission project. Accordingly, the Commission directed SCE&G to revise its OATT to clearly describe how the transmission providers will identify alternative local or regional transmission projects that would be required in lieu of the proposed regional transmission project for purposes of calculating the benefits of the proposed project, addressing the concern noted above.

⁸⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 338.

⁸⁸ SCE&G OATT Att. K §§ VII.A.d and VII.C.a.

⁸⁹ Second Compliance Order, 147 FERC ¶ 61,126 at P 210.

2. Third Compliance Filing

57. In its third compliance filing, SCE&G proposes to include the following language in its OATT:

In the absence of a comparable project existing in the Local or Regional Transmission Plans, the Transmission Providers will identify the alternative projects that would be required in lieu of the proposed Regional Project by developing alternative projects plans that establish similar functionality and capability in the transmission system as created by the proposed Regional Project. The Transmission Providers will use most current transmission models and assumptions in the development of alternative projects plans that would be required in lieu of the proposed Regional Project. These alternative projects will be used for comparison purposes in the evaluation of the proposed transmission project. Upon request, the Transmission Providers will share with Stakeholders in a transparent manner the assumptions and data used to support the identification of the alternative project.⁹⁰

3. Protest

58. LS Power states that the timing of SCE&G's determination of alternative projects remains vague. LS Power argues that SCE&G will determine these alternative project plans after nonincumbent transmission developers have submitted their plans, effectively providing the incumbent transmission owners with a second bite at the apple to create projects that supplant the nonincumbent proposals. Based on the lack of detail regarding the timeline of alternative projects, LS Power is unsure whether the development of alternative project plans gives enrolled transmission providers the opportunity to propose new facilities on their own systems, to propose to build these new facilities, and to consider alternative projects not on the transmission provider's system. Therefore, LS Power requests that the Commission require SCE&G to clarify the timing of its development of alternative project plans and to affirmatively find that it would be unjust and unreasonable for the enrolled transmission providers to self-assign alternative projects after reviewing submissions by nonincumbent transmission providers.

⁹⁰ SCE&G OATT Att. K § VII.G.1.

4. Commission Determination

59. We find that SCE&G's proposed revisions to the evaluation process provisions comply with the directives in the Second Compliance Order and are consistent with Order No. 1000. SCE&G has added language to its OATT that makes clear how the transmission providers will identify alternative local or regional transmission projects that would be required in lieu of a proposed regional transmission project for purposes of calculating the benefits of the proposed project. We will not require SCE&G to provide more information about the timing of its development of alternative project plans as LS Power requests because we find that the OATT is sufficiently clear about the timing of the various steps of the SCRTP regional transmission planning process.⁹¹ SCE&G outlines eight stakeholder meetings, each within a three month timeframe, in the two-year SCRTP regional transmission planning process. SCE&G's months' long determination and review of alternative projects appears logically sequential within this process. In addition, we find it unnecessary to make a finding about the potential assignment of any alternative project that may be identified during the SCRTP region's evaluation process because any such assignments would have to follow relevant provisions of the OATT.

F. Coordination Agreement

1. Second Compliance Order

60. In the First Compliance Order, the Commission required SCE&G to file the *pro forma* contractual agreement that was required to be executed by the transmission developer whose transmission project was selected in the regional transmission plan for purposes of cost allocation, among other things.⁹² In the Second Compliance Order, the

⁹¹ See, e.g., SCE&G OATT Att. K § III.E.2 (giving the timeline for the regional transmission planning process).

⁹² First Compliance Order, 143 FERC ¶ 61,058 at PP 208-209 ("Finally, we agree with LS Power's concern regarding the contractual agreement required by SCE&G for transmission projects selected in the regional transmission plan for purposes of cost allocation and direct SCE&G to submit any such *pro forma* agreement for review by the Commission in its compliance filing within 120 days from the date of the issuance of this order. The *pro forma* contractual agreement should address SCE&G's contractual provisions [such as, communication responsibilities of the transmission developer and the transmission providers; circumstances prompting reevaluation; interconnection provisions; transmission project requirements and specifications; engineering, procurement and construction (EPC) contract requirements; and operations and maintenance responsibilities] with the understanding that certain issues may be negotiated on a case-by-case basis.").

Commission required SCE&G to modify several provisions of the *pro forma* contractual agreement it filed in response to the First Compliance Order.⁹³ The Commission found that several of the provisions of that contract were inconsistent with Order No. 1000 or acted as barriers to entry, including provisions on removal of transmission projects from the regional transmission plan, termination provisions allowing SCE&G and Santee Cooper to retain the transmission developer's plans and use those plans themselves or give them to another entity without remedy to a transmission developer whose plans they were, and holding the transmission providers harmless regardless of the theory of recovery.

2. Third Compliance Filing

61. SCE&G proposes to remove the *pro forma* Coordination Agreement and the requirement that a nonincumbent transmission developer execute a Coordination Agreement prior to a proposed regional transmission project being selected in the regional transmission plan for purposes of cost allocation.⁹⁴ SCE&G contends that it would be more appropriate for such agreements to be negotiated between the transmission providers and the developer after a project has been selected in the regional transmission plan for purposes of cost allocation because the terms of such an agreement will vary based upon the facts and circumstances surrounding each project.⁹⁵ Additionally, as a legal matter, such a post-selection, implementation contract goes beyond transmission planning and could address interconnection, operation and maintenance, system restoration and cost recovery issues going far beyond the scope of Order No. 1000.

3. Protests and Answers

62. LS Power asserts that the Second Compliance Order required SCE&G to take specific actions with respect to revisions or removal of identified terms and conditions in the *pro forma* Coordination Agreement, but did not give SCE&G the option to decide whether the Coordination Agreement is even required.⁹⁶ LS Power notes that, rather than acknowledge its obligation to file revisions to the specific terms of the *pro forma* Coordination Agreement as required by the Second Compliance Order, SCE&G simply stated that it has removed from its OATT the requirement that a Qualified Developer

⁹³ Second Compliance Order, 147 FERC ¶ 61,126 at PP 218-228.

⁹⁴ *Id.* at Appendix K-8 (4.0.0).

⁹⁵ SCE&G Transmittal at 10.

⁹⁶ LS Power Protest at 4.

enter into a Coordination Agreement in order to be selected in the regional transmission plan for purposes of cost allocation.⁹⁷ Thus, LS Power states that to the extent that SCE&G desires to remove the previously accepted requirement, the appropriate mechanism for SCE&G to request that tariff change is to make a section 205 filing to establish that the proposed tariff change is just and reasonable.⁹⁸

63. Regarding SCE&G's rationale for removal of the requirement to enter into the Coordination Agreement that such a contract could address issues far beyond the scope of Order No. 1000, LS Power notes that a similar rationale in the SERTP region was rejected by the Commission.⁹⁹ LS Power claims that SCE&G would be aware of this Commission determination since the SERTP Second Compliance Order was cited by SCE&G in its third filing on compliance. Further, LS Power states that SCE&G is aware of the difference on compliance between a directive that is specific and one that is more open-ended. LS Power argues that the Commission did not provide SCE&G with the "option to modify, clarify or further justify" the tariff to eliminate the need for a Coordination Agreement altogether, but instead gave specific directions regarding revision or removal of certain terms and conditions of the *pro forma* Coordination Agreement.¹⁰⁰

64. In its August 22 Answer, South Carolina argues that LS Power's protest of SCE&G's removal of the Coordination Agreement has misconstrued the Commission's order and fails to acknowledge an earlier Commission decision approving the same action that LS Power protests. SCE&G asserts that the Commission has been clear that a *pro forma* contract must be included in transmission providers' OATT only if the transmission providers' wish to require the execution of a contract prior to a proposed project being selected. SCE&G further argues that LS Power ignores the Commission's

⁹⁷ *Id.*

⁹⁸ *Id.* at 4-5.

⁹⁹ *Id.* at 5-6 (citing SERTP Second Compliance Order, 147 FERC ¶ 61,241 at P 427. In the SERTP Second Compliance Order, the Commission stated simply because such a contract generally contains matters related to construction, cost recovery, or other matters that may be beyond the scope of Order No. 1000 does not mean that Filing Parties' proposal to condition project selection on execution of such a contract is outside the scope of Order No. 1000.

¹⁰⁰ *Id.* at 7.

acceptance of removing the requirement for a transmission developer to execute a contract in the SERTP Second Compliance Order.¹⁰¹

4. Commission Determination

65. In response to the directives in the Second Compliance Order to modify the proposed *pro forma* agreement that a transmission developer would need to sign, SCE&G proposes to delete the requirement for a transmission developer to execute a mutually-agreed to contract, thus obviating the need for a *pro forma* agreement. SCE&G states any future contracts would be negotiated, and that such post-selection implementation contract would go beyond transmission planning.¹⁰² Because SCE&G has removed the provision requiring a transmission developer to execute the Coordination Agreement in order to be selected and to the extent that no contract is required as a condition of a transmission project remaining selected in the regional transmission plan for the purposes of regional cost allocation, we accept SCE&G's proposal to not include a *pro forma* agreement in its OATT. We note that this finding is also consistent with the findings in SERTP Second Compliance Order.¹⁰³

66. However, while we accept SCE&G's proposal to remove the provision requiring a transmission developer to execute a Coordination Agreement, we reject SCE&G's corresponding change to the withdrawal provision of its OATT as ambiguous. Specifically, SCE&G proposes to revise its OATT to state that, in order to avoid regional cost allocation, an enrollee must withdraw prior to "the execution of any agreement governing the construction of the project" rather than prior to the execution of any Coordination Agreement.¹⁰⁴ With this change, there is no longer a definitive point in the process by which an enrollee must withdraw in order to avoid regional or interregional cost allocation where the withdrawing enrollee has been identified as a beneficiary of the project and allocated costs associated with the project. That is because it is unclear when a transmission developer will execute an agreement that governs the construction of the project, or even what constitutes an "agreement governing the construction of the project."

67. This is in contrast to the Commission's finding in the Second Compliance Order that the withdrawal provision provided certainty because it was clear "that to avoid the

¹⁰¹ SERTP Second Compliance Order, 147 FERC ¶ 61,241 at P 434.

¹⁰² SCE&G Transmittal at 10.

¹⁰³ SERTP Second Compliance Order, 147 FERC ¶ 61,241 at P 434.

¹⁰⁴ SCE&G OATT Att. K, § III.B.

allocation of costs, the enrollee must withdraw before the execution of a Coordination Agreement.”¹⁰⁵ Furthermore, under the revised withdrawal provision it is unclear what costs the enrollee avoids by withdrawing. One sentence states that the enrollee will avoid “regional or interregional cost allocation,” while the next sentence states that the “withdrawing enrollee is not responsible for regional or interregional costs allocated pursuant to this Attachment K associated with the planning cycle resulting in costs to which enrollee’s notice of withdrawal responds.”¹⁰⁶ The first sentence seems to suggest that, by withdrawing before the execution of any agreement governing construction of a transmission project, the withdrawing enrollee can avoid the costs of that specific transmission project, while the second sentence seems to suggest that the withdrawing enrollee may be able to avoid the costs of all transmission projects that were selected in the regional transmission plan for purposes of cost allocation during the current planning cycle. Therefore, we direct SCE&G to file, within 30 days of the date of issuance of this order, a further compliance filing removing the language that requires an enrollee to withdraw prior to “the execution of any agreement governing the construction of the project” and revising the withdrawal provision so that it provides a clear and definitive point in the process by which an enrollee must withdraw to avoid cost allocation and clarifying what costs the withdrawing enrollee must continue to pay and what costs the withdrawing enrollee will not be required to pay.¹⁰⁷ In clarifying which costs the withdrawing entity is not required to pay, we also direct SCE&G to revise the following phrase to be consistent with this clarification; “withdrawing enrollee is not responsible

¹⁰⁵ Second Compliance Order, 147 FERC ¶ 61,126 at P 34.

¹⁰⁶ SCE&G OATT Att. K. § III.B.

¹⁰⁷ *Cf. Tampa Elec. Co.*, 143, FERC 61,254 (2013), *order on reh’g and compliance*, 148 FERC ¶ 61,172, at P 36 (2014) (accepting Florida Parties’ withdrawal provision because it allows a non-public utility transmission provider to withdraw from the transmission planning region but requires that the non-public utility transmission provider continue to pay any costs it is allocated pursuant to the regional cost allocation method for a transmission facility that was selected in the regional transmission plan for purposes of cost allocation while it was enrolled, until the entire prudently incurred cost of the transmission facility has been recovered); SERTP Second Compliance Order, 147 FERC ¶ 61,241 at P 47 (accepting Filing Parties’ withdrawal provision, which allows a non-public utility transmission provider to withdraw upon written notice effective immediately and makes clear that a withdrawing non-public utility transmission provider will still be responsible to pay any costs allocated to it prior to the effective date of its withdrawal.); *id.* P 255 (“enrolled non-public utility transmission providers would still be required to pay in accordance with cost allocation decisions subject to the accepted withdrawal process.”).

for regional or interregional costs allocated pursuant to this Attachment K associated with the planning cycle resulting in costs to which enrollee's notice of withdrawal responds.”

68. To the extent that SCE&G requires a contract with the transmission developer as a condition for a transmission project to remain selected in the regional transmission plan for the purposes of cost allocation, we disagree with SCE&G that such contract is beyond the scope of Order No. 1000.¹⁰⁸ Such a requirement directly implicates a transmission developer's access to, and ability to use, the regional cost allocation method, regardless of whether the transmission developer is an incumbent or nonincumbent transmission developer. Simply because such a contract generally contains matters related to construction, cost recovery, or other matters that may be beyond the scope of Order No. 1000 does not mean that a proposal to condition project selection on execution of such a contract is outside the scope of Order No. 1000 or the Commission's jurisdiction. We clarify that, to the extent the terms and conditions in the contract “in any manner affect or relate to”¹⁰⁹ jurisdictional “charges... made, demanded or received by a public utility for or in connection with the transmission or sale of electric energy,” it is subject to filing with the Commission.¹¹⁰ This includes agreements covering financial contributions in aid of construction, transmission and interconnection issues.¹¹¹ Accordingly, we affirm our finding in the Second Compliance Order that, should SCE&G wish to require a contract with a transmission developer as a condition of the developer's transmission project

¹⁰⁸ SERTP Second Compliance Order, 147 FERC ¶ 61,241 at P 427.

¹⁰⁹ 16 U.S.C. § 824d(c).

¹¹⁰ 16 U.S.C. § 824d(a).

¹¹¹ See, e.g., *Am. Mun. Power-Ohio, Inc. et al. v. Ohio Edison Co.* 57 FERC ¶ 61,358 (1991) (clarifying that contributions in aid of construction are Commission jurisdictional and must be filed); *Tennessee Power Co.*, 90 FERC ¶ 61,238 (2000) (clarifying that interconnection is a component of transmission service and interconnection must be offered under the terms of the *pro-forma* tariff); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (clarifying what activities are within the scope of the Commission's jurisdiction under section 205 of the FPA and must be filed, including contributions in aid of construction, exchange arrangements, pole attachment agreements, joint ownership agreements and operating and maintenance agreements, and “borderline agreements”). However, if an otherwise non-public utility allows its facilities to be used by a jurisdictional utility (such as an independent system operator or regional transmission organization), that would not make the non-public utility now jurisdictional. *Bonneville Power Admin.*, 112 FERC ¶ 61,012, at P 28 (2005).

remaining selected in the regional transmission plan for purposes of cost allocation, SCE&G must submit such an agreement for Commission review. In addition, should circumstances arise where there is disagreement over the terms and conditions of a Commission-jurisdictional agreement, the Commission's *pro forma* OATT requires that the transmission provider file an unexecuted agreement with the Commission, at the request of the customer, if the provider and customer cannot come to terms on all aspects of transmission service.¹¹²

G. Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation

1. Second Compliance Order

69. In the Second Compliance Order, the Commission directed SCE&G to clarify SCE&G's proposal that "[t]o the extent that regional cost allocation is sought for any needed regional solutions, the [t]ransmission [p]roviders will submit such regional solutions for consideration."¹¹³ The Commission found SCE&G's proposal was unclear and potentially prohibited nonincumbent transmission developers from proposing transmission projects that are identified through the transmission providers' regional analysis. Further, the Commission noted that it was unclear whether any transmission developer – incumbent or nonincumbent – can request cost allocation for unsponsored transmission projects that the transmission providers identify through the regional analysis as a more efficient or cost-effective transmission solution.

2. Third Compliance Filing

70. In response, SCE&G proposes revisions to clarify that should the transmission providers desire regional cost allocation in accordance with Order No. 1000 for a regional transmission project that they have identified through their regional analysis, the

¹¹² *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) (Appendix D- Pro Forma Open Access Transmission Tariff, Section 15.3- Initiating Service in the Absence of an Executed Service Agreement), *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).

¹¹³ Second Compliance Order, 147 FERC ¶ 61,126 at P 240.

transmission providers will submit that project through the SCRTP Order No. 1000 transmission planning process.¹¹⁴

3. Commission Determination

71. We find that SCE&G's revisions partially comply with the directive of the Second Compliance Order. While SCE&G has clarified how the transmission providers may seek regional cost allocation for an unsponsored transmission project that they have identified, through their regional analysis, as a more efficient or cost-effective solution to address transmission needs, SCE&G has not revised its OATT to address the Commission's concern that SCE&G's OATT could prohibit a nonincumbent transmission developer from seeking regional cost allocation for such a transmission project. Therefore, we direct SCE&G to submit, within 30 days of the date of issuance of this order, a further compliance filing to revise its OATT to provide that both incumbent transmission providers and nonincumbent transmission developers may request regional cost allocation in accordance with Order No. 1000 for an unsponsored transmission project that the transmission providers have identified through their regional analysis as a more efficient or cost-effective solution to address transmission needs.¹¹⁵

H. Regional Cost Allocation Principle 4

1. Second Compliance Order

72. In the Second Compliance Order, the Commission held that SCE&G's proposed cost allocation method did not comply with the Regional Cost Allocation Principle 4 requirement that the regional transmission planning process identify the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region. The Commission also found that SCE&G did not address whether the SCRTP transmission planning region has agreed to bear the costs associated with any required upgrades in another transmission planning region or, if so, how such costs will be allocated within the SCRTP region.¹¹⁶

¹¹⁴ SCE&G OATT Att. K, § VII.A.

¹¹⁵ Second Compliance Order, 147 FERC ¶ 61,126 at P 240.

¹¹⁶ *Id.* P 276.

2. Third Compliance Filing

73. SCE&G indicates that it will generally recognize that the constructing transmission owner in a neighboring transmission planning region has cost responsibility for network upgrades resulting from transmission projects included in the SCRTP regional transmission plan for purposes of cost allocation. However, SCE&G notes that when reliability upgrades are required on a neighboring system in another transmission planning region, SCE&G will work with the constructing transmission owner on a case-by-case basis to determine, by mutual agreement, whether all or a portion of the network upgrade should be paid for by the neighboring transmission owner.¹¹⁷ Additionally, SCE&G notes that it has currently not agreed, as a general rule, to bear the costs associated with any upgrades needed in another transmission planning region in connection with transmission projects approved for inclusion in the SCRTP regional transmission plan for purposes of cost allocation.¹¹⁸

3. Commission Determination

74. We find that SCE&G's revised OATT partially complies with the Commission's directives in the Second Compliance Order addressing Regional Cost Allocation Principle 4. As directed in the Second Compliance Order, SCE&G has addressed whether the SCRTP transmission planning region has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated within the SCRTP region, explaining that it will not agree, as a general rule, to bear the costs associated with such upgrades, but will work with the constructing transmission owner in that region. However, SCE&G has not complied with the Regional Cost Allocation Principle 4 requirement that the regional transmission planning process identify the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region. Therefore, we direct SCE&G to submit, within 30 days of the date of issuance of this order, a further compliance filing to revise its OATT to explain how the SCRTP transmission planning region will identify the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region.

¹¹⁷ SCE&G Transmittal at 9.

¹¹⁸ *Id.*

I. Other Compliance Directives

75. In the Second Compliance Order, the Commission found reasonable SCE&G's proposal to use in its regional transmission planning process the information it receives under the previously-accepted guidelines and schedule for the submittal of customer and stakeholder information in its local transmission planning process. However, the Commission found that SCE&G had not included language in its OATT to implement this proposal and, therefore, directed SCE&G to revise its OATT to state that the customer and stakeholder information submitted at the beginning of each local transmission planning cycle is also used in the regional transmission planning process.¹¹⁹ In response to the Commission's directive, SCE&G proposes language in its OATT stating that the information stakeholders submit at the first stakeholder meeting of each local transmission planning cycle will be used in identifying and evaluating both local and regional transmission solutions for transmission needs.¹²⁰

76. In the Second Compliance Order, the Commission rejected SCE&G's proposal to amend the definition of public policy requirement and directed SCE&G to reestablish its originally proposed definition in both the regional and local transmission planning processes as a requirement that is stated in state, federal, or local law or regulation (including an order of a state, federal, or local agency).¹²¹ On compliance, SCE&G proposes to reinstate its originally proposed definition of a public policy requirement.¹²² The Commission also directed SCE&G to revise its OATT to delete as a factor SCE&G would consider when evaluating a transmission need driven by public policy requirements the ability of the proposed regional transmission project to fulfill the identified transmission need driven by public policy requirements practically.¹²³ SCE&G proposes to delete the provision. Finally, the Commission directed SCE&G to revise its OATT to clarify when stakeholders may identify local transmission needs driven by public policy requirements.¹²⁴ SCE&G proposes a revision to its OATT to clarify that stakeholders may identify potential transmission needs driven by public policy

¹¹⁹ Second Compliance Order, 147 FERC ¶ 61,126 at P 45.

¹²⁰ SCE&G OATT Att. K § III.E.1.

¹²¹ Second Compliance Order, 147 FERC ¶ 61,126 at P 108.

¹²² SCE&G OATT Att. K § II.D.

¹²³ Second Compliance Order, 147 FERC ¶ 61,126 at P 112.

¹²⁴ *Id.*

requirements in the local transmission planning process by July 15 of the second year of the planning cycle.¹²⁵

77. In the qualification section of the Second Compliance Order, the Commission directed SCE&G to make three revisions to its qualification criteria. First, the Commission directed SCE&G to limit the parental guarantee requirement to state that a transmission developer relying on its parent company to demonstrate that it is creditworthy must provide a satisfactory written guarantee from its parent company to be unconditionally responsible for all of the transmission developer's financial obligations that are related to any transmission project the transmission developer may propose for potential selection in the regional transmission plan for purposes of cost allocation (instead of being unconditionally responsible for all of the transmission developer's financial obligations).¹²⁶ SCE&G proposes to revise its OATT to limit the parental guarantee requirement so that it applies only to financial obligations that are related to any transmission project the transmission developer may propose.¹²⁷ Second, the Commission directed SCE&G to expand the requirement for the transmission developer to be in business for at least one year to state that the transmission developer, affiliate, or parent company has been in business at least one year.¹²⁸ SCE&G proposes to expand the requirement to be in business for at least one year so that a transmission developer can meet it by relying on an affiliate or parent company.¹²⁹ Third, the Commission directed SCE&G to revise its OATT to provide a defined, reasonable time period in which a transmission developer may remedy any deficiencies in its qualification application.¹³⁰ On compliance, SCE&G proposes to provide a transmission developer 15 days to remedy any deficiencies in its qualification application.¹³¹

¹²⁵ SCE&G OATT Att. K § III.E.1.

¹²⁶ Second Compliance Order, 147 FERC ¶ 61,126 at P 148.

¹²⁷ SCE&G OATT Att. K § VII.E.1.b.

¹²⁸ Second Compliance Order, 147 FERC ¶ 61,126 at P 148.

¹²⁹ SCE&G OATT Att. K § VII.E.1.a-b.

¹³⁰ Second Compliance Order, 147 FERC ¶ 61,126 at P 155.

¹³¹ SCE&G OATT Att. K § VII.E. SCE&G states that the 15 day period is consistent with Commission precedent. SCE&G Transmittal at 6 (citing SERTP Second Compliance Order, 147 FERC ¶ 61,241).

78. In the information requirements section of the Second Compliance Order, the Commission directed three changes. First, the Commission directed SCE&G to revise its OATT to specify that it will refund interest on excess study deposits calculated in accordance with section 35.19a(a)(2) of the Commission's Rules and Regulations.¹³² SCE&G proposes revisions to its OATT stating that refunds will be issued with interest calculated in accordance with section 35.19(a)(2) of the Commission's Rules and Regulations.¹³³ Second, the Commission directed SCE&G to delete the provisions that required transmission developers to (1) identify any North American Electric Reliability Corporation standards that will be implicated by developing the project and ensure that any proposed regional transmission project meets all applicable local or regional reliability and transmission provider requirements; (2) identify transmission projects in the latest expansion plans that may be avoided, canceled or postponed as a result of the proposed project; and (3) provide reports, such as system impact studies or load flow cases, that demonstrate the expected performance of the project.¹³⁴ SCE&G also proposes to delete the three information requirements from its OATT. Finally, the Commission directed SCE&G to revise its OATT to make clear that the information requirements do not apply for those potential transmission solutions that stakeholders may suggest as part of providing input in the SCRTP regional transmission planning process.¹³⁵ SCE&G proposes revisions to its OATT stating that, consistent with Order No. 890's coordination principle, any entity may provide input into and participate in the development of the regional transmission plan without submitting a regional project that conforms to the information requirements in the OATT.¹³⁶

79. Regarding the second step of the evaluation process, the Commission directed SCE&G to delete the provision under which it would consider the ability of the proposed regional transmission project to fulfill the identified need practically because the provision was redundant and unnecessary.¹³⁷ The Commission also directed SCE&G to clarify that: (1) rather than the proposed requirement for a proposed transmission project to not have *any* adverse impacts on reliability to be selected in the regional transmission plan for purposes of cost allocation, a proposed regional transmission project must not

¹³² Second Compliance Order, 147 FERC ¶ 61,126 at P 175.

¹³³ SCE&G OATT Att. K § VII.C.

¹³⁴ Second Compliance Order, 147 FERC ¶ 61,126 at P 176.

¹³⁵ *Id.* P 177.

¹³⁶ SCE&G OATT Att. K § VII.A.

¹³⁷ Second Compliance Order, 147 FERC ¶ 61,126 at P 209.

have *unmitigated* adverse impacts on reliability; and (2) the costs of any necessary mitigation measures will be accounted for as part of the metric for calculating the costs of a proposed regional transmission project that measures the cost of any additional projects or increase in cost to other planned projects required due to the proposed project.¹³⁸

80. In the third compliance filing, SCE&G proposes to delete the provision under which it would consider the ability of the proposed regional transmission project to fulfill the identified need practically. SCE&G also proposes revisions to its OATT which specify that a proposed transmission project must not have unmitigated adverse impacts on reliability¹³⁹ and that costs to mitigate adverse impact to reliability are included in the calculation of costs of a proposed regional project.¹⁴⁰

81. In the Second Compliance Order, the Commission instructed SCE&G to revise its OATT to either revise or remove the provision which states that when more than one regional transmission project has a benefit to cost ratio greater than 1.25, those projects may be considered for selection, regardless of costs or benefit to cost ratios. If SCE&G proposed to revise the provision, it should make it consistent with the provision it proposed in its First Compliance Filing that was no longer included in its OATT.¹⁴¹ In its third compliance filing, SCE&G proposes to amend its OATT to use the language that was included in its first compliance filing, which states, “[i]f more than one regional transmission project meets the benefit to cost ratio, both projects may be considered for selection, regardless of whether one has a lower cost than the other.”¹⁴²

82. In the Second Compliance Order the Commission directed SCE&G to either remove from its OATT the provisions related to the assignment of increased costs associated with abandoned or delayed transmission projects to the transmission developer, or justify and provide additional detail to explain what costs may be included in the impacted utilities’ increased costs, how such costs would be calculated, and how

¹³⁸ *Id.* P 210.

¹³⁹ SCE&G OATT Att. K § VII.G.1.

¹⁴⁰ SCE&G OATT Att. K § VII.G.2.

¹⁴¹ Second Compliance Order, 147 FERC ¶ 61,126 at P 212. The provision the SCE&G proposed in the First Compliance Filing stated that if more than one regional transmission project meets the benefit to cost ratio, both projects may be considered for selection, regardless of whether one has a lower cost than the other. *Id.*

¹⁴² SCE&G OATT Att. K § VII.G.1.

SCE&G would implement the proposal.¹⁴³ In response to the Commission's directive, SCE&G proposes to remove this language from its OATT.¹⁴⁴

83. Finally, in the Second Compliance Order, the Commission found with respect to SCE&G's proposed regional cost allocation method that SCE&G's proposed benefit to cost ratio does not comply with Regional Cost Allocation Principle 3 and directed SCE&G to revise its OATT to clarify that a regional transmission project must have a benefit to cost ratio *equal to or* greater than 1.25 or provide a justification for a higher ratio.¹⁴⁵ SCE&G has revised its OATT to include the phrase "equal to or" in regard to its benefit to cost ratio.¹⁴⁶ In addition, the Commission required SCE&G to revise its OATT to provide that SCE&G will provide adequate documentation to allow a stakeholder to determine how the regional cost allocation method and data requirements for determining benefits and identifying beneficiaries were applied to a proposed transmission facility.¹⁴⁷ SCE&G proposes to revise its OATT to state that the transmission providers will provide adequate documentation to allow a stakeholder to determine how the regional cost allocation method and data requirements for determining benefits and identifying beneficiaries were applied to a proposed transmission facility.¹⁴⁸

84. We find that SCE&G has complied with the above directives.

The Commission orders:

(A) The requests for rehearing and clarification are hereby denied, as discussed in the body of this order.

(B) SCE&G's compliance filing is hereby accepted, effective April 19, 2013, subject to a further compliance filing, as discussed in the body of this order.

¹⁴³ Second Compliance Order, 147 FERC ¶ 61,126 at P 235.

¹⁴⁴ SCE&G Transmittal at 8.

¹⁴⁵ Second Compliance Order, 147 FERC ¶ 61,126 at P 275.

¹⁴⁶ SCE&G OATT Att. K § VII.G.1.

¹⁴⁷ Second Compliance Order, 147 FERC ¶ 61,126 at P 278.

¹⁴⁸ SCE&G OATT Att. K § VII.L.

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(C) SCE&G is hereby directed to submit a further compliance filing, within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Bay is concurring with a separate statement attached. Commissioner Honorable is voting present.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

South Carolina Electric & Gas Company Docket Nos. ER13-107-006
ER13-107-007

(Issued January 22, 2015)

BAY, Commissioner, *concurring*:

In Order No. 1000, the Commission determined that “federal rights of first refusal in favor of incumbent transmission providers deprive customers of the benefits of competition in transmission development, and associated potential savings” and therefore ordered that they be removed from Commission-approved tariffs.¹ The Commission noted, however, that Order No. 1000 was not “intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities.”²

In a series of orders issued today, the Commission finds that Order No. 1000 does not compel the removal of tariff provisions that permit, in the transmission planning process, the recognition of state laws and regulations that grant a right of first refusal with respect to the construction of transmission facilities or the use of existing rights of way.³ While I concur in the result of these orders, I write separately to note that the Constitution limits the ability of states to erect barriers to interstate commerce.⁴ State laws that discriminate against interstate commerce – that protect or favor in-state enterprise at the expense of out-of-state competition – may run afoul of the dormant commerce clause.⁵

¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 285.

² *Id.* at P 287.

³ *See also Midwest Independent Transmission System Operator, Inc.*, 150 FERC ¶ 61,037 (2015); *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,038 (2015).

⁴ *South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984) (the Commerce Clause “has long been recognized as a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce”).

⁵ *See C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 394 (1994) (“State and local governments may not use their regulatory power to favor local enterprise by prohibiting patronage of out-of-state competitors or their facilities.”); *New England Power Co. v. New Hampshire*, 455 U.S. 331, 339 (1982) (“The order of the New Hampshire Commission, prohibiting New England Power from selling its hydroelectric energy outside the State of New Hampshire, is precisely the sort of protectionist regulation that the Commerce Clause declares off-limits to the states.”);

The Commission's order today does not determine the constitutionality of any particular state right-of-first-refusal law. That determination, if it is made, lies with a different forum, whether state or federal court.

Norman C. Bay
Commissioner

Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 352 (1977)
(invalidating a state law that “offers the . . . [in-state] industry the very sort of protection against competing out-of-state products that the Commerce Clause was designed to prohibit”).

Document Content(s)

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