

144 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisville Gas and Electric Company and Kentucky Utilities Company	Docket No. ER13-897-000
Alabama Power Company	Docket No. ER13-908-000
Ohio Valley Electric Corporation	Docket No. ER13-913-000

ORDER ON COMPLIANCE FILINGS

(Issued July 18, 2013)

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1. On February 7, 2013 and February 8, 2013, Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E/KU); Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies); and Ohio Valley Electric Corporation (OVEC) (collectively, Filing Parties) submitted, pursuant to section 206 of the Federal Power Act (FPA),¹ revisions to their transmission planning processes under their respective Open Access Transmission Tariffs (OATTs) to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.² In this order, we accept Filing Parties' respective compliance filings, subject to further compliance filings, as discussed below.

I. Background

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890³ to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional-OATTs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

¹ 16 U.S.C. § 824e (2006).

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

³ *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).

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

4. The Commission acknowledged in Order No. 1000 that each transmission planning region has unique characteristics, and, therefore, Order No. 1000 accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate regional differences.⁴ Order No. 1000 does not prescribe the exact manner in which public utility transmission providers must fulfill the regional transmission planning requirements.⁵ Similarly, because the Commission did not want to prescribe a uniform method of cost allocation for every transmission planning region, Order No. 1000 adopts the use of cost allocation principles.⁶ The Commission stated that it was acting to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms, and conditions that are just and reasonable and not unduly discriminatory or preferential, and it acknowledged that public utility transmission providers in some regions may already meet or exceed some requirements of Order No. 1000.⁷

II. Compliance Filings

5. Filing Parties submitted, in separate dockets, coordinated compliance filings that revise their respective Order No. 890-compliant transmission planning processes.⁸ Their

⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

⁵ *Id.* P 157.

⁶ *Id.* P 604.

⁷ *Id.* P 13.

⁸ Southern Companies, Open Access Transmission Tariff, Attachment K (The Southeastern Regional Transmission Planning Process) (1.0.0) (Southern Companies OATT, Attachment K); OVEC, Open Access Transmission Tariff, Attachment M (The

individual filings contain largely uniform transmittal letters and proposed OATT revisions⁹ that seek to establish new transmission planning responsibilities for the Southeastern Regional Transmission Planning (SERTP) process, which currently is the regional transmission planning process for the Southeastern sub-region of the SERC Reliability Corporation (SERC). Filing Parties explain that the SERTP region, consisting of both public and non-public utility transmission providers, has recently been expanded to include several additional transmission providers and owners,¹⁰ making the SERTP region the largest Attachment K transmission planning region in the Eastern Interconnection in terms of transmission miles.¹¹

6. Filing Parties propose a number of revisions to their respective OATTs to address Order No. 1000's requirements, as discussed more fully herein. In describing the proposed revisions, Filing Parties explain the process that went into developing them. They state that Filing Parties engaged in significant outreach efforts with stakeholders, and that their compliance materials and related issues have been vetted through the course of four stakeholder meetings that occur during each annual transmission planning cycle, beginning with the 2011 Annual Transmission Summit that occurred on December

Southeastern Regional Transmission Planning Process) (2.0.0) (OVEC OATT, Attachment M); LG&E/KU, Joint Pro Forma Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (4.0.0) (LG&E/KU OATT, Attachment K). Citations to a Filing Party's existing OATT, instead of its proposed OATT revisions submitted as part of its compliance filing, will provide the full cite, including the current version numbers.

⁹ Given this uniformity, the Commission will cite to the Southern Companies' transmittal letter and OATT when referencing Filing Parties' proposal. Where differences between or among the filings are addressed, the Commission will cite to individual Filing Parties' filings as appropriate.

¹⁰ Filing Parties state that the non-public utility transmission provider sponsors of SERTP are (1) Associated Electric Cooperative Inc., (2) Dalton Utilities, (3) Georgia Transmission Corporation, (4) the Municipal Electric Authority of Georgia, (5) PowerSouth Energy Cooperative, (6) the South Mississippi Electric Power Association, and (7) the Tennessee Valley Authority (TVA). E.g., Southern Companies Transmittal Letter at 2 n.6.

¹¹ Filing Parties state that the SERTP sponsors own approximately 66,000 miles of existing transmission and that SERTP's footprint currently covers all or parts of Alabama, Florida, Georgia, Indiana, Iowa, Kentucky, Mississippi, Missouri, Ohio, Oklahoma, Tennessee, and Virginia. E.g., *id.* at 4.

14, 2011. Filing Parties state that they also conducted three interim meetings with stakeholders to specifically address Order No. 1000 materials, and posted on their regional website iterations of their compliance materials, a related presentation for stakeholder and regulator review, and draft OATT language.¹²

7. Filing Parties explain that the SERTP process is structured to focus regional transmission planning activities and resources on the identification of project alternatives of a regional scale, which may be more efficient and cost-effective than transmission facilities identified through bottom-up transmission planning processes. Filing Parties also state that the SERTP process is structured to complement those bottom-up planning activities by identifying efficient and cost-effective alternatives of regional scale well in advance of regional needs, thereby providing sufficient time to fully develop and construct regional transmission projects while avoiding disruptions to the efficient and timely completion of the high volumes of upgrades identified on existing facilities and underlying systems through state integrated resource planning or other local load serving processes.¹³ Filing Parties state that evaluation of transmission projects proposed for selection in the regional transmission plan for purposes of cost allocation will be performed through the SERTP's existing processes.¹⁴

8. Southern Companies state that their compliance filing is submitted under protest and challenge the application of Order No. 1000's requirements to Southern Companies. Southern Companies allege that their existing regional transmission planning process does not suffer from the deficiencies identified by the Commission in Order No. 1000, and that as a result Order No. 1000's requirements, as applied to Southern Companies, are unlawful.¹⁵ Southern Companies further allege that the Commission's prohibition on the use of participant funding as an Order No. 1000-compliant regional cost allocation method was arbitrary and capricious, and that Order No. 1000's requirements violate section 201 of the FPA.¹⁶

¹² E.g., *id.* at 7.

¹³ E.g., *id.* at 17.

¹⁴ E.g., *id.* at 21.

¹⁵ Southern Companies Compliance Filing, Ex. B at 1-9.

¹⁶ *Id.* at 9-12.

III. Notice of Filing and Responsive Pleadings

9. Notice of Filing Parties' filings was published in the *Federal Register*, 78 Fed. Reg. 11,634- 636 (2013), with interventions and protests due on or before March 25, 2013. Appendix A contains the list of intervenors, commenters, protesters, and entities filing answers in these proceedings.¹⁷

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We also grant the National Rural Electric Cooperative Association's unopposed motion to intervene out-of-time because granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

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

12. However, we reject the protest that Southern Companies submitted with their compliance filing as a collateral attack on Order No. 1000. A collateral attack is an "attack on a judgment in a proceeding other than a direct appeal"¹⁸ and is generally prohibited. Southern Companies attempt to challenge the Commission's findings in Order No. 1000 as applied to Southern Companies, notwithstanding that Southern

¹⁷ Given that Filing Parties filed a joint regional transmission planning proposal, we address comments and protests filed in dockets for individual Filing Parties (e.g., the Alabama Commission's comments regarding the Southern Companies' filing) as comments and protests filed regarding the joint proposal, except in instances where the comments or protests address specific provisions of an individual Filing Party's OATT. Similarly, Public Interest Organizations filed separate comments in each docket. Citations to those comments, in the absence of a specific docket number indicating to the contrary, are to the comments filed in Docket No. ER13-908-000, concerning the Southern Companies' Order No. 1000 compliance filing.

¹⁸ *Wall v. Kholi*, 131 S.Ct. 1278, 1284 (2011) (citing *Black's Law Dictionary* 298 (9th ed. 2009)).

Companies raised, and the Commission rejected, the same arguments in the Order No. 1000 proceedings; indeed, much of the material submitted in support of Southern Companies' protest is a copy of material submitted as exhibits to Southern Companies' request for rehearing in the Order No. 1000 proceedings.¹⁹ Southern Companies' attempt to revive those arguments in this compliance proceeding is an improper collateral attack upon the Commission's findings in Order No. 1000 and therefore must be rejected.

B. Substantive Matters

13. We find that Filing Parties' compliance filings partially comply with the regional transmission planning and cost allocation requirements adopted in Order No. 1000. Accordingly, we accept Filing Parties' compliance filings to be effective as discussed in the body of this order, subject to further compliance filings as discussed below. We direct Filing Parties to file the further compliance filings within 120 days of the date of issuance of this order.

1. Regional Transmission Planning Requirements

14. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that complies with the identified transmission planning principles of Order No. 890 and that, in consultation with stakeholders, results in the development of a regional transmission plan.²⁰ The regional transmission plan will identify transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related²¹ needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.²² A primary objective of the reforms in Order No. 1000 is to ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan

¹⁹ See, for example, Attachments B-1, B-2, B-3, and B-4 to Southern Companies' compliance filing, which were included as exhibits to Southern Companies' request for rehearing of Order No. 1000.

²⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

²¹ Public Policy Requirements are defined and described below.

²² *Id.* PP 11, 148.

that can meet a transmission planning region's needs more efficiently and cost-effectively.²³

a. Transmission Planning Region

15. Order No. 1000 specifies that a transmission planning region is one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate for purposes of regional transmission planning and development of a single regional transmission plan.²⁴ The scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.²⁵ However, an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements of Order No. 1000.²⁶

16. In addition, Order No. 1000 requires that public utility transmission providers explain in their compliance filings how they will determine which transmission facilities evaluated in their local and regional transmission planning processes will be subject to the requirements of Order No. 1000.²⁷ Order No. 1000's requirements are intended to apply to new transmission facilities, which are those transmission facilities that are subject to evaluation, or reevaluation as the case may be, within a public utility transmission provider's local or regional transmission planning process after the effective date of the public utility transmission provider's compliance filing.²⁸ Each region must determine at what point a previously approved project is no longer subject to reevaluation and, as a result, whether it is subject to these requirements.²⁹

17. Order No. 1000-A states that public utility transmission providers in each transmission planning region must have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become

²³ *Id.* PP 4, 6.

²⁴ *Id.* P 160.

²⁵ *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

²⁶ *Id.*

²⁷ *Id.* PP 65, 162.

²⁸ *Id.*

²⁹ *Id.*

part of the transmission planning region.³⁰ Each public utility transmission provider (or regional transmission planning entity acting for all of the public utility transmission providers in its transmission planning region) must include in its OATT a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region.³¹ A non-public utility transmission provider will not be considered to have made the choice to join a transmission planning region and thus be eligible to be allocated costs under the regional cost allocation method until it has enrolled in the transmission planning region.³²

i. Filing Parties' Compliance Filings

18. Filing Parties assert that, by virtue of the original SERTP's compliance with Order No. 890, the original SERTP region qualifies as a transmission planning region for purposes of Order No. 1000.³³ They explain that the expanded SERTP region would combine the original SERTP region with Central Public Power Partners,³⁴ LG&E/KU, and OVEC's transmission systems,³⁵ and that the expanded SERTP transmission

³⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

³¹ *Id.*

³² *Id.* PP 276-277.

³³ The original SERTP is comprised of the footprints of Southern Companies; Georgia Transmission Corporation; Municipal Electric Authority of Georgia; PowerSouth Energy Cooperative; South Mississippi Electric Power Association; and Dalton Utilities. Southern Companies note in their transmittal that South Mississippi Electric Power Association has announced that it will be joining the Midwest Independent Transmission System Operator, Inc., now known as the Midcontinent Independent System Operator, Inc., but intends to remain a sponsor of SERTP for at least a transitional period. E.g., Southern Companies Transmittal Letter at 4 n.16.

³⁴ Central Public Power Partners, a non-public utility planning group, was formed in part for reciprocity purposes related to Order No. 890's transmission planning provisions. Its current members are TVA, Big River Electric Cooperative, and Associated Electric Cooperative Inc. At the time Filing Parties submitted their compliance filings, Central Public Power Partners also included East Kentucky Power Cooperative. However, East Kentucky Power Cooperative was integrated into PJM Interconnection, L.L.C. (PJM), effective June 1, 2013.

planning region will combine several contiguous planning regions and adjacent balancing authority areas “around the centrally located [Tennessee Valley Authority (TVA)].”³⁶

19. Filing Parties state that their systems are electrically integrated through numerous resource/power sale and purchase arrangements. They state further that the expansion of the SERTP transmission planning region reinforces their current practice of engaging in reliability coordination and transmission planning under the auspices of SERC.³⁷

20. Filing Parties’ OATTs provide that a public utility or non-public utility transmission provider and/or transmission owner with a statutory or OATT obligation to ensure that adequate transmission facilities exist within a portion of the SERTP region may enroll in the SERTP transmission planning region.³⁸ Filing Parties propose that such a public utility or non-public utility transmission provider or transmission owner may enroll in the SERTP region by executing the form of enrollment posted on the regional transmission planning website.³⁹ Filing Parties note that the jurisdictional SERTP members are deemed to have enrolled in SERTP’s coordinated, open, and transparent regional transmission planning process, and that all of the non-public utility SERTP members, including TVA, have indicated that they intend to participate in SERTP’s regional transmission planning process.⁴⁰ Filing Parties state that the list of enrollees will

³⁵ Additionally, on May 22, 2013, Duke Energy Carolinas, LLC and Duke Energy Progress, Inc. submitted a compliance filing in Docket No. ER13-83-002, in which Duke Energy Carolinas, LLC and Duke Energy Progress, Inc. propose to join SERTP for purposes of regional transmission planning. We will address this compliance filing in a subsequent order once the Commission has had an opportunity to evaluate the May 22 compliance filing.

³⁶ E.g., *id.* at 5-6.

³⁷ SERC is the regional entity responsible for promoting reliability and adequacy of the bulk power system in the area served by its member systems. Southern Companies note that OVEC is currently a member of the ReliabilityFirst Corporation, but is integrated with the other SERTP sponsors having, *inter alia*, a 345 kV interface with the LG&E/KU system and a FERC-approved long-term power sale arrangement with LG&E for a portion of its generating output. E.g., *id.* at 6 n.25.

³⁸ E.g., Southern Companies OATT Attachment K, § 12.1.

³⁹ E.g., *id.* § 12.3.

⁴⁰ We note that Southern Companies and OVEC’s respective OATTs refer to the “Transmission Provider” (i.e., Southern Companies and OVEC within their respective

(continued . . .)

be posted and maintained on the SERTP website.⁴¹ Additionally, Filing Parties' proposal would allow a non-public utility to immediately withdraw from the process should the Commission, a court, or other governmental entity impose amendments to the proposed regional transmission planning process.⁴²

21. Filing Parties propose that their compliance filings become effective at the start of the next practical transmission planning cycle/year following Commission acceptance of their compliance filings, assuming that the Commission largely adopts the filings and issues an order sufficiently before the beginning of the next year to allow for commencement of implementation. Filing Parties expect that the effective date will be January 1, 2014, but state that should the Commission require extensive changes, that date might not be feasible.⁴³

ii. Protests/Comments

22. LS Power argues that the compliance filings fail to establish that (a) the proposed region is integrated in nature, and (b) there are common reliability and resource issues affecting it. LS Power states that there is only one 300 kV or greater connection between TVA and LG&E/KU, suggesting that LG&E/KU are substantially more integrated with

transmission systems) as the entity responsible for implementing the regional and local transmission planning processes, while LG&E/KU's OATT instead refers to the "Transmission Owner" (i.e., LG&E/KU) as bearing that responsibility. This difference in terms is attributable to the fact that transmission service over LG&E/KU's systems is provided by an Independent Transmission Organization rather than by LG&E/KU, while Southern Companies and OVEC provide transmission service over their systems. *Louisville Gas and Elec. Co.*, 137 FERC ¶ 61,195, at PP 37, 41-43 (2011) (approving TranServ International, Inc. as the Independent Transmission Organization responsible for, among other things, reviewing and approving all planning activities for the LG&E/KU systems). To simplify our discussion of the transmission planning processes in this order, we will use the term "transmission provider" rather than "transmission provider/owner," but intend our discussion to cover the tariff obligations assumed by each Filing Party in its OATT.

⁴¹ E.g., Southern Companies Transmittal Letter at 14.

⁴² E.g., Southern Companies OATT, Attachment K, §12.5.

⁴³ E.g., Southern Companies Transmittal Letter at 23.

Midwest Independent Transmission System Operator, Inc.⁴⁴ or PJM. LS Power notes that Filing Parties have provided a map of the expanded SERTP region,⁴⁵ and alleges that an acknowledgment by the Filing Parties that “all facilities shown [on the map of the proposed region] may not be owned by a SERTP Sponsor” makes it impossible to evaluate whether the proposed SERTP region meets Order No. 1000’s regional scope requirements.⁴⁶

23. Further, LS Power asserts that TVA’s participation is essential to the expanded SERTP because without TVA the region is divided into non-contiguous pieces, and a single regional transmission plan cannot be developed. Therefore, LS Power proposes that the Commission insist on TVA’s commitment to participate in the SERTP process before evaluating the region. LS Power further argues that TVA-generated power cannot be sold outside of TVA, thus calling into question whether there can be regional power flows.⁴⁷

iii. Answer

24. SERTP Sponsors⁴⁸ state they are clearly electrically integrated around the centrally-located TVA. In addition, they argue that Order No. 1000 did not prescribe any certain level of electric integration nor preclude a utility in one region from having strong electrical ties with a utility in a neighboring transmission planning region. However,

⁴⁴ Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

⁴⁵ LS Power Protest at 7 (referring to Southern Companies Compliance Filing, Ex. A).

⁴⁶ *Id.* at 8.

⁴⁷ *Id.* at 8-9.

⁴⁸ The answer to protests filed in these proceedings was filed not only by Filing Parties (i.e., Southern Companies, OVEC, and LG&E/KU), but also by several non-public utility sponsors of SERTP: Associated Electric Cooperative Inc., Dalton Utilities, Georgia Transmission Corporation, the Municipal Electric Authority of Georgia, PowerSouth Energy Cooperative, the South Mississippi Electric Power Association, and TVA. Accordingly, we will refer to these parties as the “SERTP Sponsors” and cite to their answer as the SERTP Sponsors Answer, rather than Filing Parties Answer, in this order.

SERTP Sponsors agree with LS Power's argument that the continued participation of the centrally-located TVA as a SERTP sponsor is essential to the current configuration of the SERTP region.⁴⁹

25. Regarding TVA's ability to sell its power "outside of TVA," SERTP Sponsors state that while Congress generally placed "fence" restrictions upon TVA in 1959, LS Power fails to acknowledge that Congress recognized the integrated nature of the electric grid in the Southeast by allowing TVA to continue to engage in economic sales and power exchange arrangements with a specified list of utilities, including Southern Companies and LG&E/KU. Further, SERTP Sponsors assert that there are no such "fence" restrictions on TVA for interconnection or the sale of wholesale transmission service.⁵⁰

26. SERTP Sponsors argue that the Commission's orders only require non-public utility transmission providers to enroll in a regional transmission planning process if they are seeking Order No. 1000 cost allocation in a region where they have load. Additionally, SERTP Sponsors assert that the Commission has also determined that participation in developing a regional transmission planning process does not mean that non-public utility transmission providers are required to enroll.⁵¹

iv. Commission Determination

27. We find that the scope of the transmission planning region, the description of the transmission facilities that will be subject to the requirements of Order No. 1000, and the enrollment process specified in Filing Parties' proposal partially comply with the requirements of Order No. 1000. Therefore, we require each Filing Party to make a further compliance filing, as described more fully below.

28. Order No. 1000 defines a transmission planning region as one in which the public utility transmission providers have agreed to participate for the purposes of regional transmission planning and the development of a single regional transmission plan.⁵² Order No. 1000 requires that the scope of a transmission planning region be governed by the integrated nature of the regional power grid and the particular reliability and resource

⁴⁹ SERTP Sponsors Answer at 11-13.

⁵⁰ *Id.* at 12.

⁵¹ *Id.* at 8.

⁵² *Id.*

issues affecting individual regions.⁵³ Order No. 1000 does not require a specific number of ties between two transmission providers, or that such ties be at a specific voltage level, to conclude that the transmission providers are electrically integrated. As discussed above, Filing Parties propose a significant expansion in the scope of the SERTP region. We conditionally find that the expanded SERTP region satisfies the requirements of Order No. 1000 and, therefore, reject LS Power's objections based on the voltage level of particular interconnections between participating transmission providers.

29. Order No. 1000-A requires public utility transmission providers in each transmission planning region to have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region.⁵⁴ Filing Parties' proposed OATT revisions provide that a public utility or non-public utility transmission provider that has a statutory or OATT obligation to ensure that adequate transmission facilities exist within a portion of the SERTP region, and that wishes to enroll in SERTP, may do so by executing the enrollment application posted on the regional transmission planning website.⁵⁵ However, the proposed tariff language appears to prohibit an entity that wishes to voluntarily enroll in the SERTP region from doing so, if that entity does not have a statutory or OATT obligation to ensure that adequate transmission facilities exist within a portion of the SERTP region. For example, there may be a non-public utility transmission provider that does not have such a statutory or OATT obligation but that nevertheless wishes to voluntarily enroll in the SERTP region. Filing Parties have not explained why it is necessary to prohibit such entities from enrolling. Therefore, we direct Filing Parties to submit a further compliance filing, within 120 days of the date of issuance of this order, to revise the enrollment process in their OATTs to eliminate this requirement.

30. Additionally, we find that Filing Parties' compliance filings do not comply with Order No. 1000-A's requirement that each public utility transmission provider include a list of all public and non-public utility transmission providers enrolled in the transmission planning region in its OATT.⁵⁶ Rather than including a list of all public utility and non-public utility transmission providers that have enrolled as transmission providers in the SERTP transmission planning region in their OATTs, Filing Parties propose to post this list of public utility and non-public utility transmission providers and transmission

⁵³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160.

⁵⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

⁵⁵ E.g., Southern Companies OATT, Attachment K § 12.3.

⁵⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

owners enrolled in the SERTP transmission planning region on the regional transmission planning website and each Filing Party's proposed OATT states that it "is deemed to have enrolled for purposes of Order No. 1000 through this Attachment [K or M]."⁵⁷ We direct Filing Parties to submit further compliance filings that (1) revise their respective OATTs to include a list of all the public utility and non-public utility transmission providers that have enrolled as Order No. 1000 transmission providers in their transmission planning region; and (2) eliminate the statement that each public utility transmission provider "is deemed to have enrolled for purposes of Order No. 1000 through this Attachment [K or M]" because such statement will no longer be necessary given the list of enrollees in the OATTs. If, as a result of the list, in the OATTs, of all public utility and non-public utility transmission providers that have enrolled as transmission providers in the SERTP region, the expanded SERTP region is no longer governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions, the Commission directs Filing Parties to make further filings as necessary to comply with Order No. 1000's regional scope requirement.⁵⁸

31. Filing Parties propose that the OATT revisions submitted as part of their respective compliance filings become effective at the start of the next practical transmission planning cycle following Commission acceptance of their compliance filings, assuming that the Commission largely accepts their filings and issues an order sufficiently before the beginning of that next year's cycle to allow for commencement of implementation. Filing Parties expect that effective date to be January 1, 2014.⁵⁹ We accept Filing Parties' revised OATTs effective January 1, 2014, i.e., the date Filing Parties indicate will allow them to commence implementation of the changes to their transmission planning processes in the next transmission planning cycle.⁶⁰ However, we

⁵⁷ E.g., Southern Companies OATT, Attachment K § 12.3.

⁵⁸ With respect to TVA, we conclude that as a non-public utility it remains TVA's decision to enroll as a transmission provider in the SERTP region. We agree that TVA's participation in regional transmission planning is important. However, we recognize that Order No. 1000 did not require TVA, or any other non-public utility transmission provider, to enroll or otherwise participate in a regional transmission planning process.

⁵⁹ E.g., Southern Companies Transmittal Letter at 22-23.

⁶⁰ We note that the Annual Transmission Planning Summit and Assumptions Input meeting is held in the fourth quarter of each year and provides the forum for discussion with, and input from, stakeholders regarding the data gathering and transmission model assumptions that will be used for the following year's transmission planning cycle. E.g., Southern Companies OATT, Attachment K § 1.2.4.2. In accepting Filing Parties'

(continued . . .)

reject Filing Parties' proposal to the extent that it would extend this effective date indefinitely if the Commission requires extensive changes to their OATTs. We believe Filing Parties can and should begin implementing their proposed transmission planning processes before every issue in this proceeding has been resolved. Therefore, we direct the Filing Parties to submit a compliance filing that reflects a January 1, 2014 effective date for their proposed OATT revisions. If Filing Parties believe it is necessary, they may propose a different effective date than January 1, 2014, but must demonstrate why such effective date is more appropriate.

32. Order No. 1000 further provides that each region must determine at what point a previously approved transmission project is no longer subject to reevaluation and, as a result, whether it is subject to Order No. 1000's requirements.⁶¹ However, Filing Parties do not explain which transmission facilities, including those transmission projects currently under consideration in Filing Parties' existing Order No. 890-compliant local and regional transmission planning processes, will be subject to the regional transmission planning process that the Commission determines complies with Order No. 1000 (i.e., which facilities are new transmission facilities subject to evaluation or reevaluation in the next regional transmission planning cycle).⁶² Therefore, we direct Filing Parties to file, within 120 days of the date of issuance of this order, further compliance filings to: (1) identify which transmission facilities within Filing Parties' existing local and regional transmission planning processes the proposed OATT revisions will apply to as of the effective date of Filing Parties' compliance filings; and (2) explain how Filing Parties will evaluate or reevaluate under the proposed OATT revisions those transmission projects currently under consideration in those existing transmission planning processes.

33. Accordingly as discussed above, we direct Filing Parties, within 120 days of the date of issuance of this order, to revise their respective OATTs to: (1) revise the enrollment process in their OATTs to eliminate any requirement that an entity that wishes to voluntarily enroll in the SERTP region must have a statutory or OATT obligation to ensure that adequate transmission facilities exist within a portion of the SERTP region; (2) include a list of all public and non-public utility transmission providers enrolled in the SERTP region; (3) eliminate the statement that each public utility transmission provider

proposed January 1, 2014 effective date, we expect Filing Parties to implement their new transmission planning procedures in that meeting preceding the 2014 transmission planning cycle.

⁶¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65.

⁶² *Id.* PP 65, 162.

“is deemed to have enrolled for purposes of Order No. 1000 through this Attachment [K or M]”; (4) reflect a January 1, 2014 effective date for their proposed OATT revisions or demonstrate why a different effective date is more appropriate; (5) identify to which transmission facilities within Filing Parties’ existing local and regional transmission planning processes the proposed OATT revisions will apply as of the effective date of Filing Parties’ compliance filings; and (6) explain how Filing Parties will evaluate or reevaluate under the proposed OATT revisions those transmission projects currently under consideration in those existing transmission planning processes.

b. Order No. 890 and other Regional Transmission Planning Process General Requirements

34. Order No. 1000 requires that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan and that complies with certain transmission planning principles of Order No. 890 identified in Order No. 1000.⁶³ Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.⁶⁴ Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region’s needs more efficiently or cost-effectively.⁶⁵ The procedures must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region’s needs.⁶⁶ The process used to produce the regional transmission plan must satisfy the following Order No. 890 transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning.⁶⁷

⁶³ *Id.* PP 146, 151.

⁶⁴ *Id.* P 148.

⁶⁵ *Id.* P 149.

⁶⁶ *Id.* P 147.

⁶⁷ *Id.* P 151. These transmission planning principles are explained more fully in Order No. 890.

35. Application of these transmission planning principles will ensure that stakeholders have an opportunity to participate in the regional transmission planning process in a timely and meaningful manner. Stakeholders must have an opportunity to express their needs, have access to information, and an opportunity to provide information, and thus have an opportunity to participate in the identification and evaluation of regional solutions.⁶⁸ In addition, when evaluating the merits of alternative transmission solutions, proposed non-transmission alternatives must be considered on a comparable basis.⁶⁹ Public utility transmission providers must identify how they will evaluate and select from competing solutions and resources such that all types of resources are considered on a comparable basis.⁷⁰

i. Filing Parties' Compliance Filings

36. Filing Parties state the Commission has already found that the existing SERTP transmission planning process complies with the transmission planning principles of Order No. 890.⁷¹ Filing Parties state, therefore, that they are not proposing changes to the existing sections of the SERTP process that the Commission has already found comply with the regional transmission planning principles except as necessary to comply with specific requirements of Order No. 1000 or as necessary to accommodate the expansion of the SERTP region.⁷² Southern Companies propose to maintain the previously-accepted SERTP process in their OATT,⁷³ while LG&E/KU and OVEC propose to amend their respective OATTs to incorporate these provisions.⁷⁴

⁶⁸ *Id.* P 150. As explained in Order No. 1000, the term “stakeholder” means any interested party. *Id.* P 151 n.143.

⁶⁹ *Id.* P 148.

⁷⁰ *Id.* P 155.

⁷¹ E.g., Southern Companies Transmittal Letter at 6 (citing *Southern Co. Services, Inc.*, 124 FERC ¶ 61,265 (2008), *order on reh'g and compliance*, 127 FERC ¶ 61,282 (2009), *order on reh'g and compliance*, 132 FERC ¶ 61,091 (2010)).

⁷² E.g., *id.*

⁷³ Southern Companies OATT, Attachment K §§ 1-5, 7.

⁷⁴ LG&E/KU OATT, Attachment K §§ 11-19; OVEC OATT, Attachment M § 1-5, 7.

37. Filing Parties also propose OATT revisions related to the differences between the SERTP process, which they are relying on to comply with the regional transmission planning requirements of Order No. 1000, and each public utility transmission provider's local transmission planning process. LG&E/KU propose revisions to their Attachment K to clarify which sections apply to their local and regional transmission planning processes, respectively.⁷⁵ Southern Companies propose two new sections to their Attachment K – “Local Transmission Planning” and “Regional Transmission Planning” – which describe that Southern Companies rely on the SERTP process for both local transmission planning and regional transmission planning.⁷⁶ OVEC, like Southern Companies, proposes to rely on the SERTP process for both local and regional transmission planning processes.⁷⁷

ii. Protests/Comments

38. Public Interest Organizations argue that Filing Parties' proposed solutions evaluation process violates the comparability principle by expressly favoring transmission solutions over non-transmission solutions. They state that Filing Parties' proposal says very little about comparable treatment for non-transmission alternatives, and assert that it seems impossible to satisfy Order No. 1000's comparability requirements without explaining how the SERTP process will consider non-transmission alternatives throughout the regional transmission planning process. Public Interest Organizations state that while Filing Parties' proposed OATT revisions describe the qualifications for, process for, and means of evaluating alternative *transmission* proposals, Filing Parties' proposal contains no similar information for non-transmission alternatives. Public Interest Organizations state that suggesting that the SERTP process only consider transmission solutions to identified needs could result in selection of solutions that are preferential and discriminatory. Public Interest Organizations assert that Filing Parties have an affirmative obligation under Order No. 1000 to evaluate alternatives that may meet the needs of the region more efficiently or cost-effectively, including providing for the comparable consideration of transmission and non-

⁷⁵ LG&E/KU Transmittal Letter at 9-11. Specifically, LG&E/KU explain that sections 1-10 of their Attachment K describe their existing local transmission planning process and new sections 11-32 describe the regional transmission planning process (i.e., the SERTP process), with sections 11-19 substantially reflecting the existing, Commission-approved SERTP regional transmission planning process.

⁷⁶ Southern Companies Transmittal Letter at 9-11.

⁷⁷ OVEC Transmittal Letter at 12-15.

transmission alternatives to meet regional transmission needs.⁷⁸ Public Interest Organizations also state that, to the extent a non-transmission alternative is proposed and provides the most cost-effective solution to a regional transmission need, the regional transmission plan should not include a duplicative transmission solution. Public Interest Organizations request that the Commission require Filing Parties to revise their proposal to include procedures for considering non-transmission alternatives as solutions to identified regional transmission needs.⁷⁹

39. In addition, Public Interest Organizations state that Order No. 1000 noted that compliance with Order No. 890 obligations is not dispositive of whether a public utility transmission provider complies with the requirements of Order No. 1000. They argue that Filing Parties must demonstrate that their OATTs, as modified to comply with Order No. 1000, continue to provide comparable treatment for non-transmission alternatives. They note that Filing Parties' proposal in their compliance filings to add specific procedures for consideration and evaluation of alternative transmission proposals may render incomplete the current parameters for evaluating non-transmission alternatives. They also assert that the absence of non-transmission alternative proposals in the existing SERTP transmission planning process suggests that Filing Parties' OATTs may fall short of ensuring comparable treatment.⁸⁰

iii. Answer

40. SERTP Sponsors argue that Public Interest Organizations seek to relitigate, or have the Commission ignore, the processes that Filing Parties have adopted to comparably consider non-transmission alternatives. SERTP Sponsors acknowledge that Filing Parties' compliance filings do not address comparable treatment for non-transmission alternatives, but argue that non-transmission alternative matters were addressed and found to be compliant in Filing Parties' respective Order No. 890 compliance proceedings.⁸¹

⁷⁸ E.g., Public Interest Organizations Protest at 13-15.

⁷⁹ E.g., *id.* at 14.

⁸⁰ E.g., *id.* at 14-15.

⁸¹ SERTP Sponsors Answer at 16-17.

iv. Commission Determination

41. The Commission previously found that the SERTP process satisfied each of the transmission planning principles of Order No. 890.⁸² Our focus in Filing Parties' Order No. 1000 compliance proceeding is, therefore, on the incremental changes to the SERTP process that Filing Parties developed to comply with the general regional transmission planning requirements of Order No. 1000. In addition, LG&E/KU and OVEC did not previously participate in the SERTP process, so we also review any differences between the previously-accepted SERTP process as described in the Southern Companies' OATT and how that process is described in the LG&E/KU and OVEC OATTs. Finally, we review the additional proposed changes related to each Filing Parties' local transmission planning process that are needed as a result of the expansion of the SERTP process to include additional public utility transmission providers.

42. Our review of Southern Companies' OATT indicates that they have not substantially modified the provisions the Commission relied upon in finding that the SERTP process complied with the transmission planning principles of Order No. 890. In addition, LG&E/KU and OVEC have revised their OATTs to include, with one exception, language that is substantially identical to the language the Commission relied upon in finding that the SERTP process complied with the transmission planning principles of Order No. 890. Accordingly, we find that, in general, the SERTP process continues to comply with the Order No. 890 transmission planning principles. However, as discussed further below, we direct Filing Parties to revise their OATTs to include definitions for certain terms in their proposed regional transmission planning processes, and Southern Companies and OVEC to revise their OATTs to clarify the language regarding their local transmission planning processes.

43. With regard to Public Interest Organizations' assertion that the SERTP process does not treat transmission and non-transmission alternatives on a comparable basis, we note that, as described above, Filing Parties uniformly adopt the provisions that the Commission previously concluded comply with the comparability principle in Order No. 890. The Commission found, for example, that the SERTP process identifies when and where in the planning process that stakeholders, including sponsors of transmission, generation and demand resources, may provide input regarding data to develop baseline assumptions and may propose transmission and non-transmission alternatives for

⁸² *Southern Co. Services, Inc.*, 124 FERC ¶ 61,265 (2008), *order on reh'g and compliance*, 127 FERC ¶ 61,282 (2009), *order on reh'g and compliance*, 132 FERC ¶ 61,091 (2010).

consideration in the SERTP process.⁸³ The Commission also found that the SERTP process describes how the process will evaluate and select from among competing solutions such that all types of resources are considered on a comparable basis.⁸⁴ The changes Filing Parties propose in this proceeding to comply with the general regional transmission planning requirements of Order No. 1000 do not substantively alter these previously-accepted procedures.⁸⁵ We therefore find that Filing Parties comply with the comparability principle.

44. Although LG&E/KU and OVEC do incorporate into their OATTs language describing the SERTP process that is substantially similar to the language the Commission relied upon in finding that the SERTP process complies with the transmission planning principles of Order No. 890, they omit one item. To comply with the openness principle, the Commission, in addressing Southern Companies' Order No. 890 compliance filing, required Southern Companies to revise its definition of "stakeholder" to clearly provide that all interested parties may participate in the SERTP process.⁸⁶ The Commission ultimately accepted the following definition at section 1.47 of the Southern Companies' OATT as complying with the openness principle: "Any party interested in the [SERTP], including but not limited to transmission and interconnection customers, generation owners/development companies, developers of alternative resources, or state commissions."⁸⁷ LG&E/KU and OVEC do not include this definition of a SERTP stakeholder in their OATTs. Accordingly, we direct LG&E/KU and OVEC to submit a further compliance filing to revise their respective OATTs to include the same definition of a SERTP "stakeholder" as the one in the Southern Companies' OATT. With the expansion of the SERTP region to include public utility transmission providers other than Southern Companies, Filing Parties also propose OATT revisions regarding how the SERTP process, which they rely on to comply with the *regional* transmission planning requirements of Order No. 1000, relates to each public utility transmission provider's *local* transmission planning process. We find that

⁸³ *Southern Co. Services, Inc.*, 127 FERC ¶ 61,282 at P 29.

⁸⁴ *Southern Co. Services, Inc.*, 132 FERC ¶ 61,091 at P 25.

⁸⁵ Protests were submitted regarding whether the Filing Parties' proposal to comply with Order No. 1000's requirement to consider transmission needs driven by public policy requirements violates the transparency, openness, and economic planning principles, and those protests are addressed below in section IV.B.1.d.

⁸⁶ *Southern Co. Services, Inc.*, 124 FERC ¶ 61,265 at P 22.

⁸⁷ *Southern Co. Services, Inc.*, 127 FERC ¶ 61,282 at P 16.

LG&E/KU's proposed OATT revisions, which explain that their local transmission planning process is described in sections 1-10 of LG&E/KU's Attachment K and that the newly incorporated SERTP process is described in sections 11-19,⁸⁸ are sufficiently clear for stakeholders to understand the distinction between the LG&E/KU local transmission planning process and the SERTP process and the procedures that apply to each process.

45. We find that Southern Companies' and OVEC's proposed revisions to their OATTs related to their local transmission planning processes, however, are not sufficiently clear. Although Southern Companies and OVEC propose two new sections in their OATTs called "Local Transmission Planning" and "Regional Transmission Planning," both sections merely refer to the same SERTP process. While the SERTP process complies with the transmission planning principles, it is unclear whether Southern Companies and OVEC intend to use the SERTP process to conduct separate local transmission planning processes or if they intend to combine both of their local transmission planning processes into the SERTP regional transmission planning process. For example, Southern Companies and OVEC propose new OATT language stating that "references to a transmission 'plan,' 'planning,' or 'plans' [in the SERTP process] should be construed in the singular or plural as may be appropriate in a particular instance" and that "the reference to a plan or plans [in the SERTP process] may, depending upon the circumstance, be a reference to a regional transmission plan required for purposes of Order No. 1000."⁸⁹ Southern Companies and OVEC do not explain, and their OATTs do not provide an indication of, how a stakeholder would know whether, for example, a reference to a "plan" in the SERTP process is referring to a single local transmission plan, multiple local transmission plans, or the SERTP regional transmission plan. While we are not prejudging whether it is appropriate to use the SERTP procedures to conduct separate local transmission planning processes, or to combine both of their local transmission planning processes into the regional transmission planning through the SERTP, we find that additional explanation and clarification is needed. Accordingly, we direct Southern Companies and OVEC to submit a further compliance filing, within 120 days of the date of issuance of this order, to explain the interaction between their local transmission planning processes and the SERTP process and to revise their

⁸⁸ For example, LG&E/KU have revised their Attachment K to state that "all references in the regional planning portion of this Attachment K (Sections 11-31) to a transmission 'plan,' 'planning,' or 'plans' should be construed to refer to regional transmission planning and the Transmission Owner's participation in the regional planning only." LG&E/KU OATT, Attachment K § 11.2.1 n.3.

⁸⁹ Southern Companies OATT, Attachment K, § 1.2.1 n.4; OVEC OATT, Attachment M § 1.2.1 n.4.

respective OATTs to provide stakeholders sufficient information to understand which aspects of the SERTP procedures apply to the local transmission planning processes and which apply to the regional transmission planning process.

46. Accordingly, as discussed above, we direct, within 120 days of the date of the issuance of this order: (1) LG&E/KU and OVEC to revise their respective OATTs to include the same definition of a SERTP “stakeholder” as the one in Southern Companies’ OATT; and (2) Southern Companies and OVEC to revise their respective OATTs to (i) explain the interaction between their local transmission planning processes and the SERTP process; and (ii) provide sufficient information to understand which aspects of the SERTP procedures apply to the local transmission planning process and which apply to the regional transmission planning process.

c. Requirement to Plan on a Regional Basis to Identify More Efficient or Cost-Effective Transmission Solutions

47. Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.⁹⁰ Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region’s needs more efficiently or cost-effectively.⁹¹ In addition, whether or not public utility transmission providers within a transmission planning region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is a more efficient or cost-effective solution to their needs.⁹²

48. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer⁹³ must provide to the regional transmission planning process to

⁹⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

⁹¹ *Id.* P 149.

⁹² *Id.* P 331.

⁹³ Order No. 1000 defines merchant transmission projects as projects “for which the costs of constructing the proposed transmission facilities will be recovered through

allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.⁹⁴

49. Finally, the regional transmission planning process developed by public utility transmission providers, in consultation with stakeholders, must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's needs.⁹⁵ Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

i. Affirmative Obligation to Plan

(a) Filing Parties' Compliance Filings

50. Filing Parties explain that the SERTP process has always provided for the coordinated, open, and transparent preparation of an annual transmission plan.⁹⁶ Filing Parties state that the SERTP process is structured to focus regional transmission planning activities on identifying project alternatives of a regional scale, which may be more efficient or cost-effective than the typically smaller, shorter-lead time transmission facilities from the bottom-up process. The regional process is also structured to identify these regional alternatives well in advance of regional needs, and to avoid disruptions to the efficient and timely completion of the high volumes of upgrades identified on existing facilities.⁹⁷

51. Filing Parties propose that the annual regional transmission planning process begins in the fourth quarter of each year, in conjunction with completion of the preceding year's regional transmission planning cycle. At the annual Transmission Planning Summit and Assumptions Input Meeting,⁹⁸ Filing Parties will host an open forum for

negotiated rates instead of cost-based rates." *Id.* P 119. The Commission noted in Order No. 1000 that "a merchant transmission developer assumes all financial risk for developing its transmission project and constructing the proposed transmission facilities. . . ." *Id.* P 163.

⁹⁴ *Id.* P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

⁹⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

⁹⁶ E.g., Southern Companies Transmittal Letter at 12.

⁹⁷ E.g., *id.* at 17.

⁹⁸ E.g., Southern Companies OATT, Attachment K § 1.2.4.

discussion with, and input from, stakeholders regarding the data gathering and transmission model assumptions that will be used for the development of the next year's ten-year transmission expansion plan.⁹⁹ Filing Parties propose that transmission developers who seek to have a transmission project considered for regional cost allocation must provide the information required in Filing Parties' OATTs no later than 60 calendar days following the Annual Transmission Summit and Input Assumptions meeting.¹⁰⁰

52. In the first quarter of each calendar year, Filing Parties will conduct a training session for all interested stakeholders regarding the SERTP process, including an explanation and discussion of the underlying methodology and criteria that will be used to develop the regional transmission plan. Stakeholders will have an opportunity to comment on the proposed methodology and criteria prior to them being finalized. In addition, the Regional Planning Stakeholders' Group will be formed for that year, and Filing Parties will meet with the Regional Planning Stakeholders' Group and any other interested stakeholders to allow the Regional Planning Stakeholders' Group to select up to five stakeholder-requested economic planning studies.¹⁰¹

53. In the second quarter of each calendar year, Filing Parties will meet with interested stakeholders to explain and discuss the SERTP preliminary transmission expansion plan, including input into that year's SERC (or other applicable NERC region) regional model, internal model updating, and any other coordination study activities (whether *ad hoc* or with transmission providers in the Florida Reliability Coordinating Council). Stakeholders will have an opportunity to supply their input and feedback, including any "transmission plan/enhancement alternatives" that stakeholders would like to be considered in the regional transmission planning process. Stakeholders may also raise issues as part of the SERC (or other applicable NERC region) reliability assessment process.¹⁰²

54. During the third quarter of each calendar year, Filing Parties will meet with the Regional Planning Stakeholders' Group and any other interested stakeholders to report the preliminary results for the economic planning studies requested by the Regional Planning Stakeholders' Group, at which time the Regional Planning Stakeholders' Group

⁹⁹ E.g., *id.* § 1.2.4.2.

¹⁰⁰ E.g., *id.* § 15.2.

¹⁰¹ E.g., *id.* §§ 1.2.1, 3.5.1.2, 3.5.2.

¹⁰² E.g., *id.* §§ 1.2.2, 3.5.2.

will have an opportunity to provide input and feedback regarding the preliminary results, including alternatives for possible transmission solutions that have been identified. Filing Parties will also provide feedback to stakeholders regarding transmission expansion plan alternatives that stakeholders previously provided. Filing Parties will also discuss with stakeholders the results of the SERC (or other applicable NERC region) regional model development for that year and any ongoing coordination study activities. Moreover, Filing Parties will address any transmission planning issues raised by stakeholders.¹⁰³

55. Finally, during the fourth quarter of each calendar year, Filing Parties will host the annual Transmission Planning Summit and Assumptions Input Meeting.¹⁰⁴ At the Transmission Planning Summit, Filing Parties will present the final results of the economic planning studies, as well as an overview of the ten-year transmission expansion plan and the results of any coordination activities.¹⁰⁵ As discussed above, the Assumptions Input Meeting will take place following the annual Transmission Planning Summit and will provide an open forum for discussion with, and input from, stakeholders regarding the data gathering and transmission model assumptions that will be used for the development of the next year's ten-year transmission expansion plan.¹⁰⁶

(b) Protests/Comments

56. LS Power argues that Filing Parties' proposal does not establish regional transmission planning procedures, but rather is little more than individual transmission providers making the same decisions that they have always made and aggregating their individual plans into a single regional transmission plan. LS Power notes that Filing Parties' compliance filings state that "[t]o the extent that this Attachment K makes statements that might be construed to imply establishing duties or obligations upon other Sponsors, no such duty or obligation is intended."¹⁰⁷ LS Power asserts that simply rolling up individual transmission providers' local plans does not establish a regional transmission plan, nor does the fact that, after the roll-up of local plans is complete, other entities are permitted to suggest "alternatives" provide meaningful regional transmission

¹⁰³ E.g., *id.* § 1.2.3.

¹⁰⁴ E.g., *id.* § 1.2.4.

¹⁰⁵ E.g., *id.* § 1.2.4.1.

¹⁰⁶ E.g., *id.* § 1.2.4.2.

¹⁰⁷ LS Power Protest at 3 (quoting, e.g., Southern Companies OATT, Attachment K fn.1).

planning for captive wholesale transmission customers in the proposed SERTP regional transmission planning process.¹⁰⁸

(c) **Answers**

57. SERTP Sponsors argue that LS Power's assertion that the SERTP regional transmission planning process does nothing more than combine local transmission plans is incorrect. SERTP Sponsors assert that the Southeast is known for having a robust transmission grid that results from effective transmission planning processes, and that the Commission recognized in Order No. 1000 that utilities that already meet many of Order No. 1000's goals would only have to make modest changes. SERTP Sponsors state that they have always exhausted opportunities for regional coordination, and that the Order No. 1000 compliance filings follow in those footsteps.¹⁰⁹

(d) **Commission Determination**

58. We find that the regional transmission planning process specified in Filing Parties' compliance filings partially complies with Order No. 1000's requirement that public utility transmission providers evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning processes. For example, while the OATTs of Southern Companies and OVEC suggest that, as part of the reliability planning process, neighboring transmission owners may identify superior solutions, which will then be incorporated into the ten-year expansion plan as reliability transmission projects,¹¹⁰ it is unclear from Filing Parties' OATTs whether the transmission providers in the SERTP region will conduct their own regional analysis as part of each planning cycle, or whether they may rely solely on transmission developers to propose more efficient and cost-effective transmission solutions. Accordingly, Filing Parties must submit further compliance filings to revise their respective OATTs, as discussed below.

59. Order No. 1000 requires public utility transmission providers to participate in a transmission planning region that conducts a regional analysis to identify whether there

¹⁰⁸ *Id.* at 3-4.

¹⁰⁹ SERTP Sponsors Answer at 18-20.

¹¹⁰ Southern Companies OATT, Attachment K § 6.6.2(a)(iii); OVEC OATT, Attachment M § 6.4.2(a)(iii).

are more efficient or cost-effective solutions to regional transmission needs. It is not sufficient for a transmission planning region to merely “roll-up” local transmission plans without analyzing whether the regional transmission needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution.

60. One of the stated purposes of the requirements adopted in Order No. 1000 is “to remedy deficiencies in the existing requirements of Order No. 890. . . .”¹¹¹ The Commission explained the deficiencies as follows:

Order No. 890 required public utility transmission providers to coordinate at the regional level for the purpose of sharing system plans and identifying system enhancements that could relieve congestion or integrate new resources. The Commission did not specify, however, whether such coordination with regard to identifying system enhancements included an obligation for public utility transmission providers to take affirmative steps to identify potential solutions at the regional level that could better meet the needs of the region. As a result, the existing requirements of Order No. 890 permit regional transmission planning processes to be used as a forum merely to confirm the simultaneous feasibility of transmission facilities contained in their local transmission plans. Consistent with the economic planning requirements of Order No. 890, regional transmission planning processes also must respond to requests by stakeholders to perform studies that evaluate potential upgrades or other investments that could reduce congestion or integrate new resources or loads on an aggregated or regional basis. Again, no affirmative obligation was placed on public utility transmission providers within a region to undertake such analyses in the absence of requests by stakeholders. There is also no obligation for public utility transmission providers within the region to develop a single transmission plan for the region that reflects their determination of the set of transmission facilities that more efficiently or cost-effectively meet the region’s needs.¹¹²

¹¹¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 12.

¹¹² *Id.* P 147 (footnotes omitted).

Order No. 1000 addresses these deficiencies by, among other requirements, placing an affirmative obligation on public utility transmission providers to participate in a regional transmission planning process that produces a regional transmission plan.¹¹³

61. In light of Order No. 1000's requirements, Filing Parties must conduct a regional analysis themselves to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs, regardless of whether stakeholders, prospective transmission developers, or other interested parties propose potential transmission solutions for the region to consider. In conducting the regional analysis, Filing Parties may not rely exclusively on proposals from qualified developers as the region's means to identify more efficient or cost-effective regional transmission solutions. To satisfy the requirements of Order No. 1000, we require Filing Parties to submit OATT revisions that describe the process they will use to identify more efficient or cost-effective transmission solutions and explain how the region will conduct that regional analysis through power flow studies, production cost analyses, and/or other methods.

62. Order No. 1000's affirmative obligation to identify more efficient or cost-effective transmission solutions applies to transmission needs driven by economic considerations just as it applies to transmission needs driven by public policy requirements or reliability considerations. We note that, while Filing Parties' proposal meets Order No. 1000's requirement to permit stakeholders to request economic studies on a regional basis, as proposed, economic planning is not an integral part of SERTP's regional transmission planning process. In particular, the proposed regional transmission planning process does not require the affirmative identification of transmission needs driven by economic considerations, regardless of whether stakeholder requests for economic studies are received. We find that the compliance filings are deficient in this regard.

63. With respect to the proposed provision in Filing Parties' OATTs stating that "[t]o the extent that this Attachment [K or M] makes statements that might be construed to imply establishing duties or obligations upon other Sponsors, no such duty or obligation is intended,"¹¹⁴ we note that our directive here addresses LS Power's concerns with this provision, as it requires Filing Parties to clearly set forth their affirmative obligation to identify more efficient or cost-effective transmission solutions in their OATTs. Moreover, we note that this affirmative obligation must be set forth in each of the Filing Parties' OATTs, and because each of the Filing Parties must follow their own OATTs,

¹¹³ *Id.* P 148.

¹¹⁴ E.g., Southern Companies OATT, Attachment K fn.1.

the provision noted above will not provide a means for Filing Parties to avoid Order No. 1000's requirements.

64. Accordingly, as discussed above, we direct Filing Parties, within 120 days of the date of issuance of this order, to revise their respective OATTs to set forth the affirmative obligation to identify transmission solutions that more efficiently or cost-effectively meet reliability requirements, address economic considerations, and meet transmission needs driven by public policy requirements.¹¹⁵

ii. Minimum Threshold Requirements

(a) Filing Parties' Compliance Filings

65. Filing Parties propose a set of minimum thresholds for transmission facilities potentially eligible for selection in a regional transmission plan for purposes of cost allocation. Filing Parties state that in order for a transmission project proposed by a transmission developer to be considered for evaluation and potential selection in a regional transmission plan for purposes of cost allocation, the project must be a major transmission project effectuating significant bulk electric transfers across the SERTP region and addressing significant electrical needs. Specifically, Filing Parties state that the transmission project generally must be a transmission line that would: (1) operate at a voltage of 300kV or greater; (2) span 100 miles within the SERTP region; (3) be located in two or more balancing authority areas in the SERTP region; and (4) be materially different than projects that are already under consideration and that have been previously considered in the transmission planning process.¹¹⁶

66. Filing Parties explain that the transmission system of the SERTP Sponsors is built to integrate generation to large load centers utilizing major transmission lines operating at or above 300 kV, which make up the "backbone" of transmission facilities that convey bulk transfers throughout the SERTP region. Filing Parties reason that these high voltage transmission facilities provide regional efficiencies through significant reliability, economic, and operational benefits. Filing Parties also contend that 230 kV transmission facilities, with their higher impedances and lower loadings, might convey "regional" deliveries for smaller regions, but not for a region of SERTP's scale. Filing Parties also

¹¹⁵ We also note that any additional OATT procedures proposed to implement the affirmative obligation discussed above must also comply with the Order No. 890 principles.

¹¹⁶ E.g., Southern Companies OATT, Attachment K § 14.

claim that 230 kV facilities are increasingly becoming load-serving in nature for SERTP utilities.¹¹⁷

67. Filing Parties state that the transmission facilities in the SERTP region that generally address “*regional needs*” are those rated 300 kV and above which traverse a regionally significant distance (i.e., 100 miles or more) across two or more balancing authority areas.¹¹⁸ Filing Parties do, however, propose that a transmission project that does not satisfy the above criteria, but that would effectuate similar, significant bulk electric transfers across the SERTP region and address similar, regional electrical needs, will be considered on a case-by-case basis for potential selection in a regional transmission plan for purposes of cost allocation.¹¹⁹

68. Additionally, Filing Parties propose that in order for a proposed transmission project to be a more efficient and cost-effective alternative to the project identified by the transmission providers through their transmission planning processes, it should be materially different than projects already under consideration and materially different than projects previously considered in the regional transmission planning process. Filing Parties state that the “materially different” requirement stems from Order No. 1000’s holding that regional transmission facilities are those that “are more efficient and cost effective solutions.”¹²⁰ Finally, Filing Parties state that the proposed transmission project must be able to be constructed and tied in to the transmission system by the required in-service date.¹²¹

(b) Protests/Comments

69. LS Power opposes Filing Parties’ proposal to impose minimum threshold requirements on a transmission project’s eligibility for regional cost allocation.¹²² First, LS Power objects to limiting regional transmission projects to projects that operate at 300 kV or greater. LS Power states that adopting Filing Parties’ proposal would exclude a

¹¹⁷ E.g., Southern Companies Transmittal Letter at 17.

¹¹⁸ E.g., *id.*

¹¹⁹ E.g., Southern Companies OATT, Attachment K § 14.

¹²⁰ E.g., Southern Companies Transmittal Letter at 17 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 81).

¹²¹ E.g., Southern Companies OATT, Attachment K § 14.

¹²² LS Power Protest at 12.

significant percentage of the systems within the SERTP region from Order No. 1000 compliance. LS Power believes the reference to a minimum voltage floor should be struck in its entirety, since LS Power states that a regional transmission project is one for which any of the costs are allocated regionally because the project provides regional benefits, or that extends beyond a single transmission provider's retail distribution service territory or footprint.¹²³ In addition, LS Power states that the definitional focus of regional transmission projects should not be on "balancing authority areas within SERTP," but rather on "retail distribution territories or footprints," as specified in Order No. 1000-A.¹²⁴

70. Second, LS Power opposes the 100-mile threshold requirement. LS Power notes that there are plenty of examples where transmission projects of less than 100 miles in length have had significant regional benefits. LS Power states that under Order No. 1000, a project needs to benefit, and be paid for by, two entities (i.e., retail distribution service territories) within the SERTP region to be considered "regional." LS Power states that the 100-mile requirement is wholly inconsistent with Order No. 1000, and asserts that this threshold should be removed in its entirety.¹²⁵

71. Finally, LS Power opposes the requirement that regional transmission projects be "materially different" than projects already under consideration and from projects previously considered in the regional transmission planning process. LS Power contends that the provision is vague and unnecessary because the only projects in the regional transmission plan should be local projects or projects affirmatively approved in each future Order No. 1000-compliant regional transmission plan. LS Power suggests this language is unnecessary or could imply that the Filing Parties are attempting to preserve an advantage to plan regional transmission projects before nonincumbent transmission developers have an opportunity. As such, LS Power objects to a *de facto* right of first refusal for transmission projects that have been previously considered in the regional transmission planning process as inconsistent with Order No. 1000.¹²⁶

¹²³ *Id.* (citing Order 1000, FERC Stats. & Regs. ¶ 31,323 at P 64).

¹²⁴ *Id.* (citing Order 1000-A, 139 FERC ¶ 61,132 at P 423).

¹²⁵ *Id.* at 13.

¹²⁶ *Id.* at 15-16.

(c) Answer

72. SERTP Sponsors state that the criteria for a regional transmission project to be eligible for regional cost allocation reflect flexibility so as not to reject transmission projects that would address regional needs, while balancing the need to establish clear and objective standards that ensure reliability and result in transmission planning that is transparent and non-discriminatory for incumbent transmission providers and nonincumbent transmission providers alike. SERTP Sponsors state that the Commission should reject LS Power's desired definition of regional transmission facilities that are eligible for cost allocation (i.e., transmission projects in which any costs are shared) because it conflicts with Order No. 1000, especially in recognition that merchant transmission projects sometimes include cost sharing arrangements between multiple parties.¹²⁷

73. Additionally, SERTP Sponsors state that the 300 kV and 100 mile threshold criteria for projects are justified. SERTP Sponsors state these criteria are appropriate considering that, to provide true "regional" benefits for a region as expansive as SERTP; the facility needs to provide significant bulk electric transfers and address significant regional needs. SERTP Sponsors comment that less significant facilities (in terms of voltage and mileage) are much more likely to only be local in nature and effectuate local benefits. SERTP Sponsors also emphasize that they have committed to be flexible in their implementation of these criteria and consider transmission projects on a case-by-case basis provided that the project effectuates similar bulk transfer and addresses regional needs.¹²⁸

74. SERTP Sponsors also defend the proposed requirement that a regional proposal must be "materially different" from those currently under consideration or previously rejected. SERTP Sponsors point out that it is axiomatic that for a proposal to satisfy Order No. 1000's requirement that it be "more efficient and cost effective" than solutions already considered or otherwise under consideration, the proposal has to be materially different than other such projects.¹²⁹

¹²⁷ SERTP Sponsors Answer at 24.

¹²⁸ *Id.* at 24-25.

¹²⁹ *Id.* at 26-27.

(d) Commission Determination

75. We find that Filing Parties' proposed minimum thresholds for transmission facilities potentially eligible for selection in a regional transmission plan for purposes of cost allocation partially comply with the requirement to plan on a regional basis to identify more efficient or cost-effective transmission solutions. As discussed below, we require Filing Parties to provide further justification for certain thresholds, or to remove them from their OATTs.

76. Order No. 1000 did not establish regional project minimum threshold requirements, such as voltage and line length requirements, for a proposed transmission project to be eligible for selection in the regional transmission plan for purposes of cost allocation. Minimum threshold requirements for determining whether a proposed transmission facility is eligible to be selected in the regional transmission plan for purposes of cost allocation may be a reasonable way to identify transmission facilities that likely have regional benefits. We find that Filing Parties have provided adequate support for their proposed minimum threshold requirement that a transmission project operate at a voltage of 300 kV or greater to be eligible for selection in the regional transmission plan for purposes of cost allocation. As Filing Parties explain, transmission projects that operate at or above 300 kV make up the "backbone" of the transmission facilities that convey bulk transfers throughout the SERTP region, integrating generation to large load centers, as compared to 230 kV facilities increasingly used by SERTP facilities to serve load.¹³⁰ Therefore, we agree with Filing Parties' proposed minimum threshold requirement of transmission projects that operate at or above 300 kV.

77. However, we find that Filing Parties have failed to justify the requirement that a transmission project be 100 miles or greater to be eligible for selection in the regional transmission plan for purposes of cost allocation. Filing Parties have not demonstrated that this criterion will identify transmission facilities that are likely to have regional benefits and is not so limiting as to preclude from evaluation transmission projects that may provide regional benefits. Accordingly, we direct Filing Parties to justify or remove the 100-mile requirement as part of their further compliance filings. If Filing Parties choose to retain this proposed threshold, they should, on compliance, provide additional justification as to how the 100-mile threshold identifies transmission facilities that are likely to have regional benefits. For example, Filing Parties could provide a historical analysis of which existing transmission facilities within the transmission planning region would have been eligible for evaluation for selection in the regional transmission plan for purposes of cost allocation under the proposed minimum threshold requirement.

¹³⁰ E.g., Southern Companies Transmittal Letter at 16-17.

78. In addition, we reject the requirement that a regional transmission project eligible for potential selection in a regional transmission plan for purposes of cost allocation must be located in two balancing authority areas because this requirement may inappropriately exclude certain transmission projects that might provide regional benefits from being evaluated for selection in the regional transmission plan for purposes of cost allocation. For example, Southern Companies' respective transmission systems are located within a single balancing authority area,¹³¹ despite consisting of multiple retail service territories, and Southern Companies' service areas encompass approximately 122,500 square miles and include more than 27,000 miles of transmission lines.¹³² As a result, a transmission facility of significant size and scope could be located within a single balancing authority area. However, based on Filing Parties' proposed minimum threshold requirement, that transmission facility, even if it provided significant regional benefits, would be presumed ineligible for even *consideration* for selection in the regional transmission plan for purposes of cost allocation, potentially significantly limiting the ability of nonincumbent transmission developers to develop regional transmission projects in the SERTP region.¹³³

79. Filing Parties also propose that, to be eligible for selection in the regional transmission plan for purposes of cost allocation, a transmission project must be materially different than (1) transmission projects already under consideration in the regional transmission planning process and (2) transmission projects that have been previously considered in the regional transmission planning process. With respect to the first requirement, we find that Filing Parties must justify this proposed requirement or, in the alternative, remove it from their OATTs. We are concerned that this requirement

¹³¹ According to the "Overview of the Transmission System in the Southern Company Area" provided by Southern Companies, the transmission facilities of affiliates Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company, and also those of non-affiliates that participate in the Georgia Integrated Transmission System (i.e., Municipal Electric Authority of Georgia, Dalton Utilities, and Georgia Transmission Corporation), are planned and operated as a single Balancing Authority Area, meaning that the bulk power facilities perform as a single, aggregated transmission system even though the ownership of individual facilities varies. Southern Companies Compliance Filing at Attachment B-4.

¹³² *Id.*

¹³³ As the Commission recognized in Order No. 1000, the sponsor of a particular transmission project wherever located may choose not to seek regional cost allocation and, instead, fund the transmission project itself. *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 724-25.

could exclude from evaluation transmission facilities that provide benefits to the transmission planning region. Moreover, should Filing Parties propose to retain this requirement in their OATTs, they must justify their proposed requirement and provide additional explanation of how a proposed transmission facility will be determined to be “materially different,” as we are concerned that the proposed requirement provides undue discretion for the transmission providers to determine what transmission facilities may be considered for selection in the regional transmission plan for purposes of cost allocation.

80. With respect to the second requirement, that to be eligible for selection in the regional transmission plan for purposes of cost allocation, a transmission project must be materially different than transmission projects that have been previously considered in the regional transmission planning process, we reject Filing Parties’ proposal and direct them to remove this provision from their OATTs. Simply because a transmission facility was not selected in a regional transmission plan as a more efficient or cost-effective solution is no reason to refuse to consider whether that transmission project, or a similar project, may nonetheless be a more efficient or cost-effective solution in future transmission planning cycles. As a result, refusing to consider in a subsequent transmission planning cycle a transmission project that was considered, but not selected in a regional transmission plan for purposes of cost allocation, in a prior transmission planning cycle could improperly exclude from evaluation transmission facilities that provide benefits to the transmission planning region.

81. We also reject Filing Parties’ requirement that the proposed transmission project must be able to be constructed and tied in to the transmission system by the required in-service date. While we recognize that needs must be met on a timely basis, we do not think it is appropriate to categorically disqualify a project at the proposal stage due to its estimated in-service date. There may be situations in which, notwithstanding a later estimated in-service date, the transmission planning region decides that the benefits provided by a proposed transmission project are sufficient to justify selecting the project in the regional transmission plan and implementing alternative, shorter-term solutions prior to the project’s in-service date to meet the need in a timely manner. Accordingly, we direct Filing Parties’ to remove this provision from their OATTs. We note, however, that we find here only that Filing Parties cannot categorically exclude proposed transmission projects from consideration at the proposal stage based solely on the estimated in-service date. The regional transmission planning process may consider this criterion in the evaluation of proposals.

82. With respect to Filing Parties’ proposal to permit other transmission facilities capable of providing significant bulk electric transfers and regional benefits to be considered on a case-by-case basis for selection in the regional transmission plan for purposes of cost allocation, Filing Parties have failed to explain the factors that will be considered in determining whether a proposed transmission facility provides such benefits. While we understand the possible need for review of certain transmission

projects on a case-by-case basis, we find that additional detail is needed to ensure that the provisions are transparent and would not result in unjust and unreasonable or unduly discriminatory outcomes. We direct Filing Parties to provide, on further compliance, additional detail regarding how this proposal will be implemented, as well as an explanation of how the analysis as to whether a proposed transmission facility has regional benefits will be performed.

83. Accordingly, we direct Filing Parties to file within 120 days of the date of issuance of this order further compliance filings to: (1) provide further justification as to how their proposed 100 mile minimum threshold requirement identifies transmission facilities that likely have regional benefits, or remove this provision from their OATTs; (2) remove the proposed OATT language related to transmission lines needing to be located in two or more SERTP balancing authority areas; (3) remove from their OATTs or justify and explain the provision requiring transmission projects to be “materially different” than projects under consideration; (4) remove from their OATTs the provision requiring transmission projects to be “materially different” than projects that have been previously considered in the transmission planning process; (5) remove from their OATTs the provision requiring that a proposed transmission project must be able to be constructed and tied in to the transmission system by the required in-service date; and (6) provide additional detail to ensure that the provisions for review of certain transmission projects on a case-by-case basis are transparent and would not result in unjust and unreasonable or unduly discriminatory outcomes.

iii. Merchant Transmission Developers

(a) Filing Parties’ Compliance Filings

84. Filing Parties propose that merchant transmission developers who propose to develop a transmission project that will impact the transmission systems in the SERTP region, including those merchant transmission developers who do not seek regional cost allocation, shall provide information and data necessary for transmission providers to assess the potential reliability and operational impacts of those projects. Specifically, Filing Parties propose to require that information to include transmission project timing, scope, network terminations, load flow data, stability data, high-voltage direct current data (as applicable), and other technical data necessary to assess potential impacts.¹³⁴

¹³⁴ E.g., Southern Companies Transmittal Letter at 13; Southern Companies OATT, Attachment K § 11.

(b) **Protests/Comments**

85. No protests or comments were filed on this topic.

(c) **Commission Determination**

86. We find that Filing Parties' proposed OATT provisions regarding merchant transmission developers comply with the requirements of Order No. 1000 because they describe the information and data required to be provided by merchant transmission developers.

iv. **Other Issues**

(a) **Filing Parties' Compliance Filings**

87. Filing Parties assert that their compliance filings reflect extensive collaborative efforts with stakeholders and regulators. Filing Parties explain that their compliance materials and related issues have been vetted during the course of four stakeholder meetings that occurred during each annual transmission planning cycle beginning with the 2011 Annual Transmission Summit that occurred on December 14, 2011. Filing Parties state that they also conducted three interim meetings with stakeholders to specifically address Order No. 1000 issues, and that they posted on their websites iterations of their "strawman" compliance filings, related presentations for stakeholder and regulator review, and draft OATT language. Filing Parties also state that they engaged in outreach efforts with their state commissions about the proposed expansion of the SERTP region and their Order No. 1000 compliance proposals, and that they sought feedback from Commission staff. In addition, Filing Parties state that their compliance filings include changes reflecting feedback from stakeholders and regulators, including Commission staff.¹³⁵

(b) **Protests/Comments**

88. Public Interest Organizations argue that Filing Parties failed to comply with Order No. 1000's requirement that public utility transmission providers engage stakeholders in the development of the regional compliance proposal. Public Interest Organizations state that although they submitted three sets of written proposals, it is unclear whether those comments were considered, as Filing Parties did not provide specific responses to many of Public Interest Organizations' comments. Public Interest Organizations state that this lack of engagement by Filing Parties substantiates their concern that Filing Parties'

¹³⁵ E.g., Southern Companies Transmittal Letter at 7-9.

proposed OATTs may not contain adequate language to ensure the opportunity for meaningful stakeholder input going forward.¹³⁶

89. The Non-Public Utility Sponsors state that Filing Parties' proposal reflects the input of non-public utility transmission providers and transmission owners that participated in its development. They also state that the proposal is the result of an extensive process to collect feedback and input from stakeholders and regulators.¹³⁷

(c) **Answers**

90. SERTP Sponsors reject Public Interest Organizations' allegations that SERTP Sponsors did not consider stakeholder feedback during development of the proposed regional transmission planning process. They reference Filing Parties' transmittal letters, which they assert detail how stakeholder feedback was considered and incorporated into the proposed regional transmission planning process. SERTP Sponsors instead argue that Public Interest Organizations' complaint seems to be that SERTP Sponsors did not provide a written response to every item of feedback received from stakeholders. SERTP Sponsors explain that they did not feel that such a "check the box" approach would facilitate collaboration with stakeholders or be an efficient use of resources. Instead, according to SERTP Sponsors, they focused on trying to address concerns through stakeholder meetings, and Filing Parties summarized changes made to respond to stakeholder comments in their compliance filings.¹³⁸

(d) **Commission Determination**

91. We find that Filing Parties have complied with the requirement to engage stakeholders in the development of their Order No. 1000 compliance filings by providing for active participation from public and non-public utility transmission providers and interested stakeholders. Filing Parties provided multiple opportunities for stakeholder participation, including holding open meetings and receiving written comments throughout the development of the proposed regional transmission planning process, and incorporating suggestions from stakeholders into that proposal.

¹³⁶ E.g., Public Interest Organizations Protest at 15-16.

¹³⁷ Non-Public Utility Sponsors Comments at 3-4.

¹³⁸ SERTP Sponsors Answer at 36-38.

d. Consideration of Transmission Needs Driven by Public Policy Requirements

92. Order No. 1000 requires public utility transmission providers to amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.¹³⁹ The Commission clarified in Order No. 1000-A that Order No. 1000 requires that transmission needs driven by Public Policy Requirements be considered just as transmission needs driven by reliability or economic concerns are also considered.¹⁴⁰ Public Policy Requirements are requirements established by local, state or federal laws or regulations (i.e., enacted statutes passed by the legislature and signed by the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).¹⁴¹ As explained further below, Order No. 1000 specifies that the consideration of transmission needs driven by Public Policy Requirements means: (1) the identification of transmission needs driven by Public Policy Requirements and (2) the evaluation of potential solutions to meet those identified needs.¹⁴²

93. To comply with the requirement to identify transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with their stakeholders, must establish procedures in their OATTs to identify at the local and regional level those transmission needs driven by Public Policy Requirements for which potential transmission solutions will be evaluated.¹⁴³ The process for identifying transmission needs driven by Public Policy Requirements must allow stakeholders, including, but not limited to, those responsible for complying with the Public Policy Requirements at issue and the developers of potential transmission facilities that are needed to comply with one or more Public Policy Requirements, an opportunity to provide input and to offer proposals regarding the transmission needs they believe are

¹³⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

¹⁴⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at PP 204, 206, 208-211, 317-319.

¹⁴¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2. Order No. 1000-A clarified that public policy requirements included local laws and regulations passed by a local governmental entity, such as a municipal or county government. Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹⁴² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

¹⁴³ *Id.* PP 206, 207.

driven by Public Policy Requirements.¹⁴⁴ Public utility transmission providers must explain in their compliance filings how the procedures adopted give all stakeholders a meaningful opportunity to submit what the stakeholders believe are transmission needs driven by Public Policy Requirements.¹⁴⁵

94. In addition, public utility transmission providers, in consultation with stakeholders, must establish a just and reasonable and not unduly discriminatory process through which public utility transmission providers will identify, out of this larger set of needs, those needs for which transmission solutions will be evaluated.¹⁴⁶ Public utility transmission providers must explain in their compliance filings how their open and transparent transmission planning process determines whether to move forward regarding transmission needs driven by Public Policy Requirements.¹⁴⁷ In addition, each public utility transmission provider must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that have been identified for evaluation for potential solutions in the local and regional transmission planning processes and (2) how other transmission needs driven by Public Policy Requirements introduced by stakeholders were considered during the identification stage and why they were not selected for further evaluation.¹⁴⁸

95. To comply with the requirement to evaluate potential solutions to meet the identified transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with stakeholders, must also establish procedures in their OATTs to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements.¹⁴⁹ These procedures must include the evaluation of transmission facilities stakeholders propose to satisfy an

¹⁴⁴ *Id.* PP 207, 208.

¹⁴⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

¹⁴⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

¹⁴⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

¹⁴⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

¹⁴⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

identified transmission need driven by Public Policy Requirements.¹⁵⁰ Stakeholders must be provided an opportunity to provide input during the evaluation of potential solutions to identified needs.¹⁵¹ In addition, the Commission and stakeholders must be able to review the record that is created by the process to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential.¹⁵² The Commission will review the proposed evaluation procedures to ensure they comply with the objective of meeting the identified transmission needs more efficiently or cost-effectively.¹⁵³

96. Public utility transmission providers must amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.¹⁵⁴ There are no restrictions on the type or number of Public Policy Requirements to be considered as long as any such requirements arise from local, state, or federal laws or regulations that drive transmission needs and as long as the requirements of the procedures required in Order No. 1000 are met.¹⁵⁵ In addition, Order No. 1000 does not preclude any public utility transmission provider from considering in its transmission planning process transmission needs driven by additional public policy objectives not specifically required by local, state, or federal laws or regulations. However, Order No. 1000 creates no obligation for any public utility transmission provider or its transmission planning processes to consider transmission needs driven by a public policy objective that is not specifically required by local, state, or federal laws or regulations.¹⁵⁶ In addition, public utility transmission providers are not required to consider Public Policy Requirements themselves as part of the transmission planning process.¹⁵⁷

¹⁵⁰ *Id.* P 211; *see also id.* P 211 n.191 (“This requirement is consistent with the existing requirements of Order Nos. 890 and 890-A which permit sponsors of transmission and non-transmission solutions to propose alternatives to identified needs.”).

¹⁵¹ *Id.* P 220.

¹⁵² Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

¹⁵³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

¹⁵⁴ *Id.* P 203.

¹⁵⁵ *Id.* P 214; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹⁵⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216.

¹⁵⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 204.

i. Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process

(a) Filing Parties' Compliance Filings

97. Filing Parties' proposal states that the transmission provider addresses transmission needs driven by public policy requirements in the routine planning, design, construction, operation, and maintenance of the transmission system. Accordingly, Filing Parties propose to address transmission needs driven by the public policy requirements of load-serving entities and wholesale transmission customers through the planning for and provision of long-term firm transmission services to meet native load obligations and wholesale transmission customer obligations under the OATT.¹⁵⁸

98. Filing Parties' proposal also addresses the consideration of transmission needs driven by public policy requirements identified through stakeholder input and proposals. To propose a transmission need driven by public policy requirements for consideration, a stakeholder must submit the following information via the regional transmission planning website: (1) the applicable public policy requirement, which must be a requirement established by an enacted state or federal law(s) and/or regulation(s); (2) an explanation of the possible transmission need driven by the public policy requirement (e.g., the situation or system condition for which possible solutions may be needed, as opposed to a specific transmission project); and (3) an explanation and/or demonstration that the current transmission expansion plan does not adequately address the identified need.¹⁵⁹ Stakeholders must provide this required information no later than 60 calendar days after the SERTP Annual Transmission Planning Summit and Input Assumptions Meeting for the previous transmission planning cycle.¹⁶⁰

99. Filing Parties propose that the transmission provider will evaluate stakeholder input regarding potential transmission needs driven by public policy requirements to determine if there is a transmission need driven by the public policy requirements identified by a stakeholder that should be addressed in the transmission expansion plan.¹⁶¹ If a transmission need is identified that is not already addressed in the regional

¹⁵⁸ E.g., Southern Companies OATT, Attachment K § 10.1.

¹⁵⁹ E.g., *id.* § 10.2.1.

¹⁶⁰ E.g., *id.* § 10.2.2.

¹⁶¹ E.g., *id.* § 10.3.1.

transmission planning process, the transmission provider will identify a transmission solution to address the need in the transmission planning processes.¹⁶² Filing Parties also propose that stakeholder input regarding potential transmission needs driven by public policy requirements may be directed to the governing OATT process as appropriate (e.g., if a potential transmission need driven by public policy requirements is essentially a request by a network customer to integrate a new network resource, the request would be directed to the existing OATT process).¹⁶³

100. Finally, Filing Parties propose that the transmission provider will post on the regional transmission planning website a response to stakeholder input regarding transmission needs driven by public policy requirements.¹⁶⁴

(b) Protests/Comments

101. LS Power and Public Interest Organizations argue that Filing Parties have failed to include adequate procedures for considering transmission needs driven by public policy requirements, as well as for adequate stakeholder input into such consideration. LS Power contends that Filing Parties' proposal is not consistent with Order No. 1000 as it provides no mechanism to address public policy requirements in the regional transmission plan.¹⁶⁵ LS Power cites to Filing Parties' proposal that the transmission provider will address transmission needs driven by public policy requirements in its routine planning, design, construction, operation, and maintenance of the transmission system. LS Power contends that the regional transmission planning process excludes public policy requirements projects, giving the incumbent transmission provider a *de facto* right of first refusal for such projects. LS Power argues that the Commission should reject this effort to circumvent Order No. 1000.¹⁶⁶ LS Power asserts that allowing the individual transmission providers to plan for public policy needs of wholesale transmission customers on an exclusively local basis ensures that wholesale customers always have only one choice for their transmission needs: their existing transmission provider.¹⁶⁷

¹⁶² E.g., *id.* § 10.3.2.

¹⁶³ E.g., *id.* § 10.3.3.

¹⁶⁴ E.g., *id.* § 10.4.

¹⁶⁵ LS Power Protest at 10.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 10-11.

102. Public Interest Organizations express several concerns with Filing Parties' proposal to consider transmission needs driven by public policy requirements in the regional transmission planning process. First, Public Interest Organizations state that contrary to the clarification in Order No. 1000-A, Filing Parties have not included local laws and regulations in the definition of public policy requirements included in their OATTs.¹⁶⁸

103. Second, Public Interest Organizations contend that Filing Parties fail to satisfy the Order No. 1000 requirement to establish procedures at the regional level for identifying public policy requirement-driven needs, selecting those needs for which solutions will be considered, and evaluating solutions to those needs because they have failed to set forth in their OATTs actual procedures.¹⁶⁹ Public Interest Organizations claim that Filing Parties' proposed OATTs instead state that the planning process considers public policy requirement-driven needs without explaining how that consideration occurs.¹⁷⁰ Public Interest Organizations argue that without such procedures in place, it is impossible for stakeholders to understand which public policy requirements and related grid needs have been considered and either rejected or accepted for further evaluation and identification of potential solutions, hindering stakeholders' ability to suggest public policy requirement-driven needs for consideration and risking inefficient duplication.¹⁷¹ Moreover, Public Interest Organizations contend that while Filing Parties' OATTs describe how the transmission provider will respond to stakeholder input regarding transmission needs driven by public policy requirements, these provisions are insufficient

¹⁶⁸ E.g., Public Interest Organizations Protest at 6-7.

¹⁶⁹ E.g., *id.* at 7.

¹⁷⁰ E.g., *id.*

¹⁷¹ E.g., *id.* at 7-9. Public Interest Organizations note, as an example of their concerns, that during the SERTP 2013 planning process, they had requested that SERTP engage in an economic study to model the impacts of retirement of certain coal-fired generating units. Public Interest Organizations stated that at that time, the continued operation of the coal-fired units might become uneconomic due to pollution control retrofits required by a U.S. Environmental Protection Agency (EPA) final rule. Public Interest Organizations state that SERTP rejected their study request as outside the scope of the economic study planning process. Public Interest Organizations state that SERTP proposes to use essentially the same process for future transmission plans but that the process should include procedures by which, for example, existing EPA regulations can be proposed for consideration as affecting transmission needs and potential solutions to such needs can be evaluated. E.g., *id.* at 8-9.

because stakeholder input is only part of the process for identifying the transmission needs driven by public policy requirements.¹⁷² Accordingly, Public Interest Organizations request that the Commission require Filing Parties to develop procedures at the regional level for the identification and evaluation of potential public policy requirement-driven needs that describe (1) when and how the transmission providers would conduct their own assessment of public policy requirement-driven needs, (2) how stakeholders will be provided the opportunity for meaningful input on proposals by other stakeholders and by the transmission providers, and (3) how the SERTP process will identify those needs for which solutions will be evaluated.¹⁷³

104. Third, Public Interest Organizations state that Filing Parties' proposed procedures for stakeholders to propose transmission needs driven by public policy requirements do not comply with Order No. 1000.¹⁷⁴ Public Interest Organizations contend that Filing Parties' proposal that stakeholders must submit both the possible transmission need driven by the public policy requirement and an explanation or demonstration that the current transmission plan does not adequately address the need could require stakeholders to perform substantial modeling, potentially disadvantaging stakeholders without the requisite modeling ability or financial resources to obtain assistance. Specifically, Public Interest Organizations state that Filing Parties' proposal fails to provide for an opportunity for stakeholder input on proposals made by the transmission provider and other stakeholders on public policy requirement-driven needs and solutions, as required by Order No. 1000. Public Interest Organizations state that Filing Parties' proposal provides that stakeholder input regarding potential public policy requirement-driven needs "may be directed to the governing Tariff process as appropriate."¹⁷⁵ Public Interest Organizations argue that all such needs should be governed by the OATT provisions addressing the consideration of transmission needs driven by public policy requirements. Public Interest Organizations state that the Commission should require that the opportunity for stakeholder input, regardless of whether a stakeholder made a proposal itself, be made explicit, especially given that Filing Parties have failed to propose procedures for their own identification and evaluation of potential public policy requirement-driven needs.¹⁷⁶

¹⁷² E.g., *id.* at 7-8.

¹⁷³ E.g., *id.* at 9.

¹⁷⁴ E.g., *id.* at 10.

¹⁷⁵ E.g., *id.* at 12.

¹⁷⁶ E.g., *id.* (quoting Southern Companies OATT, Attachment K § 10.3.3).

105. Public Interest Organizations note that Order No. 1000 requires that public utility transmission providers post an explanation of which transmission needs driven by public policy requirements will be evaluated for potential solutions in the local and regional transmission planning processes, as well as an explanation of why other suggested transmission needs will not be evaluated. Public Interest Organizations argue that Filing Parties' proposal to post "a response to Stakeholder input regarding transmission needs driven by Public Policy Requirements" does not necessarily capture the obligation established in Order No. 1000. Public Interest Organizations thus request that the Commission instruct Filing Parties to revise the proposed OATT language to satisfy, explicitly, Order No. 1000's posting requirements.¹⁷⁷

(c) Answer

106. SERTP Sponsors respond that the arguments of LS Power and Public Interest Organizations against the Filing Parties' proposed public policy requirements provisions should be dismissed because the Filing Parties' proposed provisions comply with Order No. 1000.¹⁷⁸ SERTP Sponsors argue that they provided evidence in the Order No. 1000 proceeding and in their compliance filings that their current transmission planning processes already ensure that public policy requirements are addressed in the regional transmission planning process.¹⁷⁹ Additionally, SERTP Sponsors state that their proposed Attachment K revisions: (1) explain how the Filing Parties identify and address transmission needs driven by public policy requirements in their normal course of business; (2) provide stakeholders the opportunity to submit such transmission needs driven by public policy requirements; and (3) provide for the evaluation and related postings pertaining to the stakeholder proposals.¹⁸⁰

107. SERTP Sponsors also argue that Public Interest Organizations are attempting to have the Commission regulate Filing Parties' integrated resource planning processes. SERTP Sponsors assert that the Commission recognized in Order No. 1000 that resource planning is to continue to be regulated by the states. SERTP Sponsors point to Public Interest Organizations' request, which was considered and denied by the existing SERTP process, for an economic study to model the impacts of retirement of certain coal-fired

¹⁷⁷ E.g., *id.* at 12-13.

¹⁷⁸ SERTP Sponsors Answer at 21.

¹⁷⁹ *Id.* (citing Southern Companies' Compliance Filing, Attachment B-2, Garey C. Rozier Aff. at PP 3, 9, 10, 20, 24, 26).

¹⁸⁰ *Id.* at 22.

generating units, arguing that such a study would have been a resource planning analysis and would have required resource planning decisions inconsistent with those made by the resource planners in the state-regulated integrated resource planning processes. SERTP Sponsors argue that because all generation retirement decisions are included in the regional transmission planning process, public policy requirement-driven needs are considered.¹⁸¹

108. SERTP Sponsors further argue that Public Interest Organizations' complaint that they might have to engage in transmission planning to submit proposals on transmission needs driven by public policy requirements demonstrates that they are interested in integrated resource planning rather than transmission planning. Filing Parties state in order for a stakeholder to submit a meaningful suggestion, the stakeholder needs to have performed its own "homework" before submitting a proposed solution.¹⁸² SERTP Sponsors argue that they are committed to stakeholder participation in the transmission planning process but that process focuses on transmission planning and not integrated resource planning. SERTP Sponsors argue that allowing the Public Interest Organizations to second guess and disrupt integrated resource planning in the Commission-regulated transmission planning processes would impair the state-regulated integrated resource planning processes.¹⁸³ SERTP Sponsors note that their transmission planners must rely on the results of state-regulated integrated resource planning as the data inputs to the regional transmission planning that they perform.¹⁸⁴

109. SERTP Sponsors argue that LS Power's assertion that the Filing Parties have a federal right of first refusal for public policy projects is incorrect. SERTP Sponsors assert that they have no federal right of first refusal in the SERTP planning process for transmission projects eligible for selection in the regional transmission plan for purposes of cost allocation. SERTP Sponsors state that all of the transmission projects presented in the regional transmission planning process, including transmission projects proposed to meet a transmission need driven by public policy requirements, are eligible to be displaced by a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation.¹⁸⁵

¹⁸¹ *Id.* at 13-14.

¹⁸² *Id.* at 15.

¹⁸³ *Id.* at 15.

¹⁸⁴ *Id.* at 16.

¹⁸⁵ *Id.* at 22-23.

110. Finally, SERTP Sponsors state that while they did not believe it necessary to add “local laws and regulations” to the proposed definition of public policy requirements given the clarification in Order No. 1000-A that such laws and regulations are included in the meaning of “within state and federal” laws and regulations, they would not object to doing so on compliance.¹⁸⁶

(d) Commission Determination

111. We find that Filing Parties’ filings partially comply with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements in the regional transmission planning process. Accordingly, we direct Filing Parties to file, within 120 days of the issuance of this order, further compliance filings, as discussed below.

112. Filing Parties state that each transmission provider will address transmission planning needs driven by public policy requirements in the routine planning, design, construction, operation and maintenance of the transmission system. However, we share LS Power’s concerns that Filing Parties’ OATTs lack sufficient detail for stakeholders to understand the procedures Filing Parties will use to identify and evaluate at the regional level transmission needs driven by public policy requirements. In their answer, SERTP Sponsors seek to dismiss these concerns by claiming that protestors are “seeking resource planning and not transmission planning,” with an aim to “convince the Commission to directly regulate resource planning matters,” which SERTP Sponsors assert “are and remain State (not FERC) regulated.”¹⁸⁷ We disagree that requiring the identification and evaluation of transmission needs driven by public policy requirements in the regional transmission planning process is tantamount to regulating resource planning matters or is otherwise inconsistent with state-regulated integrated resource planning.¹⁸⁸ As the Commission explained in Order No. 1000, the requirement to consider transmission needs driven by public policy requirements in the regional transmission planning process complement[s] state efforts by helping to ensure that potential solutions to identified transmission needs driven by [p]ublic [p]olicy [r]equirements of the states can be evaluated in the local and regional transmission planning processes.¹⁸⁹

¹⁸⁶ *Id.* at 20-21 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 323 n.364).

¹⁸⁷ SERTP Sponsors Answer at 13-14.

¹⁸⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 213.

¹⁸⁹ *Id.*; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 330 (“Order No. 1000’s intent is to establish a space in the transmission planning process to identify

113. With respect to the tariff provisions proposed by the Filing Parties, we find that Filing Parties' proposed definition of public policy requirements partially complies with Order No. 1000. Filing Parties correctly include in the proposed definition those public policy requirements that are requirements established by an enacted state or federal law(s) and/or regulation(s). However, as Filing Parties note, Order No. 1000-A further clarifies that the definition of public policy requirements includes local laws and regulations passed by a local governmental entity, such as a municipal or county government.¹⁹⁰ We thus agree with Public Interest Organizations that the definition of public policy requirements in Filing Parties' OATTs should be revised to include those laws enacted by local governmental entities, such as a municipality or county, as clarified in Order No. 1000-A, and note that Filing Parties stated that they do not object to making such revision on compliance. Accordingly, we direct Filing Parties to revise the definition in their OATTs of public policy requirements to explicitly include local laws or regulations along with state or federal laws or regulations.

114. Order No. 1000 requires that the process for identifying transmission needs driven by public policy requirements must allow stakeholders an opportunity to offer proposals regarding the transmission needs they believe are driven by public policy requirements.¹⁹¹ Filing Parties' OATTs provide that to propose a transmission need driven by public policy requirements for consideration, a stakeholder must submit the following information via the regional transmission planning website: (1) the applicable public policy requirement; (2) an explanation of the possible transmission need driven by the public policy requirement; and (3) an explanation and/or demonstration that the current transmission expansion plan does not adequately address the identified need.¹⁹² Filing Parties propose that stakeholders must provide this required information no later than 60 calendar days after the SERTP Annual Transmission Planning Summit and Input Assumptions Meeting for the previous transmission planning cycle.¹⁹³ We find that Filing Parties have described in sufficient detail in their respective OATTs how stakeholders can offer proposals in the regional transmission planning process regarding

transmission needs driven by Public Policy Requirements and to evaluate potential solutions to identified needs.”).

¹⁹⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹⁹¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 207, 208.

¹⁹² E.g., Southern Companies OATT, Attachment K § 10.2.1.

¹⁹³ E.g., *id.* § 10.2.2.

the transmission needs they believe are driven by [p]ublic [p]olicy [r]equirements¹⁹⁴ such that the process for doing so is transparent to all interested stakeholders.

115. However, we have concerns about Filing Parties' proposal to limit the transmission needs driven by public policy requirements that stakeholders may propose to those transmission needs that the current transmission expansion plan does not adequately address. While Order No. 1000 does not require that public utility transmission providers identify any particular set of transmission needs driven by public policy requirements for evaluation,¹⁹⁵ we are concerned that Filing Parties' proposal could have the effect of categorically precluding consideration of whether a regional transmission solution may meet transmission needs driven by public policy requirements more efficiently or cost-effectively than one or more local transmission projects. Even if a transmission need driven by public policy requirements is already being addressed under the current transmission expansion plan, there may be another more efficient or cost-effective transmission solution to that need to be considered. We therefore conclude that Filing Parties' proposal to limit the transmission needs driven by public policy requirements that stakeholders may propose to those transmission needs not adequately addressed by the current transmission expansion plan does not fully comply with Order No. 1000's requirement to consider transmission needs driven by public policy requirements. Accordingly, we direct Filing Parties, in the further compliance filings discussed below, to remove from their OATTs the requirement that a stakeholder proposing a transmission need driven by public policy requirements in the regional transmission planning process must explain and/or demonstrate that the current transmission expansion plan does not adequately address the identified need.

116. Filing Parties further propose that stakeholder input regarding potential transmission needs driven by public policy requirements is to be directed to the governing OATT process as appropriate, such as a request by a network customer to integrate a new network resource. However, Filing Parties do not describe in their respective OATTs when and how stakeholders can provide input regarding the identification of transmission needs driven by public policy requirements and the evaluation of potential solutions to those identified needs when governing OATT processes are not appropriate, i.e., when analyses are not specifically tied to a stakeholder's request for transmission service. We require Filing Parties to revise their OATTs to clearly state how stakeholders can provide input in the regional transmission planning process regarding the identification of transmission needs driven by public policy requirements, and evaluation of potential solutions to those identified needs. We

¹⁹⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 207.

¹⁹⁵ *Id.* P 210.

also agree with Public Interest Organizations that Filing Parties' proposal does not comply with Order No. 1000's requirement that they explain the just and reasonable and not unduly discriminatory process by which they will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated in the regional transmission planning process.¹⁹⁶ While Filing Parties propose that the transmission provider will evaluate stakeholder input regarding potential transmission needs driven by public policy requirements to determine if any such transmission need should be addressed in the transmission expansion plan,¹⁹⁷ Filing Parties do not explain how the transmission provider will make such determination, other than to note that if a transmission need is identified that is not already addressed in the regional transmission planning process, the transmission provider will identify a transmission solution to address the need in the transmission planning processes.¹⁹⁸ As discussed above, this could have the effect of categorically precluding consideration of whether a regional transmission solution may more efficiently or cost-effectively meet transmission needs driven by public policy requirements that are already being addressed under the current transmission expansion plan. Accordingly, we direct Filing Parties to establish a just and reasonable and not unduly discriminatory process by which they will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated in the regional transmission planning process, as required by Order No. 1000.

117. Moreover, we agree with Public Interest Organizations that Filing Parties' compliance proposals do not explain how the public utility transmission providers will evaluate potential transmission solutions to identified transmission needs driven by public policy requirements. Filing Parties propose to revise their OATTs to explain that the transmission provider will evaluate stakeholder input to determine if there is a transmission need driven by the public policy requirement identified by the stakeholder that should be addressed in the regional transmission plan. Additionally, Filing Parties' OATTs propose that if a transmission need is identified that is not already addressed in the transmission planning process, the transmission provider will identify a transmission solution to address the aforementioned need in the planning processes. However, Filing Parties have not described in their OATTs: (1) how potential transmission solutions to identified transmission needs driven by public policy requirements will be evaluated; and (2) when and how stakeholders may provide input during the evaluation of potential

¹⁹⁶ *Id.* P 209.

¹⁹⁷ E.g., Southern Companies OATT, Attachment K § 10.3.1.

¹⁹⁸ E.g., *id.* § 10.3.2.

solutions to identified transmission needs driven by public policy requirements. Accordingly, we direct Filing Parties to revise their OATTs to establish procedures to evaluate at the regional level potential transmission solutions to identified needs driven by public policy requirements. The procedures must both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements and allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs.

118. We also find that Filing Parties' proposal that the transmission provider will post on the regional transmission planning website a response to stakeholder input regarding transmission needs driven by public policy requirements does not meet the requirements of Order No. 1000. Order No. 1000 requires that each public utility transmission provider post on its website an explanation of which transmission needs driven by public policy requirements that it has identified to be evaluated for potential solutions in the regional transmission planning processes, as well as an explanation of why other suggested transmission needs will not be evaluated.¹⁹⁹ However, Filing Parties' OATTs fail to state that transmission providers will post an explanation of which transmission needs driven by public policy requirements that they have identified to be evaluated for potential solutions in the regional transmission planning processes, as well as an explanation of why other suggested needs will not be evaluated. Accordingly, we require Filing Parties, in the further compliance filings discussed below, to revise their OATTs to provide that, consistent with the requirements of Order No. 1000, each public utility transmission provider will post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the regional transmission planning process; and (2) why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation.²⁰⁰

119. In sum, we direct Filing Parties to submit, within 120 days of the date of issuance of this order, further compliance filings that make the following revisions to their respective OATTs. First, Filing Parties must revise the definition in their OATTs of public policy requirements to explicitly include local laws or regulations along with state or federal laws or regulations. Second, Filing Parties must remove from their OATTs the requirement that a stakeholder proposing a transmission need driven by public policy requirements in the regional transmission planning process must explain and/or demonstrate that the current transmission expansion plan does not adequately address the

¹⁹⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

²⁰⁰ *Id.*; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

identified need. Third, Filing Parties must revise their OATTs to clearly state how stakeholders can provide input in the regional transmission planning process regarding the identification of transmission needs driven by public policy requirements, and evaluation of potential solutions to those identified needs. Fourth, Filing Parties must revise their OATTs to establish a just and reasonable and not unduly discriminatory process by which they will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated in the regional transmission planning process. Fifth, Filing Parties must revise their OATTs to include procedures to evaluate at the regional level potential transmission solutions to identified transmission needs driven by public policy requirements that both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements and allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs. Sixth, Filing Parties must revise their OATTs to provide that, consistent with the requirements of Order No. 1000, each public utility transmission provider will post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the regional transmission planning process; and (2) why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation.

ii. **Consideration of Transmission Needs Driven by Public Policy Requirements in the Local Transmission Planning Process**

(a) **Filing Parties' Compliance Filings**

120. Southern Companies' Attachment K and OVEC's Attachment M both include an overview section on local transmission planning that states that the transmission provider has established the SERTP process as their coordinated, open, and transparent planning process. The local transmission planning portions of Southern Companies' Attachment K and OVEC's Attachment M do not contain separate sections or provisions on consideration of transmission needs driven by public policy requirements, as both Southern Companies' Attachment K and OVEC's Attachment M point instead to the SERTP regional transmission planning provisions on public policy requirements.²⁰¹ LG&E/KU's Attachment K includes a separate section on its local transmission planning process, section 8(B) of which addresses consideration of transmission needs driven by

²⁰¹ Southern Companies OATT, Attachment K § Local Transmission Planning; OVEC OATT, Attachment M § Local Transmission Planning.

public policy requirements at the local level. With minor exceptions,²⁰² the provisions are identical to the provisions governing the consideration of transmission needs driven by public policy requirements in the regional transmission planning process proposed by the Filing Parties.²⁰³

(b) Protests/Comments

121. Public Interest Organizations state that the proposed “Local Transmission Planning” section provides that the transmission provider will incorporate into its transmission plans “the needs and results of the integrated resource planning activities conducted within each of its applicable state jurisdictions pursuant to its applicable duty to serve obligations.”²⁰⁴ Public Interest Organizations state that Filing Parties intend to use the SERTP process to satisfy Order No. 1000’s local and regional transmission planning requirements with respect to the consideration of transmission needs driven by public policy requirements. Public Interest Organizations state, however, that state resource planning by retail affiliates is not under the jurisdiction of the Commission and there is no way to ensure that such resource planning by Filing Parties will satisfy Order No. 890’s openness and transparency principles. Public Interest Organizations also argue that the incorporation of state resource planning results does not relieve the Filing Parties from satisfying Order No. 1000’s requirements that procedures be developed to consider transmission needs driven by public policy requirements in Commission-jurisdictional local and regional transmission planning.²⁰⁵

122. Public Interest Organizations contend that Filing Parties fail to satisfy the Order No. 1000 requirement to establish procedures at the local level for identifying public

²⁰² Those exceptions are provisions specifying that consideration will occur in the local transmission planning process rather than the regional transmission planning process; indicating that the transmission owner will consider local transmission needs driven by public policy requirements; and requiring that stakeholders provide the required information about proposed transmission needs driven by public policy requirements no later than 60 calendar days after the November stakeholder meeting rather than no later than 60 calendar days after the SERTP Annual Transmission Planning Summit and Input Assumptions Meeting for the previous transmission planning cycle via the regional transmission planning website. LG&E/KU OATT, Attachment K § 8(B).

²⁰³ *Id.*

²⁰⁴ E.g., Public Interest Organizations Protest at 9.

²⁰⁵ E.g., *id.* at 9-10.

policy requirement-driven needs, selecting those needs for which solutions will be considered, and evaluating solutions to those needs because they have failed to set forth in their OATTs actual procedures.²⁰⁶ Public Interest Organizations thus request that the Commission require Filing Parties to comply fully with the obligation to develop explicit procedures for the identification and evaluation of transmission needs driven by public policy requirements at the local transmission and regional transmission planning level.²⁰⁷ Specifically, Public Interest Organizations request that the Commission require Filing Parties to develop procedures at the local level for the identification and evaluation of potential public policy requirement-driven needs that (1) describe when and how the transmission providers would conduct their own assessment of public policy requirement-driven needs, (2) how stakeholders will be provided the opportunity for meaningful input on proposals by other stakeholders and by the transmission providers, and (3) how the SERTP process will identify the needs for which solutions will be evaluated.²⁰⁸

(c) **Answer**

123. SERTP Sponsors argue that Public Interest Organizations have little interest in transmission planning but rather are more interested in having the Commission regulate the Filing Parties' integrated resource planning processes. SERTP Sponsors assert that the Commission recognized in Order No. 1000 that resource planning is to continue to be regulated by the states.²⁰⁹ SERTP Sponsors argue that allowing the Public Interest Organizations to second guess and disrupt integrated resource planning in the Commission-regulated transmission planning processes would impair the state-regulated integrated resource planning processes.²¹⁰

(d) **Commission Determination – Southern Companies and OVEC**

124. We find that Southern Companies and OVEC have not demonstrated that they comply with the provisions of Order No. 1000 addressing consideration of transmission needs driven by public policy requirements in the local transmission planning process.

²⁰⁶ E.g., *id.* at 7.

²⁰⁷ E.g., *id.* at 10.

²⁰⁸ E.g., *id.* at 9.

²⁰⁹ SERTP Sponsors at 13-14.

²¹⁰ *Id.* at 15.

Order No. 1000 requires all public utility transmission providers to amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by public policy requirements in the local transmission planning process.²¹¹ Southern Companies and OVEC do not address in their compliance filings how they have incorporated the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements in their local transmission planning processes. As discussed in section IV.B.1.b above, the sections entitled “Local Transmission Planning” in Southern Companies and OVEC’s respective OATTs merely refer to the SERTP process and do not distinguish among Southern Companies’ local transmission planning process, OVEC’s local transmission planning process, and the SERTP regional transmission planning process. We find that it is unclear whether Southern Companies and OVEC intend to use the SERTP process to consider transmission needs driven by public policy requirements in separate local transmission planning processes or if they intend to combine consideration of transmission needs driven by public policy requirements in both of their local transmission planning processes into the SERTP regional transmission planning process.²¹² Thus, we direct Southern Companies and OVEC to file, within 120 days of the date of issuance of this order, further compliance filings, including any necessary OATT revisions, explaining how their respective local transmission planning processes comply with the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements.

(e) **Commission Determination – LG&E/KU**

125. We find that LG&E/KU’s proposal partially complies with the requirement to describe procedures that provide for the consideration of transmission needs driven by public policy requirements in the local transmission planning process. With minor exceptions, the provisions in LG&E/KU’s OATT governing the consideration of transmission needs driven by public policy requirements in the local transmission planning process are identical to the provisions governing the consideration of transmission needs driven by public policy requirements in the regional transmission planning process discussed above. Thus, our findings in section IV.B.1.d.i above with respect to the consideration of transmission needs driven by public policy requirements in the regional transmission planning process also apply to LG&E/KU’s proposal to consider transmission needs driven by public policy requirements in the local transmission planning process.

²¹¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

²¹² We discuss concerns regarding integrated resource planning above in section IV.B.1.d.i.

126. Accordingly, we require LG&E/KU to submit, within 120 days of the date of issuance of this order, a further compliance filing that makes the following revisions to its OATT. First, LG&E/KU must revise the definition in its OATT of public policy requirements to explicitly include local laws or regulations along with state or federal laws or regulations. Second, LG&E/KU must remove from its OATT the requirement that a stakeholder proposing a transmission need driven by public policy requirements in the local transmission planning process must explain and/or demonstrate that the current transmission expansion plan does not adequately address the identified need. Third, LG&E/KU must revise its OATT to clearly state how stakeholders can provide input in the local transmission planning process regarding the identification of transmission needs driven by public policy requirements, and evaluation of potential solutions to those identified needs. Fourth, LG&E/KU must revise its OATT to establish a just and reasonable and not unduly discriminatory process by which it will identify, out of the larger set of transmission needs proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated in the local transmission planning process. Fifth, LG&E/KU must revise its OATT to include procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements that both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements and allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs. Sixth, LG&E/KU must revise its OATT to provide that, consistent with the requirements of Order No. 1000, each public utility transmission provider will post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the local transmission planning process; and (2) why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation.

127. We further note that LG&E/KU's existing OATT includes extensive detail regarding the critical roles played by the Stakeholder Planning Committee and the Independent Transmission Organization in LG&E/KU's local transmission planning process.²¹³ However, LG&E/KU's proposed OATT revisions addressing Order

²¹³ For example, in LG&E/KU's local transmission planning process, the Stakeholder Planning Committee provides a forum for stakeholders to provide input to the transmission owner regarding the transmission planning process and membership is open to all eligible customers. LG&E/KU OATT, Attachment K § 1. In addition, the Independent Transmission Organization, to which LG&E/KU have delegated responsibility and authority to administer their OATT, is responsible for, among other

(continued . . .)

No. 1000's requirements regarding the consideration of transmission needs driven by public policy requirements in the local transmission planning process do not describe what role(s), if any, the Stakeholder Planning Committee and the Independent Transmission Organization will play in addressing these new requirements, and it is therefore unclear how these new requirements will be incorporated into existing processes involving the Stakeholder Planning Committee and Independent Transmission Organization. Accordingly, we require LG&E/KU to submit, within 120 days of the date of issuance of this order, a further compliance filing that revises their OATT to clarify how the Stakeholder Planning Committee and the Independent Transmission Organization will be involved in the consideration of transmission needs driven by public policy requirements in LG&E/KU's local transmission planning process.

2. Nonincumbent Transmission Developer Reforms

128. Order No. 1000 institutes a number of reforms that seek to ensure that nonincumbent transmission developers have an opportunity to participate in the transmission development process. These reforms involve the elimination of federal rights of first refusal from Commission-jurisdictional OATTs and agreements, and requirements regarding qualification criteria for transmission developers and processes for evaluating proposals for new transmission facilities.

a. Federal Rights of First Refusal

129. Order No. 1000 requires that each public utility transmission provider eliminate provisions in Commission-jurisdictional OATTs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.²¹⁴ Order No. 1000 defines a transmission facility selected in a regional transmission plan for purposes of cost allocation as a transmission facility that has been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because it is a more efficient or cost-effective solution to regional transmission needs.²¹⁵

things, convening meetings related to the local transmission planning process and ultimately approving the local transmission plan.

²¹⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. The phrase "a federal right of first refusal" refers only to rights of first refusal that are created by provisions in Commission-jurisdictional OATTs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

²¹⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 5, 63.

If a public utility transmission provider's OATT or other Commission-jurisdictional agreements do not contain a federal right of first refusal provision, a public utility transmission provider should state this in its compliance filing.²¹⁶

130. The requirement in Order No. 1000 to eliminate a federal right of first refusal does not apply to local transmission facilities,²¹⁷ which are defined as transmission facilities located solely within a public utility transmission provider's retail distribution service territory or footprint that are not selected in the regional transmission plan for purposes of cost allocation.²¹⁸ The requirement also does not apply to the right of an incumbent transmission provider to build, own, and recover costs for upgrades to its own transmission facilities, regardless of whether an upgrade has been selected in the regional transmission plan for purposes of cost allocation.²¹⁹ In addition, the requirement does not remove, alter or limit an incumbent transmission provider's use and control of its existing rights-of-way under state law.²²⁰

²¹⁶ *Id.* P 314 n.294.

²¹⁷ *Id.* PP 226, 258, 318.

²¹⁸ *Id.* P 63. The Commission clarified in Order No. 1000-A that a local transmission facility is one that is located within the geographical boundaries of a public utility transmission provider's retail distribution service territory, if it has one; otherwise the area is defined by the public utility transmission provider's footprint. In the case of an RTO or ISO whose footprint covers the entire region, local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owning members. Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

²¹⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

²²⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

131. The Commission clarified in Order No. 1000-A that Order No. 1000 does not require elimination of a federal right of first refusal for a new transmission facility if the regional cost allocation method results in an allocation of 100 percent of the facility's costs to the public utility transmission provider in whose retail distribution service territory or footprint the facility is to be located.²²¹ The Commission also clarified in Order No. 1000-A that the term "selected in a regional transmission plan for purposes of cost allocation" excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located.²²² However, the Commission acknowledged in Order No. 1000-A that there may be a range of examples of multi-transmission provider zones, and it would address whether a cost allocation to a multi-transmission provider zone is regional on a case-by-case basis based on the facts presented on compliance.²²³

i. Filing Parties' Compliance Filings

132. Filing Parties indicate that their respective OATTs do not contain provisions granting a federal right of first refusal to construct transmission facilities selected in the SERTP regional transmission plan for purposes of cost allocation.²²⁴ Filing Parties' proposal does, however, state that to be considered for evaluation and potential selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be an upgrade to an existing facility or be located on the property and/or right-of-way of anyone other than the transmission developer absent the consent of the owner of the existing facility or right-of-way.²²⁵ Filing Parties state that these provisions are in place to prevent unnecessary disputes that would inevitably ensue should a developer attempt to use the rights-of-way belonging to another without first obtaining that party's consent.²²⁶

²²¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 423.

²²² *Id.*

²²³ Order No. 1000-A, 139 FERC ¶ 61,132 at P 424, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 at P 40.

²²⁴ E.g., Southern Companies Transmittal Letter at 15.

²²⁵ E.g., Southern Companies OATT, Attachment K § 14.

²²⁶ E.g., Southern Companies Transmittal Letter at 17.

ii. Protests/Comments

133. LS Power requests clarification of Filing Parties' proposal that a proposed transmission project is not eligible for evaluation and potential selection in the regional transmission plan for purposes of cost allocation if it is an upgrade to an existing facility.²²⁷ LS Power asserts that this proposal is unreasonable and is inconsistent with Order No. 1000. In particular, LS Power is concerned that Filing Parties' proposal lacks specificity regarding what constitutes an upgrade, which LS Power argues could lead to disputes. In that regard, LS Power requests clarification of the proposed language to be consistent with Order No. 1000-A.²²⁸

134. LS Power states that Filing Parties' proposed right-of-way requirement is improper and has nothing to do with the definition of a regional transmission project.²²⁹ LS Power objects to this requirement for selection in the regional transmission plan because, according to LS Power, Order No. 1000 made clear that the use and control of incumbent-owned rights-of-way is a matter of state law.²³⁰ LS Power asserts that it is not appropriate for Filing Parties, in the guise of compliance filings, to attempt to write or interpret state law regarding the use of rights-of-way or to restrict the terms of use of real estate or eminent domain authority. LS Power states that through Filing Parties' restrictions on the use of existing rights-of-way, Filing Parties seek to create a right of first refusal for projects utilizing utility rights-of-way where the Commission specifically refused to do so and left the issue to state law. LS Power requests the right-of-way requirement be struck in its entirety.²³¹

iii. Answer

135. SERTP Sponsors state that their criterion that a proposal not be an upgrade to an existing facility is consistent with Order No. 1000. Additionally, SERTP Sponsors argue that requiring a project proposal to be a viable project, which is not located on the rights-of-way of the owner absent consent, is a legitimate criterion. SERTP Sponsors recognize that the Commission has said that this is an issue of state law, but SERTP Sponsors state

²²⁷ LS Power Protest at 13.

²²⁸ *Id.* at 13-14.

²²⁹ *Id.* at 14-15.

²³⁰ *Id.* at 14 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 427).

²³¹ *Id.* at 15.

that the specified criteria are in fact what is provided under state law. SERTP Sponsors state that “without authorization, a nonincumbent developer would be setting its proposal for a suit alleging private nuisance for interference with, for example, rights of easement – which almost certainly would result in an injunction preventing the siting decision the developer assumed.”²³² SERTP Sponsors further state that rejecting the criterion would be inconsistent with the Commission’s obligation to facilitate the planning and expansion of the transmission system to meet load service needs as required by FPA Section 217(b)(4) and would subject the planning process to pointless litigation every time a transmission developer tried to force itself on someone else’s rights-of-way. SERTP Sponsors emphasize that this prerequisite is not intended as a right of first refusal for projects that are proposed for regional cost allocation purposes. SERTP Sponsors argue that this criterion aims to ensure that viable projects are submitted for purposes of regional cost allocation (as opposed to projects having little chance of fruition due to attempting to infringe upon someone else’s rights-of-way).²³³

iv. Commission Determination

136. We find that the provisions concerning federal rights of first refusal in Filing Parties’ filings partially comply with the requirements of Order No. 1000. Specifically, we find that Filing Parties’ OATTs do not have an existing federal right of first refusal provision that Filing Parties would be required to remove. However, Filing Parties’ proposal to consider for selection in the regional transmission plan for purposes of cost allocation only those proposed transmission projects that are not located on the property and/or right-of-way belonging to anyone other than the transmission developer absent consent of the owner of the property or right-of-way is not permitted by Order No. 1000, and, as such, we direct Filing Parties to remove the proposed language in the compliance filings we require here. The Commission acknowledged in Order No. 1000 that its reforms “are not intended to alter an incumbent transmission provider’s use and control of its existing rights-of-way,” that Order No. 1000 does not “grant or deny transmission developers the ability to use rights-of-way held by other entities, even if transmission facilities associated with such upgrades or uses of existing rights-of-way are selected in the regional transmission plan for purposes of cost allocation,” and that the “retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way.”²³⁴ However, the Commission did not find that as part of its compliance filing, a public utility transmission provider may add a federal right of first

²³² SERTP Sponsors Answer at 25-26.

²³³ *Id.*

²³⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

refusal for a new transmission facility based on an existing right-of-way or the ownership of the property on which the proposed facility would be located. Therefore, we direct Filing Parties to file, within 120 days of the date of issuance of this order, a further compliance filing revising the proposed OATTs' language to remove the proposed provision that to be considered for evaluation and potential selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the owner.

137. However, we note that while rights-of-way may not be used to automatically exclude proposals to develop more efficient or cost-effective transmission solutions to regional transmission needs, it is not necessarily impermissible to consider rights-of-way at appropriate points in the regional transmission planning process. It would be appropriate for Filing Parties to consider whether an entity has existing rights-of-way as well as whether the entity has experience or ability to acquire rights-of-way as part of the process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.

138. Regarding Filing Parties' proposal that to be considered for evaluation and potential selection in the regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be an upgrade to an existing facility, we note that Order No. 1000 does not remove or limit any right an incumbent transmission owner may have to build, own, and recover costs for upgrades to the transmission facilities owned by an incumbent.²³⁵ We therefore find that Filing Parties' proposal partially complies with Order No. 1000. However, as noted by LS Power, Filing Parties do not define the term "upgrade." Thus, we direct Filing Parties, in the further compliance filings discussed below, to define the term "upgrade" in their OATTs, consistent with the definition of upgrade in Order No. 1000-A, so that it is clear which transmission facilities may fall within the definition of upgrade.²³⁶ We find that this directive addresses LS Power's concern that Filing Parties' proposal is vague as to what constitutes an upgrade.

139. Accordingly, we direct Filing Parties to file within 120 days of the date of issuance of this order further compliance filings to: (1) remove from their OATTs the proposed provision that to be considered for evaluation and potential selection in the

²³⁵ *Id.*

²³⁶ In Order No. 1000-A, the Commission clarified that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

regional transmission plan for purposes of cost allocation, a proposed transmission project cannot be located on the property and/or right-of-way belonging to anyone other than the transmission developer absent the consent of the owner; and (2) revise their OATTs to define the term “upgrade” consistent with Order No. 1000.

b. Qualification Criteria

140. Order No. 1000 requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity’s eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer.²³⁷ Appropriate qualification criteria must be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developer.²³⁸ These criteria must not be unduly discriminatory or preferential and must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.²³⁹

141. The qualification criteria should also allow for the possibility that an existing public utility transmission provider already satisfies the criteria.²⁴⁰ There must be procedures in place for timely notifying transmission developers of whether they satisfy the region’s qualification criteria and opportunities to remedy any deficiencies.²⁴¹ In addition, the qualification criteria should not be applied to an entity proposing a transmission project for consideration in the regional transmission planning process if that entity does not intend to develop the proposed transmission project.²⁴²

142. The Commission clarified in Order No. 1000-A that it would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it has, or can obtain, state approvals necessary to operate in a

²³⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

²³⁸ *Id.* P 324.

²³⁹ *Id.* P 323.

²⁴⁰ *Id.* P 324.

²⁴¹ *Id.*

²⁴² *Id.* n.304; Order No. 1000-A, 139 FERC ¶ 61,132 at n.520.

state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.²⁴³

i. Filing Parties' Compliance Filings

143. Filing Parties propose that a transmission developer must satisfy several initial qualification criteria to be eligible to propose a transmission project for potential selection in the regional transmission plan for purposes of cost allocation.²⁴⁴ First, Filing Parties require that if the transmission developer or its parent or owner or any affiliate, member, or subsidiary has load in the SERTP region, the transmission developer must have enrolled in the SERTP region.²⁴⁵ Second, Filing Parties state that the transmission developer must demonstrate that it satisfies the following requirements: (1) the transmission developer has and maintains a credit rating of BBB- or higher from Standard & Poor's (S&P) or a credit rating of Baa3 or higher from Moody's Investors Service, Inc.; and (2) the transmission developer must provide "documentation of its capability to finance U.S. energy projects equal to or greater than the cost of the proposed transmission project."²⁴⁶ With respect to the requirement to have and maintain a certain credit rating, Filing Parties state that the credit rating of the transmission developer's parent company may be used to satisfy this requirement, but only if the parent company commits in writing to provide a guaranty for the transmission developer if the proposed transmission project is selected in the regional transmission plan for purposes of cost allocation. Filing Parties further state that if a project is selected in the regional transmission plan for purposes of cost allocation, having a BBB- and/or a Baa3 rating alone will not be sufficient to satisfy the requisite project security/collateral requirements.²⁴⁷ Filing Parties assert that the credit rating requirement is a prudent measure to protect customers and will be applied in a nondiscriminatory and non-preferential manner to all entities.²⁴⁸

144. Regarding technical qualifications, Filing Parties require that a prospective transmission developer must have the capability to develop, construct, operate, and

²⁴³ Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

²⁴⁴ E.g., Southern Companies OATT, Attachment K § 13.1.

²⁴⁵ E.g., *id.* § 13.1.1.

²⁴⁶ E.g., *id.* § 13.1.2.

²⁴⁷ E.g., *id.* n.11.

²⁴⁸ E.g., Southern Companies Transmittal Letter at 15.

maintain U.S. electric transmission projects of similar or larger complexity, size, and scope as the proposed transmission project, which the developer may demonstrate by providing, at a minimum, the following information: (1) a summary of the transmission developer's transmission projects that are in-service, under construction, and/or abandoned or otherwise not completed (including locations, operating voltages, mileages, development schedules, and approximate installed costs), (2) whether delays in project completion were encountered, and (3) how these facilities are owned, operated and maintained. Filing Parties propose that this showing may include projects and experience provided by a parent company or affiliate or other experience relevant to the development of the proposed transmission project. In addition, a transmission developer must, if it or a parent, owner, affiliate, or member has been found in violation of any NERC and/or Regional Entity reliability standard and/or the violation of regulatory requirement(s) pertaining to the development, construction, ownership, operation, and/or maintenance of electric infrastructure facilities, provide an explanation of such violations.²⁴⁹ Filing Parties state that these informational requirements do not require the transmission developer to register with NERC, but rather only to inform the Filing Parties if they have already done so.²⁵⁰

145. Finally, Filing Parties' OATTs state that "additional financial and technical criteria may be required to be satisfied in order for a proposed transmission project to be selected and/or included in a regional plan for [purposes of cost allocation]."²⁵¹

146. Filing Parties' OATTs provide that a prospective transmission developer must submit the information required pursuant to the qualification criteria at the same time as it must submit its proposed transmission project for consideration for selection in the regional transmission plan for purposes of cost allocation (i.e., no later than 60 calendar days after the SERTP Annual Transmission Planning Summit and Input Assumptions Meeting). This information must be submitted to the transmission provider in accordance with the contact information provided on the Regional Planning Website.²⁵² Filing Parties state that the transmission provider will notify transmission developers who do not meet the qualification criteria, or who provide an incomplete submittal, within 30 calendar days of the submittal deadline to allow the transmission developers an

²⁴⁹ E.g., Southern Companies OATT, Attachment K § 13.1.2.

²⁵⁰ E.g., Southern Companies Transmittal Letter at 16 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 444).

²⁵¹ E.g., Southern Companies OATT, Attachment K § 13.1.

²⁵² E.g., *id.* § 15.2.

opportunity to remedy any identified deficiencies. Filing Parties further state that any transmission developers who are so notified will have 15 calendar days to resubmit the necessary supporting documentation to remedy the identified deficiency.²⁵³ Additionally, the transmission developer has an obligation to update and report in writing to the transmission provider any change to its information that was provided as the basis for its satisfying the qualification criteria. If at any time the transmission provider determines that a transmission developer no longer satisfies the qualification criteria, then the transmission provider may remove the transmission developer's potential transmission project from consideration for potential selection in the regional transmission plan for purposes of cost allocation or from the selected category, as applicable.²⁵⁴

ii. Protests/Comments

147. LS Power asserts that the proposed financial criteria for transmission developer qualification are discriminatory and establish a barrier to new entrants. In general, LS Power believes that all proposed financial criteria should equally apply to both incumbent and nonincumbent transmission owners. However, LS Power asserts that Filing Parties' credit rating proposal is very onerous in comparison to other Order No. 1000 compliance filing proposals and unnecessarily focuses on credit ratings. LS Power explains that a transmission developer using a special purpose entity to develop, construct, and maintain a proposed transmission project will not have an investment grade credit rating at the proposal stage, and that obtaining two credit ratings at the proposal and selection stage will cost hundreds of thousands of dollars with little benefit in demonstrating the ability to financially execute a transmission project. LS Power requests that this requirement be removed in its entirety. In addition, LS Power states that it would be more constructive to require financial qualification criteria focused on the capabilities to finance a transmission project, and to later require milestones on a rate case being filed associated with the project. LS Power asserts that a more rigorous focus on rate case execution, rather than a credit rating, would be a better way to approach the financial capability assessment.²⁵⁵

iii. Answer

148. SERTP Sponsors state that their proposed financial criteria requirements are just and reasonable and not discriminatory. SERTP Sponsors argue that as a minimum

²⁵³ E.g., *id.* § 15.3.

²⁵⁴ E.g., *id.* § 15.4.

²⁵⁵ LS Power Protest at 17-18.

financial rating, they have adopted the lowest investment grade and, thus, their proposal cannot be characterized as inappropriate considering that Order No. 1000 is concerned with the development of “long distance transmission lines”²⁵⁶ that the Commission has concluded provide significant regional benefits. SERTP Sponsors emphasize that qualification criteria that are merely sufficient to prove a transmission developer’s ability to obtain financing are inadequate; instead, the developer must be able to demonstrate that it has sufficient staying power to construct, operate, own, and (if necessary) restore those facilities on a long-term basis. SERTP Sponsors maintain that financial integrity is critical to ensure a transmission developer's ability to maintain the reliability of the grid.²⁵⁷

149. Additionally, SERTP Sponsors state that the proposed financial criteria are comparable between incumbents and nonincumbents because all SERTP Sponsors meet the criteria and will be required to demonstrate compliance upon proposing a transmission project for selection in the regional transmission plan for purposes of cost allocation. SERTP Sponsors also challenge LS Power’s assertion that the proposed financial criteria are among “the most onerous proposed out of any of the compliance filings.”²⁵⁸ SERTP Sponsors state that most other compliance proposals do not articulate *ex ante* what credit rating they would actually require, instead deferring such assessment until a transmission developer submits an application, which could mean potentially more stringent financial criteria.

150. SERTP Sponsors, in response to LS Power’s complaint that a transmission developer using special entity status would not be able to satisfy the SERTP process’ criteria, explain that they adopted a provision that would allow such entities to be able to meet these financial criteria up-front. SERTP Sponsors explain that the SERTP process provides that an applicant may satisfy the financial criteria by having its parent company commit in writing to provide a guaranty for the transmission developer should its project be selected in the regional transmission plan for purposes of cost allocation.²⁵⁹

²⁵⁶ SERTP Sponsors Answer at 27 (citing Order No. 1000, Commissioner Moeller, dissenting at p. 1).

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 29 (citing Southern Companies OATT, Attachment K § 13.1.2.1).

iv. **Commission Determination**

151. We find that the provisions concerning financial and technical qualification criteria in Filing Parties' proposal partially comply with the requirements of Order No. 1000. As required by Order No. 1000, Filing Parties have established procedures for timely notifying transmission developers of whether they satisfy the region's qualification criteria and providing opportunities to remedy any deficiencies. Specifically, Filing Parties propose that within 30 days of receiving the information that a prospective transmission developer is required to submit pursuant to the qualification criteria, the transmission provider will notify the prospective transmission developer of any deficiencies in its application and allow 15 days for the developer to resubmit the necessary supporting documentation for the identified deficiency. However, several other aspects of Filing Parties' proposal relating to the qualification criteria do not comply with the requirements of Order No. 1000, and we thus require Filing Parties to make further compliance filings, as described below.

152. First, Order No. 1000 specifically stated that the transmission developer "qualification criteria . . . should not be applied to an entity proposing a transmission project for consideration in the regional transmission planning process if that entity does not intend to develop the proposed transmission project."²⁶⁰ Accordingly, Filing Parties' proposal that only transmission developers that satisfy initial qualification criteria are eligible to *propose* a regional transmission project for potential selection in a regional transmission plan for purposes of cost allocation is inconsistent with Order No. 1000.²⁶¹ Whether a transmission project is *proposed* during the regional transmission planning process is different than whether there is an entity qualified to *develop* such a project. Therefore, we direct Filing Parties to clarify in their OATTs that: (1) any entity may submit a transmission project into the regional transmission planning process for consideration for purposes of cost allocation; and (2) their proposed qualification criteria will only apply to a transmission developer that intends to develop a transmission project that it submits into the regional transmission planning process for purposes of cost allocation.

153. We also note that Filing Parties' proposed qualification criteria, which refer to a general "transmission developer," appear to apply to both incumbent and nonincumbent

²⁶⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324 n.304, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 439 n.519.

²⁶¹ E.g., Southern Companies OATT, Attachment K § 13.1.

transmission developers.²⁶² While Filing Parties assert that incumbent transmission developers and nonincumbent transmission developers will be treated comparably in the SERTP transmission planning process, Filing Parties' OATTs do not clearly state that the qualification criteria provisions apply to both incumbent and nonincumbent transmission developers. Order No. 1000 requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer.²⁶³ Appropriate qualification criteria must be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developer.²⁶⁴ These criteria must not be unduly discriminatory or preferential and must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.²⁶⁵ Therefore, as directed and discussed below in section IV.B.2.d, Filing Parties, in the further compliance filings described below, must revise their OATTs to clarify that the qualification criteria apply to both incumbent transmission providers and nonincumbent transmission developers.

154. We find that Filing Parties' proposed technical qualification criteria are fair and not unreasonably stringent, are not unduly discriminatory or preferential, and provide each potential transmission developer the opportunity to demonstrate that it has the necessary technical expertise to develop, construct, own, operate, and maintain transmission facilities.²⁶⁶ However, Filing Parties' proposed financial qualification criteria are unfair and unreasonably stringent.²⁶⁷ Specifically, Filing Parties' proposal

²⁶² E.g., Southern Companies Transmittal Letter at 15 ("This credit rating or equivalent surety of financial stability would be applied in a nondiscriminatory and nonpreferential manner to all entities, including any SERTP Sponsor, that propose projects for selection in a regional transmission plan for [regional cost allocation].").

²⁶³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

²⁶⁴ *Id.* P 324.

²⁶⁵ *Id.* P 323.

²⁶⁶ *Id.* P 324.

²⁶⁷ *Id.*

lacks appropriate flexibility because it fails to provide an alternative, such as allowing financial statements in lieu of a credit rating.²⁶⁸ For example, the initial credit evaluation provisions in Attachment Q of Southern Companies' OATT, which governs Southern Companies' creditworthiness procedures for entities that apply for or customers who take, or desire to remain eligible to take, service under the OATT or any related agreements, provide that if a senior unsecured debt (or similar) rating or issuer (or similar) rating from any of the rating agencies is not available, the transmission provider will evaluate creditworthiness based on financial statements and other information.²⁶⁹ Filing Parties' proposed financial qualification criteria do not provide for such an alternative showing. While we note Filing Parties' proposal provides some flexibility through their credit ratings requirement by allowing a written guaranty from a parent company or affiliate to be responsible for all financial obligations if the proposed transmission project is selected in a regional transmission plan for purposes of cost allocation, it does not provide appropriate flexibility, as there might be situations in which it is not feasible for a transmission developer to use the credit rating of its parent company (e.g., as LS Power suggests, when a transmission developer uses a special purpose entity). Thus, we direct Filing Parties to file, within 120 days of the date of issuance of this order, a further compliance filing to revise their OATTs to provide an appropriate alternative to investment crediting ratings, such as financial statements.

155. With regard to Filing Parties' proposal to require that a transmission developer provide documentation of its capability to finance U.S. energy projects equal to or greater than the cost of the proposed transmission project to be eligible to propose a transmission project for consideration for selection in a regional transmission plan for purposes of cost allocation, we find that the proposed requirement does not provide sufficient detail about the type of information that must be provided for Filing Parties to determine whether a transmission developer is qualified.²⁷⁰ Without a more detailed qualification criterion in

²⁶⁸ See, e.g., *South Carolina Elec. & Gas Co.*, 143 FERC ¶ 61,058, at P 145 (2013); *Black Hills Power, Inc.*, 123 FERC ¶ 61,020, at P 20 (2008) (affirming that "transmission providers should not automatically determine that an applicant is not creditworthy if it does not have a credit rating or that credit rating is below investment grade"); see also *Policy Statement on Credit-Related Issues for Electric OATT Transmission Providers, Independent System Operators and Regional Transmission Organizations*, 109 FERC ¶ 61,186, at PP 13-14 (2004).

²⁶⁹ *Southern Co. Services, Inc.*, 123 FERC ¶ 61,030, at PP 48-50 (2008); *Southern Co. Services, Inc.*, Docket No. OA07-38-001 (Nov. 26, 2008) (delegated letter order).

²⁷⁰ By comparison, with respect to Filing Parties' proposed requirement that a transmission developer demonstrate that it has the capability to develop, construct,

(continued . . .)

Filing Parties' OATTs, Filing Parties cannot meet Order No. 1000's requirement that they establish not unduly discriminatory qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation.²⁷¹ Therefore, we direct Filing Parties to revise their OATTs to include detailed provisions regarding the financial information that prospective transmission developers must provide.

156. With respect to Filing Parties' proposal that additional financial and technical criteria may be required for a proposed transmission project to be selected in a regional transmission plan for purposes of cost allocation, it is unclear whether the additional financial and technical criteria are part of the evaluation process for selection in a regional transmission plan for purposes of cost allocation or milestones of required steps necessary to maintain status as a regional project. For example, Filing Parties note that satisfying the minimum financial criteria specified in section 13.1.2 alone will not satisfy the security/collateral requirement after a transmission project is selected in a regional transmission plan for purposes of cost allocation.²⁷² Therefore, we direct Filing Parties to explain in detail the additional financial and technical criteria that apply to a transmission project selected in a regional transmission plan for purposes of cost allocation.

157. Finally, Filing Parties propose that a transmission developer has an obligation to update and report in writing any changes in information that was provided as the basis for the developer satisfying Filing Parties' proposed qualification criteria or information requirements, and that

if at any time the [t]ransmission [p]rovider concludes that a transmission developer or a potential transmission project proposed for possible selection in a region [transmission] plan for [purposes of cost allocation] no longer satisfies such requirements . . . , then the [t]ransmission [p]rovider may

operate, and maintain U.S. electric transmission projects of similar or larger complexity, size, and scope of the proposed transmission project, Filing Parties provide specific representative information that a transmission developer can provide to satisfy the requirement. E.g., Southern Companies OATT, Attachment K § 13.1.2.3.

²⁷¹ See *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059, at P 194 (2013) (finding deficient the proposed qualification criterion to “consider the financial resources of the entity”).

²⁷² E.g., Southern Companies OATT, Attachment K § 20.

remove the transmission developer's potential transmission project(s) from consideration for possible selection in a regional [transmission] plan for [purposes of cost allocation] and/or remove any and all such transmission project(s) from the selected category in a regional [transmission] plan for [purposes of cost allocation], as applicable.²⁷³

Although Filing Parties propose this ongoing compliance obligation upon transmission developers and their proposed transmission facilities to continue to satisfy the region's qualification criteria and information requirements, Filing Parties do not propose (1) procedures for timely notifying a transmission developer of whether it continues to satisfy the region's requirements, or (2) to grant to transmission developers the opportunity to remedy any deficiency identified by the transmission provider.²⁷⁴ Consistent with the requirements of Order No. 1000,²⁷⁵ we direct Filing Parties to revise their OATTs to remedy these deficiencies.

158. In sum, we direct Filing Parties to file, within 120 days of the date of issuance of this order, further compliance filings to revise their respective OATTs to: (1) state that any entity may submit a transmission project into the regional transmission planning process for potential selection in the regional transmission plan for purposes of cost allocation; (2) clarify that the proposed qualification criteria apply only to a transmission developer that intends to develop a transmission project that it submits into the regional transmission planning process for purposes of cost allocation; (3) revise the financial qualification criteria to provide an appropriate alternative to investment credit ratings, such as financial statements; (4) provide sufficient detail about what financial information a proposed transmission developer must provide to demonstrate that it has

²⁷³ *E.g., id.* § 15.4

²⁷⁴ *Compare, e.g., id.* § 15.3 (stating that the transmission provider will notify a transmission developer, within 30 calendar days of receiving the developer's initial qualification criteria and information requirements data, if the developer does not meet the requirements or provided an incomplete submittal, and providing a period of 15 calendar days for a transmission developer to remedy any identified deficiencies with respect to the transmission provider's initial review of the transmission developer's information) *with e.g., id.* § 15.4 (providing no similar opportunity for a transmission developer to remedy identified deficiencies under the ongoing compliance obligation or procedures for the transmission provider to inform the transmission developer of whether any deficiencies have been identified).

²⁷⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324.

the capability to finance U.S. energy projects equal to or greater than the cost of the proposed transmission project; (5) explain in detail the additional financial and technical criteria that may be required for a regional transmission project; (6) adopt procedures for timely notifying a transmission developer of whether it and its proposed transmission facility continue to satisfy the region's qualification criteria and information requirements; and (7) grant to transmission developers the opportunity to remedy any deficiency identified by the transmission provider in conjunction with a transmission developer's obligation to update any changes in information that it provided to satisfy the region's qualification criteria and information requirements.

c. Information Requirements

159. Order No. 1000 requires that each public utility transmission provider revise its OATT to identify the information that a prospective transmission developer must submit in support of a transmission project the developer proposes in the regional transmission planning process.²⁷⁶ The public utility transmission provider must identify this information in sufficient detail to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects that are proposed in this process.²⁷⁷ The information requirements must not be so cumbersome that they effectively prohibit transmission developers from proposing transmission projects, yet not be so relaxed that they allow for relatively unsupported proposals.²⁷⁸ They may require, for example, relevant engineering studies and cost analyses and may request other reports or information from the transmission developer that are needed to facilitate evaluation of the transmission project in the regional transmission planning process.²⁷⁹

160. Each public utility transmission provider must also revise its OATT to identify the date by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle.²⁸⁰ Each transmission planning region

²⁷⁶ *Id.* P 325.

²⁷⁷ *Id.* P 326.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.* P 325.

may determine for itself what deadline is appropriate and may use rolling or flexible dates to reflect the iterative nature of their regional transmission planning process.²⁸¹

i. Filing Parties' Compliance Filings

161. Filing Parties state that a transmission developer must submit the following information in support of a transmission project that it proposes for potential selection in the regional transmission plan for purposes of cost allocation: (1) documentation that the transmission developer satisfies the qualification criteria; (2) documentation that the proposed transmission project is eligible to be considered for potential selection in the regional transmission plan for purposes of cost allocation; (3) if the transmission developer or a parent, owner, affiliate or member who will be performing work in connection with the proposed transmission project is registered with NERC or other industry organizations related to electric reliability and/or the development, construction, ownership, operation, or maintenance of electric facilities, a list of relevant registrations; (4) a description of the proposed transmission project that details the intended scope (including stages of development such as engineering, right-of-way acquisition, construction, and recommended in-service date); (5) cost estimate data; (6) documentation that the proposed transmission project addresses the transmission needs more efficiently and cost-effectively than specific projects included in the latest transmission expansion plan (including the identification of the transmission projects that would be displaced by the proposed transmission project and additional projects that may be required to implement the proposed transmission project, as well as the data necessary to evaluate the transmission developer's analysis of the proposed transmission project); and (7) an explanation of the planned approach to satisfy regulatory requirements and to obtain requisite authorizations necessary to acquire rights-of-way and to construct, operate, and maintain the proposed transmission facility in the relevant jurisdictions.²⁸²

162. Filing Parties also propose to require a transmission developer to submit with each bid an administrative fee of \$25,000 to offset the costs necessary to review, process, and evaluate each proposal. Filing Parties propose, however, that if (1) the developer elects to withdraw the project by providing written notification of its intention to do so prior to the first Regional Planning Stakeholders' Group Meeting and Interactive Training Session for that planning cycle or (2) it or its proposal is found not to satisfy the

²⁸¹ *Id.* P 327.

²⁸² E.g., Southern Companies OATT, Attachment K § 15.

qualification criteria or the information requirements, \$15,000 of that fee will be refunded.²⁸³

163. Filing Parties state that a transmission developer must submit a proposal no later than 60 calendar days after the previous transmission planning cycle's SERTP Annual Transmission Planning Summit and Input Assumptions Meeting. According to Filing Parties, this requirement enables transmission projects to be evaluated comparably and efficiently under the same planning process that assesses the other transmission projects under consideration. Filing Parties state that proposals submitted after that date may be considered in subsequent transmission planning cycles.²⁸⁴ Filing Parties state that the transmission provider will notify transmission developers who provide an incomplete submittal within 30 calendar days of the submittal deadline to allow the transmission developers an opportunity to remedy any identified deficiencies. Filing Parties further state that any transmission developers who are so notified will have 15 calendar days to resubmit the necessary supporting documentation to remedy the identified deficiency.²⁸⁵

164. As with the qualification criteria, Filing Parties state that a transmission developer has an obligation to update and report in writing to the transmission provider any change to the information that it submitted to satisfy the information requirements. If at any time the transmission provider determines that a proposed transmission project no longer satisfies the information requirements, then the transmission provider may remove the project from consideration for potential selection in the regional transmission plan for purposes of cost allocation or from the selected category, as applicable.²⁸⁶

ii. Protests/Comments

165. LS Power argues that the SERTP regional transmission planning process should use a single window for submission of both incumbent and nonincumbent transmission projects. LS Power therefore requests that the Commission order Filing Parties to develop OATT language guaranteeing that incumbent and nonincumbent proposals will be submitted at the same time.

²⁸³ E.g., *id.* §15.1.8.

²⁸⁴ E.g., Southern Companies Transmittal Letter at 18-19.

²⁸⁵ E.g., Southern Companies OATT, Attachment K § 15.3.

²⁸⁶ E.g., *id.* § 15.4.

iii. Answer

166. SERTP Sponsors argue that they have appropriately specified that all proposals for transmission projects submitted for consideration for regional cost allocation must be submitted within 60 days following the SERTP Annual Transmission Planning Summit and Input Assumptions Meeting. Because the submission window is at the beginning of the transmission planning cycle for a given year, the SERTP Sponsors state that they can contemporaneously evaluate projects submitted for regional cost allocation with other project alternatives during the transmission planning cycle.²⁸⁷

iv. Commission Determination

167. We find that the provisions in Filing Parties' proposal dealing with information requirements for submitting proposals partially comply with the requirements of Order No. 1000. We find that certain of Filing Parties' proposed information requirements are reasonable and sufficiently detailed to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects that are proposed in this process, as required by Order No. 1000.²⁸⁸ Moreover, Filing Parties have specified that all proposals for transmission projects submitted for consideration for selection in the regional transmission plan for purposes of cost allocation must be submitted within 60 days following the SERTP Annual Transmission Planning Summit and Input Assumptions Meeting,²⁸⁹ satisfying Order No. 1000's requirement that each public utility transmission provider revise its OATT to identify the date by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle.²⁹⁰

168. However, we find that Filing Parties' proposal to require a prospective transmission developer to provide documentation supporting the position that the proposed transmission project addresses the transmission needs more efficiently and cost-

²⁸⁷ SERTP Sponsors Answer at 30-31 (referencing Southern Companies OATT, Attachment K §§ 15.2, 16.1).

²⁸⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 326.

²⁸⁹ E.g., Southern Companies OATT, Attachment K § 15.2.

²⁹⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

effectively²⁹¹ than specific projects included in the latest transmission expansion plan (including the identification of transmission projects in the latest expansion plan that would be displaced by the proposed transmission project and any additional projects that may be required to implement the proposed transmission project, as well as the data and/or files necessary to evaluate the transmission developer's analysis of the proposed transmission project)²⁹² does not comply with Order No. 1000. We find that requiring the prospective transmission developer to perform the studies necessary to provide such documentation to propose a transmission project for consideration for selection in the regional transmission plan for purposes of cost allocation is unreasonable and could be so cumbersome as to effectively prohibit transmission developers from proposing transmission projects.²⁹³

169. We conclude that such detailed studies are more appropriately performed by the public utility transmission providers in the regional transmission planning process to determine whether or not to select a proposed transmission project in the regional transmission plan for purposes of cost allocation. The information requirements should permit a transmission developer to submit any studies and analysis it performed to support its proposed transmission project. However, the public utility transmission providers in the SERTP region must conduct the studies and analysis that they will use to evaluate proposed transmission projects as part of the regional transmission planning process, as discussed in section IV.B.1.c.i above.

170. Consequently, we direct Filing Parties to submit, within 120 days of the date of issuance of this order, further compliance filings to remove from their OATTs the proposed information requirement that a prospective transmission developer provide documentation supporting the position that the proposed transmission project addresses the transmission needs more efficiently and cost-effectively than specific projects included in the latest transmission expansion plan (including the identification of transmission projects in the latest expansion plan that would be displaced by the proposed transmission project and any additional projects that may be required to implement the proposed transmission project, as well as the data and/or files necessary to evaluate the transmission developer's analysis of the proposed transmission project). In the alternative, Filing Parties may submit, within 120 days of the date of issuance of this

²⁹¹ We address Filing Parties' proposal to require that transmission facilities be more efficient *and* cost-effective to be selected in the regional transmission plan for purposes of cost allocation below in section IV.B.2.d.

²⁹² E.g., Southern Companies OATT, Attachment K § 15.1.

²⁹³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 326.

order, OATT revisions stating that such documentation is not required, but is permitted to the extent the transmission developer voluntarily performed studies supporting the position that its proposed transmission project addresses transmission needs more efficiently or cost-effectively than specific transmission projects included in the latest transmission expansion plan.

171. Finally, as directed and discussed further below in section IV.B.2.d, Filing Parties must revise their OATTs to ensure that all OATT provisions applicable to transmission developers, including the information requirements addressed in this section, uniformly apply to transmission projects proposed by incumbent and nonincumbent transmission developers. Furthermore, as directed and discussed above in section IV.B.2.b, Filing Parties must revise their OATTs to (1) adopt procedures for timely notifying a transmission developer of whether it and its proposed transmission facility continue to satisfy the region's information requirements; and (2) grant to transmission developers the opportunity to remedy any deficiency identified by the transmission provider in conjunction with a transmission developer's obligation to update any changes in information that it provided to satisfy the region's information requirements.²⁹⁴

d. Evaluation Process for Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

172. Order No. 1000 requires each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.²⁹⁵ Public utility transmission providers should both explain and justify the nondiscriminatory evaluation process proposed in their compliance filings.²⁹⁶

173. The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.²⁹⁷ The public utility transmission providers in a transmission

²⁹⁴ E.g., Southern Companies OATT, Attachment K § 15.4.

²⁹⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

²⁹⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at P 268.

²⁹⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

planning region must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer.²⁹⁸ When cost estimates are part of the selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or nonincumbent transmission developer.²⁹⁹ The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.³⁰⁰

i. Filing Parties' Compliance Filings

174. Filing Parties explain that their proposed evaluation and cost allocation method is based upon the benefits received from the quantifiable “avoided transmission” costs of a proposed transmission project that is determined to be a more efficient and cost-effective regional alternative than other projects under consideration. Filing Parties state that the benefits used to evaluate and select among competing transmission projects would be the displacement cost savings received by replacing the higher cost planned transmission project(s) with the more efficient and cost-effective proposed transmission project(s) that address long-term needs previously being addressed by the displaced projects. Filing Parties state that to determine whether the proposed transmission project would be a more efficient and cost-effective alternative, the OATT provides for the performance of two benefit-to-cost analyses. Filing Parties explain that these benefit-to-cost evaluations will be performed through the SERTP’s existing, coordinated, open, and transparent transmission planning processes. Furthermore, Filing Parties state “as both incumbent and nonincumbent transmission developers are free to use these same processes for the submission and evaluation of proposals for potential selection in the regional plan for [purposes of cost allocation], these processes are comparable and nondiscriminatory.”³⁰¹

175. Filing Parties propose that during the course of the then-current transmission expansion planning cycle (and thereby in conjunction with other system enhancements

²⁹⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

²⁹⁹ *Id.* P 455.

³⁰⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

³⁰¹ E.g., Southern Companies Transmittal Letter at 20-21; Southern Companies OATT, Attachment K § 16.

under consideration in the transmission planning process), the transmission provider will evaluate current transmission needs and assess alternatives to address current needs including the potential transmission projects proposed by transmission developers for possible selection in a regional transmission plan for purposes of cost allocation. Filing Parties propose that such evaluation will be in accordance with, and subject to (among other things), state law pertaining to transmission ownership, siting, and construction. Filing Parties' proposed OATTs state that utilizing coordinated models and assumptions, the transmission provider will apply its planning guidelines and criteria to evaluate submittals and determine whether: (1) the proposed transmission project addresses underlying transmission need(s); (2) the proposed transmission project addresses transmission need(s) that are currently being addressed with projects in the transmission planning process and if so, which projects could be displaced by the proposed transmission project;³⁰² and (3) any additional projects that would be required to implement the proposed transmission project.³⁰³

176. Filing Parties explain that, should the transmission project pass an initial 1.25 benefit-to-cost ratio and no individual impacted utility³⁰⁴ incur increased, unmitigated transmission costs then the project would be selected in the regional transmission plan for purposes of cost allocation if the project's detailed financial terms are acceptable to each beneficiary and approval is obtained from the pertinent jurisdictional authorities/governance boards.³⁰⁵

177. Filing Parties' proposal notes that an entity would incur increased, unmitigated transmission costs should it incur more costs than displaced benefits and not be compensated and made whole for those additional costs.³⁰⁶ Filing Parties' proposal

³⁰² Filing Parties' proposal states that entities that are identified to potentially have one or more of their planned transmission projects displaced by the transmission developer's potential transmission project for possible selection in a regional transmission plan for purposes of cost allocation shall be referred to as "Beneficiaries." E.g., Southern Companies OATT, Attachment K n.12.

³⁰³ E.g., *id.* § 16.1.

³⁰⁴ Filing Parties propose to define "Impacted Utilities" as: (i) the beneficiaries identified for the proposed transmission project; and (ii) any entity identified to potentially have increased costs in order to implement the proposal. E.g., *id.* n.13.

³⁰⁵ E.g., Southern Companies Transmittal Letter at 20.

³⁰⁶ E.g., Southern Companies OATT, Attachment K n.13.

explains that the benefit used in the benefit-to-cost calculation will be quantified by the transmission costs that the beneficiaries would avoid due to their transmission projects being displaced by the transmission developer's proposed transmission project. In addition, Filing Parties' proposal provides that the cost used in this calculation will be quantified by the transmission cost of the project proposed for selection in a regional transmission plan for purposes of regional cost allocation plus the transmission costs of any additional projects required to implement the proposal. Filing Parties' proposal further states that the transmission provider will develop planning level cost estimates for use in determining the regional benefit-to-cost ratio and detailed engineering estimates may be used if available.³⁰⁷

178. Filing Parties' proposal explains that for potential projects found to satisfy the foregoing benefit-to-cost analysis, the transmission provider and the impacted utilities will then consult with the transmission developer of that project to establish a schedule reflecting the expected in-service date of the project for: (1) the transmission developer to provide detailed financial terms for its proposed transmission project that are acceptable to each beneficiary; and (2) the proposed transmission project to receive approval for selection in a regional transmission plan for purposes of regional cost allocation from the jurisdictional and/or governance authorities of the impacted utilities.³⁰⁸

179. Filing Parties' proposal states that, by the date specified in the schedule established for transmission facilities that satisfy the benefit-to-cost analysis,³⁰⁹ the transmission developer will identify the detailed financial terms for its proposed transmission project, establishing in detail: (1) the total cost to be allocated to the beneficiaries if the proposal were to be selected in a regional transmission plan for purposes of regional cost allocation, and (2) the components that comprise that cost, such as the costs of: (a) engineering, procurement, and construction consistent with Good Utility Practice and standards and specifications acceptable to the transmission provider;

³⁰⁷ E.g., *id.* § 16.2.1.

³⁰⁸ E.g., *id.* § 16.2.2.

³⁰⁹ Filing Parties propose that this schedule will reflect considerations such as the timing of those transmission needs the regional project may address as well as the lead-times of the regional project, transmission projects that must be implemented in support of the regional project, and projects that may be displaced by the regional project. This schedule may be revised by the transmission provider and the impacted utilities, in consultation with the transmission developer (as appropriate), to address, for example, changes in circumstances and/or underlying assumptions. E.g., *id.* n.14.

(b) financing costs, required rates of return, and any and all incentive-based (including performance based) rate treatments; (c) ongoing operations and maintenance of the proposed transmission project; (d) provisions for restoration, spare equipment and materials, and emergency repairs, and (e) any applicable local, state, or federal taxes.³¹⁰

180. To determine whether the proposed transmission project is considered at that time to remain a more efficient and cost-effective alternative, the transmission provider will then perform a more detailed benefit-to-cost analysis, which must also satisfy the 1.25 threshold. Filing Parties' proposal further states that this analysis will be based upon the detailed financial terms provided by the transmission developer, as may be modified by agreement of the transmission developer and beneficiaries, and any additional updated and/or more detailed transmission planning, cost or benefit information/component(s) that are applicable to or available for the proposed transmission project, the projects that would be displaced, and any additional projects required to implement the proposal.³¹¹

181. Filing Parties propose that a transmission project will be selected in a regional transmission plan for purposes of regional cost allocation if: (1) the detailed financial terms provided, as may be modified by agreement of the transmission developer and beneficiaries, are acceptable to each beneficiary; (2) the proposed transmission project is found to satisfy the benefit-to-cost analysis; and (3) if approval is obtained from all of the jurisdictional and/or governance authorities of the impacted utilities by the date specified in the schedule adopted.³¹² With regard to this requirement to obtain jurisdictional authority/governance approval, Filing Parties state that obtaining such consent is not only critical to the viability of the project to actually get constructed (since, for example, the states retain siting authority), but it is also consistent with the Commission's encouragement for proposals to "establish a formal role for state commissions in the regional transmission planning process" and to facilitate the incumbent transmission provider's ability to continue to comply with its duty to serve requirements. Likewise, Filing Parties state that the Non-Public Utility Sponsors have emphasized the need to obtain their governance approvals so as to facilitate their ability to participate in the SERTP process.³¹³

³¹⁰ E.g., *id.* § 16.3.

³¹¹ E.g., *id.*

³¹² E.g., *id.* § 16.4.

³¹³ E.g., Southern Companies Transmittal Letter at 20-21.

ii. Protests/Comments

182. LS Power and the Public Interest Organizations oppose Filing Parties' proposal to use an avoided cost method to identify reliability, economic, and public policy requirement projects. LS Power and the Public Interest Organizations contend that Filing Parties' use of an avoided cost approach to determine a project's benefit-to-cost ratio fails to identify the benefits of projects proposed.³¹⁴ LS Power contends that the proposed benefit/cost ratio does not measure true "benefits" but simply is an "avoided cost approach," and is therefore inappropriate. LS Power argues although it has concerns regarding the use of avoided costs as a general matter, under a true "avoided cost" framework, the test should be whether a competing regional transmission project is any percentage less expensive than a project(s) in the local or regional transmission plans rather than whether a competing project is 25 percent less expensive than a project(s) in the local or regional transmission plan.³¹⁵

183. Public Interest Organizations argue that the proposal provides that the only benefit to be considered in determining a transmission project's benefit-to-cost ratio will be the avoided costs. Public Interest Organizations also argue that limiting the benefits of an alternative solution to the avoided transmission costs of the displaced project may not be just and reasonable and non-discriminatory in some instances, especially if there are other identifiable benefits to the alternative solution. Public Interest Organizations contend that the proposal seems to contemplate only one-for-one replacement of sponsor-proposed transmission projects, when in practice alternative proposals may offer different combinations of facilities that provide different (perhaps superior) benefits and, thus, should not be evaluated one-for-one.³¹⁶

184. LS Power objects to Filing Parties' proposed requirement that the developer of a potential transmission project found to meet the benefit-to-cost analysis meet with incumbent impacted utilities to establish a schedule. LS Power contends that a separate evaluation of the financial terms of the proposed transmission project to ensure they are acceptable to each incumbent utility, which occurs outside of the overall SERTP evaluation and selection process, is a barrier to entry. LS Power further argues that there

³¹⁴ LS Power Protest at 19-20; e.g., Public Interest Organizations Protest at 17-18.

³¹⁵ LS Power Protest at 20.

³¹⁶ E.g., Public Interest Organizations Protest at 19.

is no comparable requirement for any transmission project in the existing regional transmission plan.³¹⁷

185. LS Power contends that there is no mechanism provided in the OATT language to ensure that the following items are included in the cost estimate for transmission projects already in the regional transmission plan: (1) engineering, procurement and construction consistent with Good Utility Practice and Standards; (2) financing costs, required rates of return, and any and all incentive based (including performance based) rate treatments; (3) ongoing operations and maintenance of the proposed transmission project; (4) provisions for restoration, spare equipment and materials, and emergency repairs; and (5) any applicable local, state, or federal taxes. LS Power argues that, in contrast, each of these factors is required in the OATT for proposed regional transmission projects.³¹⁸ LS Power contends that absent a rigorous comparison with similar assumptions of transmission projects currently in the regional transmission plan and proposed transmission projects, the avoided cost comparison is not meaningful and not consistent with the comparable cost estimate requirements embodied in Order No. 1000-A.³¹⁹

186. LS Power notes that it does not object to Filing Parties using cost estimates as part of the evaluation process. LS Power contends, however, that the proposed OATT language should make it clear that, “when cost estimates are part of selection, a region must scrutinize costs in the same manner by both the incumbent and nonincumbent.”³²⁰ LS Power argues that the Commission should affirmatively state that “local” projects included in the regional transmission plan also require comparable treatment and disclosure for their local project cost estimates.³²¹

187. LS Power contends that the additional requirement that a regional transmission project must be approved by the jurisdictional or governance authorities of the incumbent utilities to be selected in the regional transmission plan for purposes of cost allocation instead of a locally determined project is not appropriate. LS Power further contends that making the regional transmission planning process dependent on a state commission’s

³¹⁷ *Id.* at 20.

³¹⁸ *Id.* at 20-21.

³¹⁹ *Id.* at 21 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 456).

³²⁰ *Id.* at 18 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 455).

³²¹ *Id.*

“approval” of the selection of a transmission project in the regional transmission plan for purposes of cost allocation inappropriately blurs the respective jurisdictional rules of the regulatory bodies. LS Power asserts that the ultimate failure of state or local authorities to approve a transmission project may be grounds for removing a transmission project from the regional transmission plan, but should not be a requirement for selection in the regional transmission plan for purposes of cost allocation in the first instance.³²² Similarly, LS Power contends that it is inappropriate to allow the regional transmission planning process to run its course, only to then allow the Non-Public Utility Sponsors’ “Senior Management and/or Board of Directors” to reject the regional transmission planning determination. LS Power argues that the Commission should require that entities enrolling in a regional transmission planning process either be fully subscribed to that process or not subscribed at all.³²³

188. By contrast, Alabama Commission agrees with Filing Parties’ recognition in their compliance filings of the traditional role of state agencies and authorities. Specifically, Alabama Commission asserts that Filing Parties’ proposal requires that a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation to receive the appropriate regulatory and governance approvals from the authorities charged with oversight of any of the entities affected by the selection of the project and to whom costs may be assigned. Alabama Commission contends that this requirement is consistent with the applicable provisions of Alabama law and related public policies of the state as established by its elected officials, and preserves the role of the Alabama Commission with respect to the development of electric transmission facilities by entities under its jurisdiction.³²⁴

189. LS Power contends that Filing Parties have failed their burden of proving to the Commission that the SERTP regional transmission planning process will not make evaluation and selection decisions in a discriminatory or preferential manner. LS Power argues that it sees no clear non-discriminatory process proposed in any of the compliance filings. In fact, LS Power contends, there is no description of any safeguards that will be put into place to ensure a non-discriminatory selection process. Thus, LS Power argues that the compliance filing is inconsistent with the clear mandate of Order No. 1000 to “describe a not unduly discriminatory” selection process. As a new entrant, LS Power

³²² *Id.* at 21.

³²³ *Id.* at 22.

³²⁴ Alabama Commission Comments at 3.

argues, this omission of a description of a “not unduly discriminatory process” is particularly concerning.³²⁵

190. LS Power also requests that the Commission order Filing Parties to develop OATT language guaranteeing that: (1) all proposals will be evaluated fairly; and (2) if a nonincumbent’s proposal is more cost-effective, it will be selected.³²⁶

iii. Answer

191. SERTP Sponsors assert that the Commission should reject LS Power’s protest. They argue that “cost estimates *will* be scrutinized in the same manner because the SERTP Sponsors will use the *same* ‘planning level cost estimates’ to perform the initial benefit-to-cost analysis.”³²⁷ SERTP Sponsors further state that the SERTP Sponsors’ regional transmission planning process will be open and transparent, so transmission developers and stakeholders will be able to determine whether the SERTP Sponsors have scrutinized cost estimates on the same basis.³²⁸

192. SERTP Sponsors argue that LS Power’s attempt to nullify the provisions requiring that governance and regulatory approvals be obtained is misguided. SERTP Sponsors argue that LS Power has mischaracterized the SERTP process, explaining that transmission projects that are selected in the regional transmission plan for purposes of cost allocation through the SERTP process would be binding upon the benefitting SERTP Sponsors, with a key element of that process being the practical and legal *necessity* to obtain the pertinent approvals. SERTP Sponsors contend that obtaining these approvals is critical in light of the Non-Public Utility Sponsors’ obligations and is also necessary for Filing Parties to ensure that their state regulators support the project. With regard to the Non-Public Utility Sponsors, they explain that in TVA’s case, for example, decision-making authority for the construction of transmission lines is clearly committed to the discretion of the TVA Board of Directors in Sections 10 and 12 of the TVA Act.³²⁹ SERTP Sponsors assert that the costs to be incurred in such construction must comport with TVA’s statutory obligations to deliver power at rates that must be “as low as are

³²⁵ LS Power Protest at 22-23.

³²⁶ *Id.* at 19.

³²⁷ SERTP Sponsors Answer at 30 (referencing Southern Companies OATT, Attachment K § 16.2(c) (emphasis in original)).

³²⁸ *Id.*

³²⁹ *Id.* at 9 (citing 16 U.S.C. §§ 831i, 831k (2006)).

feasible,” and the “lowest possible,” to customers in the Tennessee Valley. SERTP Sponsors argue that TVA cannot relinquish these responsibilities to another entity or otherwise abdicate its statutory role. SERTP Sponsors contend that any attempt to bind a Non-Public Utility Sponsor to a cost allocation determination without first obtaining its requisite board/governance review and approval of the transmission project and its detailed financial terms also impermissibly intrudes on its decision-making authority regarding the expenditure of capital for construction costs. SERTP Sponsors also assert that Municipal Electric Authority of Georgia, for example, must obtain board approval before it can commit a certain level of capital expenditures, and TVA must observe statutory limitations on the amount of debt it can incur.³³⁰ SERTP Sponsors argue that the protections requiring jurisdictional/governance approvals is also critical for the state-regulated SERTP Sponsors and would apply on a non-discriminatory basis. SERTP Sponsors assert that Order No. 1000 repeatedly asserts an intent to respect state jurisdiction, and this aspect of Filing Parties’ proposal was (from the state-regulated SERTP Sponsors’ perspective) adopted to ensure that they can continue to satisfy their “duty to serve” obligations under state law.³³¹

193. SERTP Sponsors argue that if the Commission requires Filing Parties to adopt a process for selecting transmission projects in the regional transmission plan for purposes of cost allocation without these protections, it is likely to frustrate, rather than encourage, the construction of transmission projects. SERTP Sponsors state that the Non-Public Utility Sponsors have expressed their commitment to SERTP and are active participants in transmission planning in the region. SERTP Sponsors contend the Non-Public Utility Sponsors cannot, however, surrender their responsibility to conduct the necessary cost and benefits evaluations and determine whether to participate in any given project. SERTP Sponsors state that the failure to observe the unique responsibilities of the Non-Public Utility Sponsors may result in one or more Non-Public Utility Sponsors having little choice but to depart from the SERTP region, which could result in a fragmentation of the expanded SERTP region.³³²

194. SERTP Sponsors state that a constant theme in LS Power’s protest is the assumption that they will not be treated fairly in the SERTP process. SERTP Sponsors assert that their decision-making under their Order No. 1000 transmission planning processes will be in accordance with the Order No. 890-compliant, coordinated, open, and transparent SERTP planning process. Accordingly, SERTP Sponsors argue that

³³⁰ *Id.* (citing 16 U.S.C. § 831n-4(a) (2006)).

³³¹ *Id.* at 8-10.

³³² *Id.* at 10-11.

stakeholders will have more than sufficient information to determine whether the SERTP Sponsors have made discriminatory decisions.³³³

iv. Commission Determination

195. We find that Filing Parties' proposed method of evaluating transmission projects does not comply with the requirements of Order No. 1000. Specifically, and as further discussed in section IV.B.3 below, we reject Filing Parties' proposal to use avoided costs as the sole metric for evaluating whether a transmission facility proposed for selection in a regional transmission plan for purposes of cost allocation is a more efficient or cost-effective solution to regional transmission needs. Filing Parties' compliance filings also do not make clear that the SERTP regional transmission planning process will identify and evaluate transmission solutions other than those proposed by transmission developers. Filing Parties' OATTs must include detail as to how the SERTP regional transmission planning process will determine through analysis potentially more efficient or cost-effective transmission solutions to regional transmission needs. This additional detail will necessarily impact the evaluation process for selection in the regional transmission plan for purposes of cost allocation.

196. Accordingly, we direct Filing Parties to file, within 120 days of the date of the issuance of this order, further compliance filings that describe in their OATTs a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the SERTP regional transmission plan for purposes of cost allocation.³³⁴ Filing Parties should both explain and justify the proposed evaluation criteria, including how they apply in a not unduly discriminatory manner to sponsored transmission projects, transmission projects proposed by stakeholders and the transmission projects identified in the SERTP process. In addition, to the extent Filing Parties propose to continue to calculate benefits using avoided costs as a component of that calculation, consistent with the Commission's determination below in section IV.B.3.iv, and to use those benefits to evaluate transmission projects proposed for

³³³ *Id.* at 33.

³³⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328 (“[T]he Commission requires each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation . . . [that culminates] in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.”); Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

selection in a regional transmission plan for purposes of cost allocation, Filing Parties must also clarify in their OATTs which transmission projects in a regional transmission plan are deemed “planned transmission projects” such that they may be replaced by a more efficient or cost-effective regional transmission project.³³⁵

197. Furthermore, while we note that Filing Parties indicate that the OATT provisions applicable to transmission developers that propose a transmission project for selection in a regional transmission plan for purposes of cost allocation would also apply to each of the Filing Parties when it similarly proposes a transmission project for regional cost allocation,³³⁶ we find that additional OATT revisions are necessary to ensure that these provisions apply to transmission projects developed by both incumbent and nonincumbent transmission developers. Accordingly, we direct Filing Parties to revise their OATTs to explicitly state that incumbent transmission providers will be required to comply with the OATT provisions applicable to transmission developers when proposing a transmission project for selection in a regional transmission plan for purposes of cost allocation.³³⁷

198. In addition, we find that Filing Parties’ OATTs use the phrase “more efficient *and* cost effective”³³⁸ in reference to the standard used to evaluate proposed transmission projects instead of the “more efficient *or* cost-effective” criterion established by Order No. 1000.³³⁹ We direct Filing Parties to revise their respective OATTs to conform to the

³³⁵ E.g., Southern Companies Transmittal Letter at 20 (stating that the initial benefit-to-cost analysis “would compare the estimated costs of the proposed transmission project (plus the costs of additional facilities that might be necessary to integrate the proposed transmission project) to the costs of the *planned transmission projects* that would be displaced” (emphasis added)).

³³⁶ E.g., *id.* at 21 (noting that “both incumbent and nonincumbent transmission developers are free to use these same processes for the submission and evaluation of proposals for potential selection in the regional plan for [purposes of cost allocation]”); SERTP Sponsors Answer at 28 (noting that Filing Parties meet their proposed financial criteria “and would have to demonstrate such compliance should they propose a project for [regional cost allocation]”).

³³⁷ This directive is also referenced in sections IV.B.2.b, IV.B.2.c, IV.B.2.e, and IV.B.2.f of this order.

³³⁸ E.g., Southern Companies OATT, Attachment K § 16.3 (emphasis added).

³³⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148 (requiring that public utility transmission providers evaluate, through the regional transmission planning

(continued . . .)

correct Order No. 1000 standard. We also note that Order No. 1000 requires that the evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.³⁴⁰ While the Commission in Order No. 1000 recognized that the process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation will likely vary from region to region,³⁴¹ such evaluation must consider “the relative efficiency and cost-effectiveness of each [proposed transmission] solution.”³⁴² Therefore, we require Filing Parties, in the further compliance filings, to: (1) propose OATT revisions explaining how the region will consider the relative efficiency and cost-effectiveness of proposed transmission solutions, as part of its evaluation of transmission solutions proposed in the regional transmission planning process; and (2) explain how the region will ensure its evaluation of transmission solutions proposed in the regional transmission planning process will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected as a more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation.

199. Filing Parties propose, among other requirements,³⁴³ that a transmission project will be selected in a regional transmission plan for purposes of cost allocation if approval

process, “alternative transmission solutions that might meet the needs of the transmission planning region more efficiently *or* cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process” (emphasis added)).

³⁴⁰ *Id.* P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

³⁴¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331.

³⁴² *Id.* n.307.

³⁴³ In addition to the requirement discussed herein, Filing Parties propose that a transmission project

will be selected [in the regional transmission plan for purposes of cost allocation], subject to the requirements of Section 18, if: (i) the detailed financial terms provided in accordance with Section 16.3, as may be modified by agreement of the transmission developer and Beneficiary(ies), are acceptable to each Beneficiary; [and] (ii) the proposed

(continued . . .)

is obtained from all of the jurisdictional and/or governance authorities of the impacted utilities by the date specified in the schedule required by the regional transmission planning process.³⁴⁴ We find that this requirement does not comply with Order No. 1000 and must be removed from Filing Parties' OATTs. In Order No. 1000-A, the Commission held that

[i]f a transmission facility is selected in the regional transmission plan for purposes of cost allocation, . . . the transmission developer of that transmission facility must submit a development schedule that indicates the required steps, such as the granting of state approvals, necessary to develop and construct the transmission facility such that it meets the transmission needs of the region.³⁴⁵

As Order No. 1000-A explained, this approach allows public utility transmission providers to monitor the development of a transmission facility *after* it has been selected in the regional transmission plan for purposes of cost allocation, and gives them “the ability to remove that new transmission facility if its developer is unable to meet an established date by which the critical development step of obtaining necessary state approvals must be achieved.”³⁴⁶ However, the Commission did not permit public utility transmission providers to require that a transmission developer obtain approvals and approvals from all of the “jurisdictional and/or governance authorities of the [i]mpacted

transmission project is found to satisfy the more detailed benefit-to-cost analysis specified in Section 16.3....

Southern Companies OATT, Attachment K § 16.4. We address proposed requirement (i) below in paragraph 202, and address Filing Parties' benefit-to-cost analysis in this section and in section IV.B.3 below.

³⁴⁴ E.g., *id.* § 16.4(iii); *see also*, e.g., *id.* § 16.2.2 (stating that “[f]or potential transmission projects found to satisfy the foregoing benefit-to-cost analysis [in section 16.2.1], the [t]ransmission [p]rovider and the [i]mpacted utilities will then consult with the transmission developer of that project to establish a schedule reflecting the in-service date of the project for: . . . the proposed transmission project to receive approval for selection in a regional [transmission plan for purposes of cost allocation] from the jurisdictional and/or governance authorities of the [i]mpacted [u]tilities”).

³⁴⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 442.

³⁴⁶ *Id.* P 443.

[u]tilities”³⁴⁷ as a *precondition* of its transmission facility being selected in a regional transmission plan for purposes of cost allocation. Therefore, as directed below, Filing Parties must revise their OATTs to remove the requirement that a transmission developer obtain approvals from all of the “jurisdictional and/or governance authorities of the [i]mpacted [u]tilities” as a precondition of its transmission facility being selected in a regional transmission plan for purposes of cost allocation.

200. Order No. 1000 requires public utility transmission providers in a region to determine which transmission facilities will be selected in the regional transmission plan for purposes of cost allocation. For example, Order No. 1000 provides

[w]hether or not public utility transmission providers within a region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is an efficient or cost effective solution to their needs.³⁴⁸

In addition, Order No. 1000-A states that “Order No. 1000 . . . requires public utility transmission providers in a region to adopt transparent and not unduly discriminatory criteria for selecting a new transmission project in a regional transmission plan for purposes of cost allocation.”³⁴⁹ Therefore, we find that Filing Parties must revise their respective OATTs to include a process for selecting transmission facilities in the regional transmission plan for purposes of cost allocation whereby the public utility transmission providers in the region ultimately decide which transmission projects are selected.³⁵⁰ We agree that, to the extent that jurisdictional and/or governance authorities want to participate, they are able to participate. The Commission has the responsibility to ensure that the rates, terms, and conditions of service provided by public utility transmission providers are just and reasonable and not unduly discriminatory or preferential and that public utility transmission providers comply with our rules and regulations enacted to meet this responsibility. Thus, the Commission is responsible for ensuring that public utility transmission providers in a region adopt transparent and not unduly discriminatory criteria for selecting a new transmission project in a regional transmission plan for

³⁴⁷ E.g., Southern Companies OATT, Attachment K §§ 16.2.2(2), 16.4(iii).

³⁴⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331.

³⁴⁹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 455.

³⁵⁰ *South Carolina Elec. & Gas Co.*, 143 FERC ¶ 61,058 at PP 192-193.

purposes of cost allocation. While we encourage state entities or regional state committees to consult, collaborate, inform, and even recommend a transmission project, the public utility transmission providers in a transmission planning region must make the selection decision with respect to the transmission project.

201. Accordingly, for the foregoing reasons, we direct Filing Parties to file further compliance filings to revise their OATTs to (1) remove the requirement that a transmission developer obtain approvals from all of the “jurisdictional and/or governance authorities of the [i]mpacted [u]tilities” as a precondition of its transmission facility being selected in a regional transmission plan for purposes of cost allocation;³⁵¹ and (2) consistent with the discussion immediately above, include a process for selecting transmission facilities in the regional transmission plan for purposes of cost allocation whereby the public utility transmission providers in the region ultimately decide which transmission projects are selected.

202. Filing Parties propose that a proposed transmission project will be selected in the regional transmission plan only if the detailed financial terms³⁵² for the proposed transmission project are acceptable to each identified beneficiary.³⁵³ We do not agree that beneficiaries should be granted the unilateral authority to prevent a transmission project that otherwise satisfies the region’s proposed benefit-to-cost ratio from being selected in the regional transmission plan for purposes of cost allocation simply because the beneficiary dislikes the financial terms for the transmission project. To grant a beneficiary such authority would frustrate the transmission planning region’s ability to identify and select the more efficient or cost-effective regional transmission solutions in the regional transmission plan for purposes of cost allocation. We direct Filing Parties, in their further compliance filings, to revise this provision to eliminate the proposed

³⁵¹ E.g., Southern Companies OATT, Attachment K §§ 16.2.2, 16.4.

³⁵² Under Filing Parties’ OATTs, the financial terms include the total cost to be allocated to beneficiaries if the proposed transmission project were to be selected in a regional plan for purposes of cost allocation, and components that comprise costs, such as the costs of: (1) engineering, procurement, and constructions consistent with Good Utility Practice and standards, and specifications acceptable to the transmission provider, (2) financing costs, required rates of return, and any and all incentive-based (including performance based) rate treatments, (3) ongoing operations and maintenance of the proposed transmission project, (4) provisions for restoration, spare equipment and materials, and emergency repairs, and (5) any applicable local, state, or federal taxes. E.g., *id.* § 16.3.

³⁵³ E.g., *id.* § 16.4.

condition that a transmission project may be selected in a regional transmission plan for purposes of cost allocation only if each beneficiary finds acceptable the financial terms of the contract required by the regional transmission planning process.

203. We share LS Power's concern regarding cost comparisons for local and regional transmission projects and direct Filing Parties, as part of the compliance filings ordered herein, to describe in their OATTs the methods they will use to determine the costs of the transmission facilities that the region will consider as part of its evaluation of more efficient or cost-effective transmission solutions. Filing Parties' OATTs do not explain whether the same standard for cost estimates will be applied to local and regional transmission projects. As a result, it is unclear how Filing Parties intend to develop cost estimates for local transmission projects in a manner that permits an equitable comparison with proposed regional transmission projects. Order No. 1000-A clarified that when cost estimates are part of the selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or nonincumbent transmission developer.³⁵⁴ We therefore direct Filing Parties to revise their OATTs in the further compliance filings to clarify the methods they will use to determine the transmission project costs of the transmission facilities that they will evaluate as part of their evaluation of more efficient or cost-effective transmission solutions and to confirm that incumbent and nonincumbent costs will be scrutinized in the same manner.

204. Filing Parties propose that an evaluation of proposals for selection in a regional transmission plan for purposes of cost allocation will be in accordance with, and subject to (among other things), state law pertaining to transmission ownership, siting, and construction.³⁵⁵ We interpret this provision to mean that nothing herein "is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities. . . ."³⁵⁶ We find that, given our interpretation of the provision, this provision is consistent with Order No. 1000.³⁵⁷

205. Accordingly, we direct Filing Parties to file, within 120 days of the date of the issuance of this order, further compliance filings proposing OATT revisions that: (1)

³⁵⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 455.

³⁵⁵ E.g., Southern Companies OATT, Attachment K § 16.1.

³⁵⁶ Order No. 1000, FERC Stats. & Regs ¶ 31,323 at P 253 n.231.

³⁵⁷ See *id.* P 253 n.231; see also *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059, at P 171 (2013).

describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation; (2) explicitly state that incumbent transmission providers will be required to comply with the OATT provisions applicable to transmission developers when proposing a transmission project for selection in a regional transmission plan for purposes of cost allocation; (3) revise the standard used to evaluate proposed transmission projects to the “more efficient *or* cost-effective” criterion established by Order No. 1000 instead of a “more efficient *and* cost-effective” criterion; (4) provide how the region will consider the relative efficiency and cost-effectiveness of proposed transmission solutions, as part of its evaluation of transmission solutions proposed in the regional transmission planning process; (5) explain how the region will ensure its evaluation of transmission solutions proposed in the regional transmission planning process will culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected as a more efficient or cost-effective solution in the regional transmission plan for purposes of cost allocation; (6) remove the requirement that a transmission developer obtain approval from all of the “jurisdictional and/or governance authorities of the [i]mpacted [u]tilities” as a precondition of its transmission facility being selected in a regional transmission plan for purposes of cost allocation, as well as include a process for selecting transmission facilities in the regional transmission plan for purposes of cost allocation whereby the public utility transmission providers in the region ultimately decide which transmission projects are selected;³⁵⁸ (7) revise the provision that provides that a proposed regional transmission facility will be selected in the regional transmission plan only if the detailed financial terms of its proposed transmission project are acceptable to each identified beneficiary to provide that whether a transmission project may be selected in a regional transmission plan for purposes of cost allocation may not depend upon whether a particular beneficiary finds acceptable the financial terms of the contract required by the regional transmission planning process; and (8) revise their OATTs to make it clear that the incumbent and nonincumbent cost estimates for local and proposed regional transmission plan projects are scrutinized in the same manner.

e. **Reevaluation Process for Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation**

206. Each public utility transmission provider must amend its OATT to describe the circumstances and procedures under which public utility transmission providers in the regional transmission planning process will reevaluate the regional transmission plan to

³⁵⁸ E.g., Southern Companies OATT, Attachment K §§ 16.2.2, 16.4.

determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative transmission solutions, including those that the incumbent transmission provider proposes, to ensure the incumbent transmission provider can meet its reliability needs or service obligations.³⁵⁹ If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.³⁶⁰

i. Filing Parties' Compliance Filings

207. Filing Parties propose that they will continue to reevaluate a proposed transmission project, including any such projects that are being considered for potential selection, or have been selected, in a regional transmission plan for purposes of cost allocation until it is no longer reasonably feasible to replace the proposed transmission project as a result of the transmission project being in a material stage of construction and/or if it is no longer reasonably feasible for an alternative transmission project to be placed in service in time to address the underlying transmission need(s) the proposed transmission project is intended to address. Filing Parties propose that this continued reevaluation will assess then-current transmission needs and determine whether the proposed transmission project continues to be needed and is more efficient and cost-effective compared to alternatives assessed in subsequent planning cycles. Even if a proposed transmission project was selected in a regional transmission plan for purposes of cost allocation, if it is determined that the proposed transmission project is no longer needed and/or is no longer more efficient and cost-effective than alternatives, the transmission project may be removed from selection for regional cost allocation purposes.³⁶¹

208. Filing Parties' OATTs explain that as part of the transmission provider's ongoing transmission planning efforts, the transmission provider will assess whether alternative transmission solutions may be required in addition to, or in place of, a potential transmission project selected in the regional transmission plan for purposes of cost

³⁵⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 263, 329, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

³⁶⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

³⁶¹ E.g., Southern Companies OATT, Attachment K § 18.

allocation due to the delay in its development or abandonment of the project. Filing Parties explain that, in this regard, the transmission developer will promptly notify the transmission provider should any material changes or delays be encountered in the development of the potential transmission project. Filing Parties' OATTs provide that if, due to such delay or abandonment, the transmission provider determines that a transmission project selected in the regional transmission plan for purposes of cost allocation no longer adequately addresses underlying transmission needs and/or no longer remains more efficient and cost-effective, then the transmission provider may remove the project from the regional transmission plan and proceed with seeking appropriate solutions(s). If a transmission project selected in the regional transmission plan for purposes of cost allocation is removed from the regional transmission plan due to delay or abandonment by the transmission developer, then the transmission developer will be responsible for, at minimum, any increased costs to the impacted utilities due to any such delay or abandonment.³⁶²

209. Filing Parties' OATTs state that once a proposed transmission project has been selected in the regional transmission plan for purposes of cost allocation, the transmission developer must submit a development schedule to the transmission provider and the impacted utilities that establishes the milestones, including (to the extent not already accomplished) obtaining all necessary rights-of-way and requisite environmental, state, and other governmental approvals and executing a mutually-agreed upon contract(s) with the beneficiaries, by which the necessary steps to develop and construct the transmission project must occur. Filing Parties' OATTs state that the schedule and milestones must be satisfactory to the transmission provider and the impacted utilities. In addition, the transmission provider and the impacted utilities will also determine the security/collateral arrangements for the proposed transmission project and the deadline(s) by which they must be provided. Filing Parties' OATTs assert that if such critical steps are not met by the specified milestones and then afterwards maintained, then the transmission provider may remove the project from the selected category in the regional transmission plan for purposes of cost allocation.³⁶³

ii. Protests/Comments

210. LS Power argues that Filing Parties' proposed removal provisions lack specificity as to the precise circumstances under which transmission projects selected in the regional transmission plan for purposes of cost allocation will be removed from the assigned transmission developer. LS Power contends that Filing Parties use language like "no

³⁶² E.g., *id.* § 19.

³⁶³ E.g., *id.* § 20.

longer needed” or “no longer more efficient and cost-effective than alternatives” to identify instances in which a transmission project “may” be removed. LS Power further contends that this loose language is inconsistent with the requirements of Order No. 1000.³⁶⁴ LS Power argues that Filing Parties’ compliance filings provide neither the circumstances in which nor procedures under which transmission projects will be reevaluated or alternative solutions will be solicited. As a result, LS Power argues that the Commission must reject Filing Parties’ proposal and require compliance with Order No. 1000. In addition, LS Power objects to the provision of Filing Parties’ proposal that provides that if a transmission project selected in the regional transmission plan for purposes of cost allocation is removed from the regional transmission plan due to delay or abandonment by the transmission developer, then the transmission developer shall be responsible for any increased costs to the impacted utilities due to any such delay or abandonment. LS Power asserts that it objects to this language as impermissibly vague, unreasonable, and inconsistent with Order No. 1000.³⁶⁵

211. LS Power argues that under Filing Parties’ proposal, the incumbent utilities will determine the security and collateral requirements for the proposed transmission project and the deadlines by which they must be provided. LS Power objects to these requirements as discriminatory unless transmission projects currently in the regional transmission plan are required to post such security and collateral as well.³⁶⁶

iii. Answer

212. SERTP Sponsors argue that the provisions providing for the removal of a transmission project that is no longer the more efficient or cost-effective alternative are comparable, contrary to LS Power’s allegations. SERTP Sponsors state that their transmission projects remain subject to suspension or cancellation until it is no longer feasible to have them replaced, and that they have complete flexibility to suspend or cancel their projects as best suited to render economic and reliable service to their customers on a cost-effective basis in accordance with their “duty to serve” obligations. They state SERTP Sponsors do quite often cancel, suspend or delay their own projects, as evidenced by the many changes in projects (need, scope, timing) identified in the SERTP

³⁶⁴ LS Power Protest at 24 (citing Order No. 1000 FERC Stats. & Regs. ¶ 31,323 at P 7).

³⁶⁵ *Id.* at 24-25.

³⁶⁶ *Id.* at 25 (citing Southern Companies OATT, Attachment K § 20; OVEC OATT, Attachment M § 20; LG&E/KU OATT, Attachment K § 30).

Sponsors' 10 year transmission expansion plans provided and discussed each year with stakeholders at the Annual Transmission Planning Summit.³⁶⁷

213. SERTP Sponsors argue that the loss or dilution of this needed flexibility is a serious concern because this flexibility benefits consumers by ensuring that a transmission project is, in fact, needed as a cost-effective or reliable alternative. To the extent that this flexibility is diluted by, for example, requiring more prescriptive requirements before a transmission project can be removed, then consumers will be harmed, the state "duty to serve" legal requirements would be preempted, and the Commission will be acting inconsistently with FPA sections 206 and 217(b)(4). Further, SERTP Sponsors contend that if a transmission project selected in the regional transmission plan for purposes of cost allocation were to be more difficult to remove from the regional transmission planning process than any other type of transmission project, then it would need to be subject to a more stringent evaluation process up-front, due to the higher risks to consumers presented by such inflexibility to respond to ongoing change in assumptions and input data that are inherent in the dynamic and iterative transmission planning process.³⁶⁸

214. SERTP Sponsors note that LS Power objects to Filing Parties' proposal that in the event that its project is removed from being selected in the regional transmission plan for purposes of cost allocation due to delay or abandonment, then the transmission developer shall be responsible for any increased costs to impacted utilities. Contrary to LS Power's argument, SERTP Sponsors contend that should a transmission developer's delay or cancellation cause higher costs, then it is just and reasonable and not unduly discriminatory to require the developer to pay for the damages that it causes, particularly since compensating the impacted utilities would facilitate their ability to fund the upgrades/operational adjustments that would result from a developer's delay or abandonment.³⁶⁹

iv. Commission Determination

215. We find that the provisions in Filing Parties' proposal dealing with the reevaluation of proposed transmission projects partially comply with the requirements of Order No. 1000.

³⁶⁷ SERTP Sponsors Answer at 34.

³⁶⁸ *Id.* at 34-35.

³⁶⁹ *Id.* at 35-36.

216. First, we note that Order No. 1000 specifically requires public utility transmission providers to reevaluate the regional transmission *plan*.³⁷⁰ Filing Parties propose that they will continue to reevaluate proposed transmission *projects*, including any transmission projects selected in the regional transmission plan for purposes of cost allocation.³⁷¹ Accordingly, in the ordered compliance filings, we direct Filing Parties to clarify in their OATTs that they will undertake a reevaluation of the regional transmission plan, rather than only transmission projects.³⁷²

217. Moreover, Filing Parties' revisions must, consistent with the requirements of Order No. 1000 regarding reevaluation of the regional transmission plan due to delay of a transmission project selected in the regional transmission plan for purposes of cost allocation: (1) allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint if an evaluation of alternatives is needed; and (2) if the proposed solution is a transmission facility, provide for the facility's evaluation for possible selection in the regional transmission plan for purposes of cost allocation.³⁷³

218. Filing Parties' proposal, with the modification ordered above in paragraph 216, generally identifies the circumstances and procedures for when it will reevaluate the regional transmission plan to determine if delays in the development of a transmission project selected in the regional transmission plan for purposes of cost allocation requires evaluation of alternative transmission solutions.³⁷⁴ However, we are concerned that the

³⁷⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329 (requiring that "each public utility transmission provider must amend its OATT to describe the circumstances and procedures under which public utility transmission providers . . . will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in the regional plan for purposes of cost allocation require evaluation of alternative solutions"); Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

³⁷¹ For example, the relevant OATT provision is entitled "On-Going Evaluations of Proposed Projects." Also, the OATT language in that section is framed in terms of the transmission provider's reevaluation of projects. E.g., Southern Companies OATT, Attachment K § 18.

³⁷² See *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206, at P 253 (2013).

³⁷³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

³⁷⁴ E.g., Southern Companies OATT, Attachment K § 18 (providing that the transmission provider will "assess then-current transmission needs and determine whether the proposed transmission project [that was selected in a regional transmission

lack of description regarding how Filing Parties will decide whether to retain a transmission project, remove a transmission project, or select an alternative transmission solution following such reevaluation may allow Filing Parties too much discretion in making this determination, particularly with respect to a determination that a transmission project is no longer more efficient or cost-effective than alternative transmission solutions. Accordingly, we direct Filing Parties on further compliance to revise their OATTs to explain the basis upon which Filing Parties will retain or remove a transmission project (whether being developed by an incumbent or nonincumbent transmission developer) selected in a regional transmission plan for purposes of cost allocation, or select an alternative transmission solution.³⁷⁵

219. Additionally, Filing Parties' OATTs provide that if a project is removed for delay or abandonment by the transmission developer, the transmission developer shall be responsible for, at a minimum, any increased costs to the impacted utilities due to any such delay or abandonment.³⁷⁶ SERTP Sponsors argue that should a developer's delay or cancellation cause higher costs, then it is just and reasonable and not unduly discriminatory to require the developer to pay for the damages that it causes, particularly since so compensating the impacted utilities would facilitate their ability to fund the upgrades/operational adjustments that would result from a developer's delay or abandonment.³⁷⁷ We are concerned that the lack of clarity in Filing Parties' OATTs, particularly regarding what costs may be included in the impacted utilities' increased costs or how those costs would be calculated, could create uncertainty regarding a transmission developer's exposure to future costs and could be a barrier to entry for transmission developers. For example, it is unclear from this language whether such increased costs would be the cost of building a facility to replace the abandoned project. Accordingly, we direct Filing Parties to either remove, or provide further justification for, this provision. If Filing Parties choose to provide further justification, Filing Parties must also revise their OATTs to provide additional detail to explain what costs may be

plan for purposes of cost allocation] continues to be needed and is more efficient and cost effective compared to alternatives as assessed in subsequent expansion planning processes. . .”).

³⁷⁵ As discussed above in section IV.B.2.d, we direct Filing Parties to revise their OATTs to ensure that OATT provisions applicable to transmission developers apply to transmission projects developed by both incumbent and nonincumbent transmission developers.

³⁷⁶ E.g., Southern Companies OATT, Attachment K § 19.

³⁷⁷ SERTP Sponsors Answer at 35-36.

included in the impacted utilities' increased costs, how such costs would be calculated, and how Filing Parties would implement the proposal.

220. Filing Parties' proposal also provides that the transmission provider and impacted utilities will determine the security/collateral arrangements for the proposed transmission project and the deadlines by which they must be provided. Filing Parties' OATTs state that if such critical steps are not met by the specified milestones and then afterwards maintained, then the transmission provider may remove the project from the selected category in a regional transmission plan for purposes of cost allocation.³⁷⁸ We are concerned about the lack of detail regarding the level of security/collateral that will be required by the transmission provider and impacted utilities in order for a transmission project selected in the regional transmission plan for purposes of cost allocation to remain in the regional transmission plan for purposes of cost allocation. Therefore, Filing Parties must revise their OATTs to clarify the security/collateral arrangements that a developer of a transmission project (whether incumbent or nonincumbent) selected in a regional transmission plan for purposes of cost allocation must provide to transmission providers for its transmission project to remain in a regional transmission plan.

221. Accordingly, we direct Filing Parties to file, within 120 days of the date of the issuance of this order, a further compliance filing that revises their respective OATTs to: (1) clarify that they will undertake a reevaluation of the regional transmission plan, rather than only transmission projects; (2) allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint if an evaluation of alternatives is needed, and, if the proposed solution is a transmission facility, provide for the facility's evaluation for possible selection in the regional transmission plan for purposes of cost allocation; (3) explain the basis upon which Filing Parties will retain or remove a transmission project selected in a regional transmission plan for purposes of cost allocation, or select an alternative transmission solution; (4) remove from their OATTs the provision requiring that a transmission developer be responsible for, at a minimum, any increased costs to the impacted utilities due to delay or abandonment of the transmission developer's project, or provide further justification for this provision and include additional detail to explain what costs may be included in the impacted utilities' increased costs, how such costs would be calculated, and how Filing Parties would implement the proposal; and (5) clarify the security/collateral arrangements that a developer of a transmission project selected in a regional transmission plan for purposes of cost allocation must provide to transmission providers for its transmission project to remain in a regional transmission plan for purposes of cost allocation.

³⁷⁸ E.g., Southern Companies OATT, Attachment K § 20.

f. **Cost Allocation for Transmission Projects Selected in the Regional Transmission Plan for Purposes of Cost Allocation**

222. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that provides that a nonincumbent transmission developer has an opportunity comparable to that of an incumbent transmission developer to allocate the cost of a transmission facility through a regional cost allocation method or methods.³⁷⁹ A nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.³⁸⁰ If a transmission project is selected in a regional transmission plan for purposes of cost allocation, Order No. 1000 requires that the transmission developer of that transmission facility (whether incumbent or nonincumbent) must be able to rely on the relevant cost allocation method or methods within the region should it move forward with its transmission project.³⁸¹

223. Order No. 1000 specifies that the regional transmission planning process could use a non-discriminatory competitive bidding process as the mechanism to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation.³⁸² A region may use or retain an existing mechanism that relies on a competitive solicitation to identify preferred solutions to regional transmission needs, and such an existing process may require little or no modification to comply with the framework adopted in Order No. 1000.³⁸³ The regional transmission planning process could allow the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project.³⁸⁴ If it uses a sponsorship model, the regional transmission planning process would also need to have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission

³⁷⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

³⁸⁰ *Id.*

³⁸¹ *Id.* P 339.

³⁸² *Id.* P 336.

³⁸³ *Id.* P 321.

³⁸⁴ *Id.* P 336.

developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.³⁸⁵

i. Filing Parties' Compliance Filings

224. Filing Parties have proposed a sponsorship model, which would permit a qualified transmission developer to submit a transmission project for possible selection in a regional transmission plan for purposes of cost allocation. Filing Parties state that, since both incumbent and nonincumbent transmission developers are free to use the same processes for the submission and evaluation of proposals for potential selection in the regional transmission plan for purposes of cost allocation, these process are comparable and nondiscriminatory.³⁸⁶

225. Filing Parties propose that when a proposed transmission project is selected in the regional transmission plan for purposes of cost allocation, a contractual agreement must be developed to address: (1) the specific financial terms/specific total amounts to be charged by the transmission developer for the regional transmission project to the beneficiaries, as agreed to by the parties; (2) the contracting beneficiary or beneficiaries' allocation(s) of the costs of the aforementioned regional facility; (3) creditworthiness/project security requirements; (4) operational control of the regional transmission project; (5) milestone reporting, including schedule of projected expenditures; (6) engineering, procurement, construction, maintenance, and operation of the proposed regional transmission project; (7) emergency restoration and repair responsibilities; (8) reevaluation of the regional transmission project; and (9) non-performance or abandonment.³⁸⁷

ii. Protests/Comments

226. No comments or protests were received regarding this issue.

iii. Commission Determination

227. We find that the provisions in Filing Parties' proposal dealing with the eligibility for cost allocation for nonincumbent transmission projects partially comply with the requirements of Order No. 1000. Filing Parties have proposed a sponsorship model,

³⁸⁵ *Id.*

³⁸⁶ E.g., Southern Companies Transmittal Letter at 21.

³⁸⁷ E.g., Southern Companies OATT, Attachment K §§ 20-21.

which would permit a qualified transmission developer, whether an incumbent or a nonincumbent, to submit a transmission project,³⁸⁸ and if that transmission project is selected in the SERTP regional transmission plan for purposes of cost allocation, then the transmission developer is eligible to use the regional cost allocation method.³⁸⁹ However, we direct Filing Parties to file, within 120 days of the date of issuance of this order, a further compliance filing that addresses the issues discussed below.

228. Filing Parties' proposed sponsorship model grants a transmission developer the right to use the regional cost allocation method for a transmission facility that it has proposed that is selected in the regional transmission plan for purposes of cost allocation. However, Filing Parties do not have a mechanism to grant such a right for unsponsored transmission projects. Consistent with our directives in section IV.B.1.c.i above, Filing Parties must participate in a transmission planning region that conducts a regional analysis to identify whether there are more efficient or cost-effective transmission solutions to regional transmission needs. The regional transmission planning process would also need to have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method to the extent it develops an unsponsored transmission facility that is selected in the regional transmission plan for purposes of cost allocation.³⁹⁰ Therefore, we direct Filing Parties, in their further compliance filings directed in this order, to revise their OATTs to include such a mechanism.

229. Additionally, under Filing Parties' OATTs, once selected in a regional transmission plan for cost allocation purposes, the transmission developer must submit a development schedule to the transmission provider and the impacted utilities that establishes milestones and the obligation to execute a mutually-agreed upon contract with the beneficiaries.³⁹¹ Consistent with our determination in *South Carolina Electric & Gas Company*,³⁹² where South Carolina Electric & Gas Company proposed to require a

³⁸⁸ E.g., Southern Companies Transmittal Letter at 21.

³⁸⁹ As discussed above in section IV.B.2.d, we direct Filing Parties to revise their OATTs to ensure that OATT provisions applicable to transmission developers apply to transmission projects developed by both incumbent and nonincumbent transmission developers.

³⁹⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

³⁹¹ E.g., Southern Companies OATT, Attachment K §§ 20-21.

³⁹² 143 FERC ¶ 61,058 at P 208.

contractual agreement between the transmission developer and transmission provider(s) for transmission projects selected in the regional transmission for purposes of cost allocation, we find that the executed, mutually-agreed-upon contract between the transmission developer, transmission provider, and impacted utilities does not appear to be transparent and no *pro forma* contract has been provided for this arrangement that will significantly impact whether a transmission project selected in a regional transmission plan for purposes of cost allocation remains selected in a regional transmission plan for purposes of cost allocation.³⁹³ Therefore, we direct Filing Parties 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 Filing Parties' contractual provisions discussed above with the understanding that certain issues may be negotiated on a case-by-case basis.

230. Accordingly, we direct Filing Parties to file, within 120 days of the date of issuance of this order, further compliance filings proposing (1) OATT revisions that establish a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method to the extent an unsponsored transmission facility is selected in the regional transmission plan for purposes of cost allocation, and (2) to include a *pro forma* contractual agreement to implement Filing Parties' proposal that a transmission developer of a transmission project selected in a regional transmission plan for purposes of cost allocation, the transmission provider, and any impacted utilities enter into a contractual agreement to address various issues related to the transmission project.

3. Cost Allocation

231. Order No. 1000 requires each public utility transmission provider to have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation.³⁹⁴ Each public utility transmission provider must show on compliance that its regional cost allocation method or methods are just and reasonable and not unduly discriminatory or preferential by demonstrating that each method satisfies six regional cost allocation principles described in Order No. 1000.³⁹⁵ The Commission took a principles-based approach because it recognized that regional differences may warrant distinctions in cost allocation

³⁹³ E.g., Southern Companies OATT, Attachment K §§ 20-21.

³⁹⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558.

³⁹⁵ *Id.* P 603.

methods among transmission planning regions.³⁹⁶ In addition, Order No. 1000 permits participant funding, but not as a regional or interregional cost allocation method.³⁹⁷

232. If a public utility transmission provider is in an RTO or ISO, Order No. 1000 requires that the regional cost allocation method or methods be set forth in the RTO or ISO OATT. In a non-RTO/ISO transmission planning region, each public utility transmission provider located within the region must set forth in its OATT the same language regarding the cost allocation method or methods that is used in its transmission planning region.³⁹⁸ Each public utility transmission provider must have a regional cost allocation method for any transmission facility selected in a regional transmission plan for purposes of cost allocation.³⁹⁹

233. Regional Cost Allocation Principle 1 specifies that the cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. Cost allocation methods must clearly and definitively specify the benefits and the class of beneficiaries.⁴⁰⁰ In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.⁴⁰¹ Regional Cost Allocation Principle 1 precludes an allocation where the benefits received are trivial in relation to the costs to be borne.⁴⁰²

234. Order No. 1000 does not prescribe a particular definition of “benefits” or “beneficiaries.”⁴⁰³ The Commission stated in Order No. 1000-A that while Order No.

³⁹⁶ *Id.* P 604.

³⁹⁷ *Id.* P 723.

³⁹⁸ *Id.* P 558.

³⁹⁹ *Id.* P 690.

⁴⁰⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 678.

⁴⁰¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622.

⁴⁰² *Id.* P 639.

⁴⁰³ *Id.* P 624.

1000 does not define benefits and beneficiaries, it does require the public utility transmission providers in each transmission planning region to be definite about benefits and beneficiaries for purposes of their cost allocation methods.⁴⁰⁴ In addition, for a cost allocation method or methods to be accepted by the Commission as Order No. 1000-compliant, they will have to specify clearly and definitively the benefits and the class of beneficiaries.⁴⁰⁵ A benefit used by public utility transmission providers in a regional cost allocation method or methods must be an identifiable benefit, and the transmission facility cost allocated must be roughly commensurate with that benefit.⁴⁰⁶ Each regional transmission planning process must provide entities who will receive regional or interregional cost allocation an understanding of the identified benefits on which the cost allocation is based.⁴⁰⁷ The public utility transmission providers in a transmission planning region may propose a cost allocation method that considers the benefits and costs of a group of new transmission facilities, although there is no requirement to do so.⁴⁰⁸

235. The regional transmission plan must include a clear cost allocation method or methods that identify beneficiaries for each of the transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁴⁰⁹ Order No. 1000-A stated that public utility transmission providers in each transmission planning region, in consultation with their stakeholders, may consider proposals to allocate costs directly to generators as beneficiaries that could be subject to regional or interregional cost allocation, but any such allocation must not be inconsistent with the generator interconnection process under Order No. 2003.⁴¹⁰

236. Regional Cost Allocation Principle 2 specifies that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities.⁴¹¹ All cost

⁴⁰⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 679.

⁴⁰⁵ *Id.* P 678.

⁴⁰⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 625.

⁴⁰⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 746.

⁴⁰⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 627, 641.

⁴⁰⁹ *Id.* P 11; Order No. 1000-A, 139 FERC ¶ 61,132 at P 585.

⁴¹⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

⁴¹¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 637.

allocation methods must provide for allocation of the entire prudently incurred cost of a transmission project to prevent stranded costs.⁴¹² To the extent that public utility transmission providers propose a cost allocation method or methods that consider the benefits and costs of a group of new transmission facilities and adequately support their proposal, Regional Cost Allocation Principle 2 would not require a showing that every individual transmission facility in the group of transmission facilities provides benefits to every beneficiary allocated a share of costs of that group of transmission facilities.⁴¹³

237. The Commission clarified in Order No. 1000-A that public utility transmission providers may rely on scenario analyses in the preparation of a regional transmission plan and the selection of new transmission facilities in the regional transmission plan for purposes of cost allocation. Regional Cost Allocation Principle 2 would be satisfied if a project or group of projects is shown to have benefits in one or more of the transmission planning scenarios identified by public utility transmission providers in their Commission-approved Order No. 1000-compliant cost allocation methods.⁴¹⁴ The Commission clarified in Order No. 1000-B that it did not intend to remove the “likely future scenarios” concept from transmission planning and that likely future scenarios can be an important factor in public utility transmission providers’ consideration of transmission projects and in the identification of beneficiaries consistent with the cost causation principle.⁴¹⁵

238. Regional Cost Allocation Principle 3 specifies that if a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, the threshold must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. Public utility transmission providers may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.⁴¹⁶

⁴¹² *Id.* P 640.

⁴¹³ *Id.* P 641.

⁴¹⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 690.

⁴¹⁵ Order No. 1000-B, 141 FERC ¶ 61,044 at P 72.

⁴¹⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

239. Regional Cost Allocation Principle 4 specifies that the allocation method for the cost of a transmission facility selected in a regional transmission plan for purposes of cost allocation must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.⁴¹⁷

240. Regional Cost Allocation Principle 5 specifies that the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.⁴¹⁸

241. Regional Cost Allocation Principle 6 specifies that a transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief, or to achieve Public Policy Requirements.⁴¹⁹ If the public utility transmission providers choose to have a different cost allocation method for each type of transmission facility, there can be only one cost allocation method for each type.⁴²⁰ In addition, if public utility transmission providers choose to propose a different cost allocation method or methods for different types of transmission facilities, each method would have to be determined in advance for each type of facility.⁴²¹ A regional cost allocation method for one type of regional transmission facility or for all regional transmission facilities may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.⁴²² However, the public utility transmission

⁴¹⁷ *Id.* P 657.

⁴¹⁸ *Id.* P 668.

⁴¹⁹ *Id.* P 685.

⁴²⁰ *Id.* P 686; *see also id.* P 560.

⁴²¹ *Id.*

⁴²² *Id.* P 689.

providers in a region may not designate a type of transmission facility that has no regional cost allocation method applied to it.⁴²³

i. Filing Parties' Compliance Filings

242. As noted above, Filing Parties propose a cost allocation methodology that is based upon “avoided transmission” costs. Specifically, the benefits of a regional transmission project are the “displacement cost savings received by replacing the higher cost planned transmission project(s) with the more efficient and cost-effective” regional transmission project.⁴²⁴ The “entities who have their transmission projects displaced by the proposed [regional transmission] project, and thereby would receive cost savings, would be the beneficiaries themselves or [beneficiaries] on behalf of their customers.”⁴²⁵

243. Filing Parties explain that the avoided transmission costs method also satisfies Order No. 1000’s six cost allocation principles. Specifically, Filing Parties state, the costs that would be allocated would be commensurate with the benefits (Cost Allocation Principle 1) because the benefits are the quantifiable benefits of avoided/displaced transmission. According to Filing Parties, this approach complies with Cost Allocation Principle 2 and Cost Allocation Principle 4 because only a transmission provider/owner in the region that avoids transmission costs would be allocated the cost of the regional transmission project, Filing Parties explain that the SERTP region’s cost allocation approach also satisfies Cost Allocation Principle 3 because it adopts a benefit-to-cost ratio of 1.25. Filing Parties assert since the benefits are quantifiable, the cost allocation method and data requirements for determining benefits and identifying beneficiaries would be transparent, satisfying Cost Allocation Principle 5, and there would be sufficient documentation to allow stakeholders to determine how the cost allocation method was applied to a proposed facility. With regard to Cost Allocation Principle 6, Filing Parties also assert that this straight-forward approach would apply to all types of transmission facilities proposed for potential selection in the regional transmission plan for purposes of cost allocation, regardless of whether those projects were proposed to address underlying reliability, economic, or public policy need, or some combination of the foregoing.

⁴²³ *Id.* P 690.

⁴²⁴ As explained above in section IV.B.2.d, we direct Filing Parties to revise the standard used to evaluate proposed transmission projects to the “more efficient *or* cost-effective” criterion established by Order No. 1000 instead of the “more efficient *and* cost-effective” criterion proposed by Filing Parties.

⁴²⁵ E.g., Southern Companies Transmittal Letter at 20.

ii. Protests/Comments

244. Public Interest Organizations contend that Filing Parties' proposal fails to include a cost allocation method that will apply to public policy requirement driven projects. Public Interest Organizations further contend that sections 16 and 17 of the proposal, by limiting the benefit assessment to avoided transmission costs, fail to address public policy-driven projects or benefits at all. Thus, Public Interest Organizations assert that the proposed cost allocation method does not satisfy Regional Cost Allocation Principle 1 (i.e., costs must be allocated in a manner that is at least roughly commensurate with benefits). As a result, Public Interest Organizations request that the Commission require Filing Parties to include in the proposal a revised or additional cost allocation method that explicitly contemplates projects chosen to address public policy requirement-driven grid issues and to expand the definition of possible benefits such that it takes account of all functions a project plays and the benefits related to those functions.⁴²⁶

245. Likewise, LS Power asserts that the proposed "avoided cost" approach is incompatible with Order No. 1000. LS Power argues that the avoided cost methodology ensures that only reliability projects will be built since the utility was required to build in the first instance, but does not adequately account for economic or public policy benefits a regional project may bring. LS Power argues that an example of the avoided cost method demonstrates the deficiency of the avoided cost as a transmission cost allocation mechanism. LS Power asserts that if Sponsor A has a reliability project in its plan that costs \$75 million, and Sponsor B has a reliability project in its plan costing \$75 million, to be eligible a regional transmission project must cost less than \$150 million. Under the proposed avoided cost method, LS Power argues, a regional transmission project that solves the two identified reliability needs and can bring economic benefits to a transmission dependent utility or a wholesale customer of \$50 million over the next 10 years, but costs \$160 million, would never be considered under the avoided transmission cost allocation model because it costs more than the only projects that Filing Parties chose to put in their local plan.⁴²⁷ LS Power contends that Filing Parties have provided the Commission with no evidence that the avoided transmission cost method is an appropriate regional cost allocation method. LS Power further contends that acceptance of the avoided cost method will ensure that limited new transmission is built in the SERTP region and that if it is built, it will only be built by the SERTP Sponsors.⁴²⁸

⁴²⁶ E.g., Public Interest Organizations Protest at 17-20.

⁴²⁷ LS Power Protest at 23-24.

⁴²⁸ *Id.* at 24.

iii. Answer

246. SERTP Sponsors state that, in SERTP, transmission expansion is planned (and performed) to satisfy long-term firm transmission commitments, including long-term firm needs driven by economic considerations or public policy requirements. Therefore, SERTP Sponsors assert that, the transmission projects proposed for selection in the regional transmission plan for purposes of cost allocation will include those needed to satisfy economic, public policy, and/or reliability considerations underlying the long-term firm need necessitating the displaced transmission project, with the avoided cost method ensuring that costs are allocated roughly commensurate with benefits.⁴²⁹

247. SERTP Sponsors contend that LS Power's example is vague and seems to be an attempt to convert the transmission planning process into an integrated resource planning process, a result that Order No. 1000 does not require. SERTP Sponsors emphasize that to generally consider "economic" benefits would constitute resource planning, as those terms often connote production cost savings or some other type of measurement of generation cost/savings. Moreover, SERTP Sponsors state that resource and load decisions drive transmission planning in SERTP and not *vice versa*. According to SERTP Sponsors, if economic benefits are identified by a market participant (such as the availability of lower priced generation than that currently used by a load serving entity), then the appropriate resource commitments should first be made to capture those benefits in conjunction with long-term firm transmission commitments to transmit the associated power, and such commitments could result in transmission solutions. SERTP Sponsors argue that if a transmission developer believes it has a more efficient and cost-effective transmission solution to transmit that power than what is in the current iteration of the transmission expansion plan, it is free to propose a transmission project for selection in a regional transmission plan for purposes of cost allocation to displace those initially identified incremental upgrades or solutions. Accordingly, SERTP Sponsors contend, it is unquestionably feasible to capture both the reliability *and* economic benefits posited in LS Power's example pursuant to the SERTP Sponsors' existing resource/bilateral market and transmission planning process.⁴³⁰

iv. Commission Determination

248. We find that Filing Parties' proposal does not comply with the regional cost allocation principles of Order No. 1000. Filing Parties propose a single cost allocation method for allocating the costs of new transmission facilities selected in the regional

⁴²⁹ SERTP Sponsors Answer at 31-32.

⁴³⁰ *Id.* at 32-33.

transmission plan for purposes of cost allocation, regardless of whether a project will serve transmission needs driven by reliability concerns, economic considerations, or public policy requirements, or some combination thereof. Therefore, we consider here whether the proposed cost allocation method adequately assesses the potential benefits of all such transmission facilities. As a threshold matter, we find that Filing Parties' proposed avoided cost method does not satisfy Cost Allocation Principle 1 and, thus, we reject Filing Parties' cost allocation proposal as a whole.⁴³¹ Accordingly, we direct Filing Parties to file, within 120 days of the date of issuance of this order, further compliance filings that propose a cost allocation method or methods for transmission facilities selected in the regional transmission plan for purposes of cost allocation that adequately assesses the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs in a manner that satisfies the six Regional Cost Allocation Principles described in Order No. 1000.

249. We agree with LS Power and Public Interest Organizations that using a single avoided cost method to account for benefits associated with addressing reliability, economic, and public policy-related transmission needs does not satisfy Order No. 1000's regional cost allocation principles. Specifically, we find that Filing Parties' proposed cost allocation method for all transmission facilities selected in the regional transmission plan for purposes of cost allocation does not comply with Regional Cost Allocation Principle 1. Relying on the avoided cost method alone to allocate the costs of a transmission facility selected in the regional transmission plan for purposes of cost allocation does not allocate costs in a manner that is at least roughly commensurate with estimated benefits because it does not adequately assess the potential benefits provided by that transmission facility. The avoided cost method as proposed only considers as benefits the cost savings that result when a local transmission project is avoided due to the selection of a transmission facility in the regional transmission plan for purposes of cost allocation, failing to account for other benefits associated with addressing economic and public policy-related transmission needs that the regional transmission facility provides and limiting the consideration by stakeholders on a more aggregated basis of whether a particular transmission facility may represent the more efficient or cost-effective means of fulfilling a given transmission need. This limitation is inconsistent with the requirements of Order No. 1000.

250. The proposed avoided cost method fails to account for benefits that were not identified in the local transmission planning processes, but that could be recognized at the

⁴³¹ We note that the use of an avoided cost method may satisfy the regional cost allocation principles when used to measure reliability benefits. *See Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at P 311.

regional level through a regional analysis of more efficient or cost-effective solutions to regional transmission needs. The following example helps illustrate the concern: Member A has an economic transmission project in its local transmission plan that costs \$50 million and Member B has an economic transmission project in its local transmission plan that also costs \$50 million (for a total cost of \$100 million). Each of the local economic transmission projects provides \$75 million in economic benefits, for a total of \$150 million in economic benefits. Under Filing Parties' proposal, a regional transmission project that can displace the transmission need for Member A's and Member B's local economic transmission projects must cost less than \$80 million to be selected in the regional transmission plan for purposes of cost allocation (to meet the 1.25 benefit-to-cost ratio); there is no consideration of the value of further benefits that could be realized by the economic transmission project. For instance, there may be a regional economic transmission project that could provide the same economic benefit (i.e., \$150 million) as the local economic transmission projects, thus replacing both Member A's and Member B's local transmission projects, but would also bring an additional \$30 million of economic benefits to each member (such that the regional economic transmission project provides a total of \$210 million in economic benefits). However, if this regional economic transmission project costs \$120 million, it would not be approved under Filing Parties avoided cost method because it is more expensive than the two local transmission projects, and the additional \$60 million in economic benefits would not be recognized. In short, under Filing Parties' proposal, the region could identify a regional transmission project that costs a total of \$120 million and provides \$105 million dollars in economic benefits to each member (for a total of \$210 million in economic benefits), but that regional transmission project will not qualify for selection in the regional transmission plan for purposes of cost allocation, even though it would have a higher benefit-to-cost ratio,⁴³² and provide more benefits, than the economic transmission projects in the local transmission plans.

251. Furthermore, under Filing Parties' proposed regional cost allocation method, a regional transmission facility that results in a more efficient or cost-effective transmission solution than what is included in the roll-up of local transmission plans would not be eligible for regional cost allocation if there is no transmission facility in the local transmission plans that it would displace. We therefore conclude that Filing Parties' proposed regional cost allocation method fails to allow for the possibility of resolving transmission needs or realizing opportunities at a regional level where, in the local

⁴³² Specifically, each of the local economic transmission projects has benefit-to-cost ratio of 1.5 to 1. The regional economic transmission project has a benefit-to-cost ratio of 1.75 to 1 for each member.

transmission planning process, the benefits of resolving the identified transmission need or realizing the identified opportunity did not outweigh the costs of doing so.

252. The following scenario illustrates this concern: Member A and Member B of a transmission planning region both recognize the possibility of building local transmission facilities to achieve \$100 million each in production cost savings in their local transmission planning processes, for a total of \$200 million of savings. In each case, though, the local transmission facility needed to realize the identified production cost savings would cost \$150 million. Because the cost of each facility (\$150 million) would outweigh its benefits (\$100 million) in each local transmission plan, neither would be included in either of the members' local transmission plans. However, even if a regional transmission facility was proposed or otherwise identified in the regional transmission planning process that realized the same \$100 million of benefits for both Member A and Member B (i.e., a total of \$200 million in benefits), but cost only \$150 million in total, such regional transmission facility would not be selected in the regional transmission plan for purposes of cost allocation under Filing Parties' proposed cost allocation method because the local transmission facilities considered were not included in the local transmission plan and, therefore, could not be displaced.

253. In a similar fashion, Filing Parties' proposal does not provide a method to "clearly and definitively specify the benefits and the class of beneficiaries" associated with transmission facilities needed to address public policy requirements that are selected in the regional transmission plan for purposes of cost allocation.⁴³³

254. In sum, we find that a regional transmission planning process that only considers whether a proposed transmission facility would displace transmission facilities in a local transmission plan and allocates costs on that basis alone does not adequately assesses the potential benefits associated with addressing reliability, economic, and public policy-related transmission needs on a regional basis and may not account for transmission needs not identified or identified in isolation, and thus not resolved, in the local transmission planning processes. We thus conclude that Filing Parties' proposed regional cost allocation method does not allocate costs in a manner that is at least roughly commensurate with estimated benefits and, accordingly, does not comply with the requirements of Order No. 1000.

255. We note, however, that a regional cost allocation method that includes, but does not rely solely upon, avoided costs could be a reasonable approach for allocating costs in

⁴³³ See Order No. 1000-A, 139 FERC ¶ 61,132 at P 678.

a manner that is at least roughly commensurate with benefits.⁴³⁴ Such an approach could recognize additional benefits of transmission while also accounting for the value of displacing the costs of certain transmission projects from the roll-up of local transmission plans. For example, in addition to identifying as benefits the costs of avoided transmission facilities in local transmission plans, a regional cost allocation method could also identify economic benefits, such as cost savings resulting from reduced losses, production cost savings, or congestion relief,⁴³⁵ and benefits associated with addressing public policy-related transmission needs. Order No. 1000 allows a public utility transmission provider through its participation in a transmission planning region to distinguish among transmission needs driven by reliability, economics, and public policy requirements as long as each of the three types is considered in the regional transmission planning process and there is a means for allocating the costs of each type of transmission facility to beneficiaries.⁴³⁶

256. Given that we find that Filing Parties' proposed avoided cost method does not comply with Regional Cost Allocation Principle 1 because it is applied to all transmission projects selected in the regional transmission plan for purposes of cost allocation, we will not make a finding on whether Filing Parties' proposed regional cost allocation method complies with Regional Cost Allocation Principles 2 through 6. We will evaluate whether Filing Parties' revised proposal complies with all six of Order No. 1000's Regional Cost Allocation Principles in the order addressing Filing Parties' revised proposal.

257. Accordingly, as discussed above, we direct Filing Parties, within 120 days of the date of issuance of this order, to review their respective OATTs, to propose a cost allocation method or methods for transmission facilities selected in the regional transmission plan for purposes of cost allocation that adequately assesses the potential

⁴³⁴ See, e.g., *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at PP 314 (finding that the use of production cost savings and reductions in reserve sharing requirements reasonably identifies beneficiaries and accounts for economic benefits), 317 (finding that identifying beneficiaries, defining benefits, and allocating costs based on the number of megawatts of public policy resources enabled by a transmission project to address transmission needs driven by public policy requirements allocates costs in a manner that is at least roughly commensurate with estimated benefits because it reflects which entities are expected to rely on particular public policy resources to meet applicable public policy requirements).

⁴³⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622.

⁴³⁶ *Id.* P 689.

benefits associated with addressing reliability, economic, and public policy-related transmission needs in a manner that satisfies the six Regional Cost Allocation Principles as described in Order No. 1000.

The Commission orders:

(A) Filing Parties' compliance filings are hereby accepted, as modified, subject to a further compliance filing, as discussed in the body of this order.

(B) Filing Parties are hereby directed to submit a further compliance filing, within 120 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Clark is dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A: Abbreviated Names of Interveners and Commenters

The following tables contain the abbreviated names of interveners, including commenters and protestors, and answers in each docket.

Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, LG&E-KU)

Docket No. ER13-897-000

Interveners

American Electric Power Service Corporation on behalf of its affiliates:
Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power
Kingsport Power Company, Ohio Power Company, Wheeling Power
Company, AEP Appalachian Transmission Company, AEP Indiana Michigan
Transmission Company, AEP Kentucky Transmission Company, AEP Ohio
Transmission Company, and AEP West Virginia Transmission Company
(collectively, AEP)

Associated Electric Cooperative (Associated Electric)

The Board of Water, Light and Sinking Fund Commissioners of the City of Dalton,
Georgia (Dalton Utilities)

Duke Energy Carolinas, LLC and Carolina Power & Light Company (d/b/a
Progress Energy Carolinas) (collectively, Duke Companies)

Georgia Transmission Corporation (Georgia Transmission Corporation)

LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively,
LS Power)

MEAG Power (MEAG Power)

National Rural Electric Cooperative Association (National Rural Electric Coops)

Natural Resources Defense Council, Sierra Club, Southern Environmental Law
Center, and Sustainable FERC Project (collectively, Public Interest Organizations)

North Carolina Utilities Commission (North Carolina Commission)

Ohio Valley Electric Corporation (OVEC)

PowerSouth Energy Cooperative (PowerSouth)

Public Service Commission of the Commonwealth of Kentucky (Kentucky PSC)

South Mississippi Electric Power Association (SMEPA)

Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Company)

Tennessee Valley Authority (TVA)

Commenters/Protestors

Associated Electric Cooperative, Inc. (AECI), Dalton Utilities, Georgia Transmission Corporation, the Municipal Electric Authority of Georgia (MEAG), PowerSouth, SMEPA, and TVA (collectively, Non-Public Utility Sponsors)

LS Power

Public Interest Organizations

Answers

AECI, Dalton Utilities, Georgia Transmission Corporation, LG&E-KU, MEAG, OVEC, PowerSouth, Southern Company, SMEPA, and TVA (collectively, SERTP Sponsors)

Southern Company

Docket No. ER13-908-000

Intervenors

AEP

Alabama Municipal Electric Authority (Alabama Municipal Electric Authority)

Alabama Public Service Commission (Alabama PSC)

Associated Electric

Calpine Corporation (Calpine)

Dalton Utilities

Duke Companies

Florida Public Service Commission (Florida PSC)

Georgia Transmission Corporation

LG&E-KU

LS Power

MEAG Power

National Rural Electric Coops

North Carolina Commission

OVEC

PowerSouth

Public Interest Organizations⁴³⁷

SMEPA

TVA

Commenters/Protestors

Alabama PSC

LS Power

Non-Public Utility Sponsors

Public Interest Organizations⁴³⁸

⁴³⁷ Southern Alliance for Clean Energy also intervened.

⁴³⁸ Southern Alliance for Clean Energy also submitted comments.

Answers

SERTP Sponsors

OVEC

Docket No. ER13-913-000

Intervener(s)

AEP

Associated Electric

Dalton Utilities

Duke Companies

Georgia Transmission Corporation

LG&E-KU

LS Power

MEAG Power

North Carolina Commission

National Rural Electric Coops

PowerSouth

Public Interest Organizations

SMEPA

Southern Company

TVA

Commenters/Protestors

LS Power

Non-Public Utility Sponsors

Public Interest Organizations

Answers

SERTP Sponsors

accommodate the unique needs of that particular region. We will then evaluate each of the Order No. 1000 compliance filings to ensure that they satisfy these requirements.³

Not unlike the Pacific Northwest, the SERTP Sponsors' region is unique as it pertains to transmission planning—and the Commission's boilerplate response fails to accommodate the unique characteristics of this non-market, non-RTO region.

Today's order fails to note that many of the SERTP Sponsors remain vertically integrated in nature as they provide electric service to the majority of the load within the SERTP's expansive footprint. This vertically-integrated nature means that state commissions inevitably greatly influence transmission-related decisions with respect to those sponsors with significant retail load-serving responsibilities. Similarly, the Tennessee Valley Authority also retains decision-making authority for the construction of transmission lines.

I cannot support a directive in this order that would require transmission providers to select a project for cost allocation when it is unclear whether it will be able to secure the necessary governmental approvals within the desired development schedule. If the selected project is not constructed, (and presumably months, if not years will have passed), the counter-productive result will not be more cost-effective and timely built transmission, but less.

For these reasons, I respectfully dissent in part.

Tony Clark
Commissioner

³ Order No. 1000-A at P 266 (emphasis added).