

124 FERC ¶ 61,261
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwestern Power Administration

Docket No. NJ08-3-000

ORDER CONDITIONALLY GRANTING PETITION
FOR DECLARATORY ORDER

(Issued September 18, 2008)

1. On December 6, 2007, pursuant to section 35.28(e) of the Commission's regulations,¹ Southwestern Power Administration (Southwestern) submitted its transmission planning process as a proposed attachment to its Open Access Transmission Tariff (OATT), as required by Order No. 890.² In this order, we conditionally grant Southwestern's petition for declaratory order, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process.³ To remedy the

¹ 18 C.F.R. § 35.28(e) (2008).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

³ The Commission, among other things, also amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability (ATC) and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity. These reforms have been or will be addressed in other orders.

potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles (discussed below) and to clearly describe that process in a new attachment (Attachment K) to their OATTs.⁴

3. In Order No. 890, the Commission required that each transmission provider's transmission planning process satisfy the following nine principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation and to build on transmission planning efforts and processes already underway in many regions of the country. However, although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.⁵

4. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.⁶ Under this procedure, non-public

⁴ Southwestern labeled its Attachment K transmission planning process as "Attachment O." This was permitted by the Commission in Order No. 890. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 437 n.246.

⁵ As the Commission explained in Order No. 890, not all rules and practices related to transmission service, or planning activities in particular, need to be codified in the transmission provider's OATT. Rules, standards and practices that relate to, but do not significantly affect, transmission service may be placed on the transmission providers' websites, provided there is a link to those business practices on OASIS. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55. Transmission providers could therefore use a combination of tariff language in the Attachment K, and a reference to planning manuals on their website, to satisfy their planning obligations under Order No. 890.

⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,281-87, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission*
(continued...)

utilities may voluntarily submit to the Commission a transmission tariff and petition for declaratory order requesting a finding that the tariff meets the Commission's comparability (non-discrimination) standards. If the Commission finds that the terms and conditions of such a tariff substantially conform or are superior to those in the *pro forma* OATT, the Commission will deem it to be an acceptable reciprocity tariff, and will require public utilities to provide open access transmission service upon request to that particular non-public utility.⁷ Order No. 890 requires that a non-public utility that already has a safe harbor OATT must amend its OATT so that its provisions substantially conform or are superior to the new *pro forma* OTT in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.⁸

5. Southwestern is a federal power marketing administration within the United States Department of Energy; it is not a public utility subject to sections 205 and 206 of the Federal Power Act (FPA).⁹ After the issuance of Order No. 888, Southwestern sought and obtained a determination by the Commission that it had an acceptable reciprocity tariff.¹⁰ Subsequently, Southwestern made additional filings to ensure that its tariff would continue to qualify for safe harbor status. However, Southwestern has not yet filed a complete, revised reciprocity tariff to comply with Order No. 890, as discussed further below.

II. Southwestern's Filing

6. Southwestern states that it currently markets power from 24 hydroelectric projects located in the states of Arkansas, Missouri, Oklahoma, and Texas. Southwestern states, further, that it markets power in those four states, as well as Kansas and Louisiana, to cooperatives, government agencies, and municipalities, and operates transmission facilities, substations, and other facilities to fulfill its obligations. Southwestern explains

Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷ In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) standards of conduct requirements, or obtain waiver of them. *See* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191.

⁹ 16 U.S.C. §§ 824d, e (2006).

¹⁰ *See United States Department of Energy -- Southwestern Power Administration*, Docket No. NJ98-2-000 (May 13, 1998) (unpublished letter order).

that it purchases energy from other suppliers when adverse water conditions prevent it from meeting its contracts for delivery of power and energy from its own resources, and it has integrated its facilities in order to efficiently receive, transmit, and deliver power and energy.

7. Southwestern states that its transmission planning proposal reflects the provisions of an agreement between the Southwest Power Pool (SPP) and Southwestern (SPP/Southwestern Agreement). Southwestern notes that this agreement provides for: (i) reciprocal use of each party's transmission system; (ii) SPP's administration of Southwestern's OATT and OASIS; and (iii) SPP's study of transmission service requests. Southwestern states that all of its facilities are within the SPP footprint, that it participates in the SPP regional planning process, and that SPP tariff procedures govern significant aspects of Southwestern's planning process. Southwestern explains, therefore, that it drafted the proposed tariff attachment to reflect the responsibilities of both SPP and Southwestern, to ensure consistency with the provisions of the SPP/Southwestern Agreement, to provide coordinated implementation of the regional planning process, and to highlight any differences in transmission planning criteria between Southwestern and SPP. Southwestern argues that any differences between the Order No. 890 transmission planning requirements and its proposed tariff attachment recognize its obligation to comply with certain Federal statutes and regulations.¹¹

8. Southwestern acknowledges that it has not yet filed a revised reciprocity tariff to address other requirements of Order No. 890. Southwestern requests that the Commission nonetheless rule on the substance of this filing so that its tariff may be updated and that it may be recognized as participating in SPP's planning process as a transmission owner within the SPP footprint. Southwestern declares that it will make a filing to address Order No. 890's other provisions in the future. Southwestern requests that the Commission issue a declaratory order determining that its filing satisfies the planning-related requirements of Order No. 890. Southwestern requests that the revised tariff become effective February 4, 2008.

III. Notice of Filing and Responsive Pleadings

9. Notice of Southwestern's filing was published in the *Federal Register*, 72 Fed. Reg. 72,692 (2007), with interventions and protests due on or before December 28, 2007, which was later extended until January 7, 2008. None were filed.

¹¹ Southwestern notes its obligations under National Environmental Policy Act requirements, advanced funding provisions complying with the Anti-Deficiency Act, budgetary authority, and provisions pertaining to Southwestern's responsibilities under the Flood Control Act of 1944.

IV. Discussion

A. Reciprocity Tariff

10. We find that, with the revisions described below, Southwestern's Attachment O transmission planning process substantially conforms or is superior to each of the nine planning principles and other planning-related requirements in Order No. 890.¹²

11. While we accept Southwestern's transmission planning process in its Attachment O, subject to further compliance filings, we nevertheless encourage further refinements and improvements to its planning processes as it and its customers and other stakeholders gain more experience through actual implementation of the processes. Commission staff will also periodically monitor the implementation of the planning processes to determine if adjustments are necessary and will inform Southwestern and the Commission of any such recommendations. Specifically, beginning in 2009, the Commission will convene regional technical conferences similar to those conferences held in 2007 leading up to the filing of the Attachment K compliance filings. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas which may need improvement.

B. Compliance with Order No. 890's Planning Principles

1. Coordination

12. In order to satisfy the coordination principle, transmission providers must provide customers and other stakeholders the opportunity to participate fully in the planning process. The purpose of the coordination requirement, as stated in Order No. 890, is to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. The planning process must provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans, allowing customers and other stakeholders to participate in the early stages of development. In its

¹² We will not establish an effective date for Southwestern's filing. Southwestern, as noted above, is not a public utility whose rates, terms and conditions of service are subject to the requirements of FPA sections 205 and 206. As a consequence, the Commission does not "accept" such rates, terms and conditions under FPA sections 205 and 206. As a further consequence, the Commission does not determine an effective date for such rates, terms and conditions under FPA sections 205 or 206.

planning process, each transmission provider must clearly identify the details of how its planning process will be coordinated with interested parties.¹³

13. Southwestern's proposed planning process provides that it will analyze the reliability of its system on an annual basis utilizing load flow models developed in coordination with SPP. To that end, Southwestern participates in the SPP's model development process, which produces a series of seasonal models for a ten year planning horizon.¹⁴ Southwestern submits data related to model development directly to SPP, which provides stakeholder access to that data on its website.¹⁵ Southwestern's planning criteria are similarly based on the SPP planning criteria, as amended from time to time and posted on SPP's website, as well as North American Electric Reliability Corporation (NERC) reliability standards.¹⁶ The results of Southwestern's annual assessments are reported in its FERC Form 715 filing and are also used to provide input into SPP's assessments and regional transmission expansion plan.¹⁷

14. To obtain data necessary for the model development process, Southwestern tenders data requests annually to its customers and neighboring balancing authority areas.¹⁸ Data received is incorporated into power flow data submitted to SPP. Stakeholders also may participate in Southwestern's local planning process through meetings facilitated by SPP. SPP planning meetings are held at least annually to provide an open forum for transmission owners in each region, including Southwestern, to present local planning issues and cost effective solutions and stakeholders to provide input and feedback as well as propose alternative projects. SPP posts notice of the transmission planning meetings on the SPP website and via e-mail distribution lists administrated by SPP. Stakeholders also may submit questions or comments to Southwestern at any time, and Southwestern will respond to such inquiries as soon as practicable.¹⁹

¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 451-54.

¹⁴ Southwestern Attachment O, section 3.4.1.

¹⁵ Southwestern Attachment O, section 3.4.1.3.

¹⁶ Southwestern Attachment O, section 3.4.2.

¹⁷ Southwestern Attachment O, section 3.4.3.

¹⁸ Southwestern Attachment O, section 3.4.4.

¹⁹ *Id.*

Commission Determination

15. We find that Southwestern's proposed planning process partially satisfies the requirements of the coordination principle stated in Order No. 890. Stakeholders will have access to data provided by Southwestern for use by SPP in developing power flow models that are, in turn, used by Southwestern to perform its annual reliability assessments. Planning meetings held by SPP will provide an open forum for stakeholders to provide input on Southwestern's local planning issues and feedback as well as propose alternative projects. However, Southwestern's proposed tariff provisions do not provide sufficient detail explaining what role SPP will play in Southwestern's local planning activities and how stakeholders have the opportunity for timely and meaningful input and participation in the development of transmission studies, including in the early stages of development.

16. For example, Southwestern does not explain whether stakeholders will be given an opportunity to provide comment or input regarding Southwestern's annual reliability assessments before they are finalized. It is unclear what matters will be discussed at local planning meetings facilitated by SPP, the role that SPP and Southwestern, respectively, will play in those meetings, and the distinction, if any, between SPP's participation in Southwestern's local planning activities and SPP's own regional planning activities. It is also unclear whether materials to be discussed at local planning meetings will be made available sufficiently in advance of the meetings to provide for meaningful review. In addition, while stakeholders will have the ability to access data Southwestern provides to SPP for use in model development, Southwestern's proposed tariff language does not state whether stakeholders will have the ability to review and comment on that information before it is incorporated into SPP's models, nor the process for stakeholders to comment on SPP's models before they are incorporated into Southwestern's annual assessment. Similarly, Southwestern fails to identify in its proposed tariff language the process for stakeholder review and comment on Southwestern's planning criteria before it is finalized. Southwestern must revise its proposed transmission planning process to address these concerns within 90 days of issuance of this order in order to satisfy the coordination requirements of Order No. 890.

2. Openness

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

transmission plan and the planning process must remain open.²⁰ Transmission providers, in consultation with affected parties, must also develop mechanisms to manage confidentiality and Critical Energy Infrastructure Information (CEII) concerns, such as confidentiality agreements and password protected access to information.²¹

18. Southwestern's proposed tariff attachment provides that its local planning process is open to participation by all affected entities.²² However, Southwestern defines stakeholders for purposes of local planning to include only transmission customers and other entities with load served from Southwestern's system.²³ Southwestern states that all public electronic forums provided and facilitated by SPP for participation by entities, including Southwestern's stakeholders, will incorporate password-protected access for the distribution and retrieval of confidential information related to the regional planning process and modeling or project data.²⁴ In order to receive password protected access, a confidentiality agreement must be executed with SPP.

Commission Determination

19. We find that Southwestern's proposed planning process partially satisfies the requirements of the openness principle stated in Order No. 890. Southwestern states that its local planning process is open to participation by all affected entities and that the information maintained on the SPP website will be available to all stakeholders, subject to confidentiality restrictions. However, Southwestern's definition of stakeholder appears to exclude certain interested parties that may not fit within that definition, such as resource developers and regulators. Southwestern also fails to identify mechanisms to manage confidentiality and CEII concerns for planning-related information beyond that which is maintained by SPP on its website, such as information provided by stakeholders for use in Southwestern's planning activities and information provided by Southwestern to stakeholders in response to inquiries. Southwestern must revise its proposed

²⁰ The Commission stated in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

²¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

²² Southwestern Attachment O, section 3.2.

²³ *Id.*

²⁴ Southwestern Attachment O, section 8.0.

transmission planning process to address these concerns within 90 days of issuance of this order in order to satisfy the openness requirements of Order No. 890.

3. Transparency

20. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. To that end, each transmission provider must describe in its planning process the method(s) it will use to disclose the criteria, assumptions and data that underlie its transmission system plans.²⁵ The Commission specifically found that simple reliance on Form Nos. 714 and 715 failed to provide sufficient information to provide transparency in planning because those forms were designed for different purposes. Transmission providers also were directed to provide information regarding the status of upgrades identified in the transmission plan.

21. The Commission explained that sufficient information should be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained in Order No. 890 that simultaneous disclosure of transmission planning information should alleviate Standards of Conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand resources in transmission planning. Where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis.²⁶

22. As noted above, Southwestern will utilize load flow models developed by SPP to perform its annual reliability assessments.²⁷ Southwestern will submit data related to model development electronically to SPP, including various supporting files that document Southwestern's compliance and participation in the model update process.²⁸

²⁵ In Order No. 890-A, the Commission stated that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to adequately understand the results reached in a transmission plan. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 199.

²⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-79.

²⁷ Southwestern Attachment O, section 3.4.3.

²⁸ Southwestern Attachment O, section 3.4.1.3.

Any entity, including Southwestern and its stakeholders, that obtains access to the SPP modeling and data coordination website may access all electronic files that have been submitted by Southwestern and other transmission owners located within the SPP footprint. Access to this website is granted by SPP. Southwestern also will use SPP planning criteria in performing its annual reliability assessments.²⁹ Southwestern states that the SPP planning criteria are posted on SPP's website, although Southwestern may at times modify those criteria in its planning process.

Commission Determination

23. We find that Southwestern's proposed planning process partially satisfies the requirements of the transparency principle stated in Order No. 890. Southwestern will rely on models and planning criteria that are developed by SPP and posted on its website. Data submitted by Southwestern supporting model development also will be posted on the SPP website. However, Southwestern states that it may modify the SPP planning criteria during its planning process, which could impact the assumptions that underlie Southwestern's reliability assessment. Southwestern does not state whether modified criteria or assumptions would be posted for stakeholder review. In addition, Southwestern proposes to report the results of its reliability assessments through its FERC Form 715. In Order No. 890, the Commission found that the information provided in Form 715 was insufficient to provide customers and others with adequate information to ensure that planning is being conducted on a comparable basis.³⁰ The Commission therefore required transmission providers to disclose all criteria, assumptions, and data that underlie transmission system plans in sufficient detail to allow stakeholders and other interested parties to replicate planning studies.³¹ The Commission also required transmission providers to provide information regarding the status of upgrades identified in transmission plans, which Southwestern does not address.³² Southwestern must revise its proposed transmission planning process to address these concerns within 90 days of issuance of this order in order to satisfy the transparency requirements of Order No. 890.

4. Information Exchange

24. The information exchange principle requires network customers to submit information on their projected loads and resources on a comparable basis (e.g., planning

²⁹ Southwestern Attachment O, section 3.4.2.

³⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 477-78.

³¹ *Id.* P 471.

³² *Id.* P 472.

horizon and format) as used by transmission providers in planning for their native load. Point-to-point customers are required to submit any projections that have a need for service over the planning horizon and at what receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as a proxy for actual reservations.³³ Transmission providers, in consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

25. The Commission also provided that, to the extent applicable, transmission customers should provide information on existing and planned demand resources and their impacts on demand and peak demand. Stakeholders, in turn, should provide proposed demand resources if they wish to have them considered in the development of the transmission plan. The Commission stressed that information collected by transmission providers to provide transmission service to their native load customers must be transparent and equivalent information must be provided by transmission customers to ensure effective planning and comparability. In Order No. 890-A, the Commission made clear that customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer, and that the transmission provider must maintain the confidentiality of this information. To this end, transmission providers must clearly define in their Attachment K the information sharing obligations placed on customers in the context of economic planning.³⁴

26. The Commission emphasized that transmission planning is not intended to be limited to the mere exchange of information and after the fact review of transmission provider plans. The planning process is instead intended to provide a meaningful opportunity for customers and stakeholders to engage in planning along with their transmission providers. To that end, the Commission clarified that information exchange relates to planning, not other studies performed in response to interconnection or transmission service requests.³⁵

27. Southwestern states that it will request that entities with loads located in Southwestern's balancing authority area or served from the Southwestern system submit load projections for summer and winter peaks through the ten year planning horizon and

³³ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 207.

³⁴ *Id.* P 206.

³⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 486-88.

specify the source(s) of power that will be utilized to serve such loads.³⁶ As noted above, Southwestern will tender formal data requests annually to its customers to obtain data necessary for the development of load flow models used in the planning process.³⁷

Commission Determination

28. We find that Southwestern's proposed planning process partially satisfies the requirements of the information exchange principle stated in Order No. 890. Southwestern identifies particular information that must be submitted by entities being served by Southwestern for inclusion in its transmission planning process. However, the scope of information sought by Southwestern is limited and does not include, for example, the opportunity to submit forecasts regarding resource investments made by entities that are not currently customers. In addition, Southwestern does not identify the timeframe for submission of information regarding projected loads and resources. Southwestern must revise its proposed transmission planning process to address these concerns within 90 days of issuance of this order in order to satisfy the information exchange requirements of Order No. 890.

5. Comparability

29. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop a transmission system plan that meets the specific service requests of their transmission customers and otherwise treats similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. In Order No. 890, the Commission expressed concern that transmission providers have historically planned their transmission systems to address their own interests without regard to, or ahead of, the interests of their customers. Through the comparability principle, the Commission required that the interests of transmission providers and their similarly-situated customers be treated on a comparable basis during the planning process. The Commission also explained that demand resources should be considered on a comparable basis to the service provided by comparable generation resources where appropriate.³⁸

30. Southwestern states that it will treat all similarly-situated customers comparably for transmission planning, subject to the federal statutes and regulations applicable to

³⁶ Southwestern Attachment O, section 3.4.1.1.

³⁷ Southwestern Attachment O, section 3.4.4.

³⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 494-95.

Southwestern.³⁹ As noted above, local planning meetings facilitated by SPP will provide an open forum for transmission owners in each region, including Southwestern, to present local planning issues and cost effective solutions and stakeholders to provide input and feedback as well as propose alternative projects.⁴⁰

Commission Determination

31. We find that Southwestern's proposed planning process satisfies the requirements of the comparability principle as stated in Order No. 890. Southwestern commits to treat all similarly-situated customers comparably in its planning process. However, we note that Order No. 890-A was issued on December 27, 2007, after Southwestern had submitted its Order No. 890 Attachment K compliance filing. In Order No. 890-A, the Commission provided additional guidance concerning, among other things, how a transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process "how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning."⁴¹ Here, Southwestern has not addressed how it will treat demand resources comparably. However, since Order No. 890-A was issued subsequent to the filing before us, Southwestern did not have an opportunity to demonstrate that it satisfies this requirement of Order No. 890-A. Southwestern must revise its proposed transmission planning process to address these concerns within 90 days of issuance of this order in order to satisfy the comparability requirements of Order No. 890.⁴²

6. Dispute Resolution

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

³⁹ Southwestern Attachment O, section 9.0.

⁴⁰ Southwestern Attachment O, section 3.4.4.

⁴¹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, 487, 494, and 549.

⁴² For example, tariff language should provide for participation throughout the transmission planning process by sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources.

planning. The Commission encouraged transmission providers, customers, and other stakeholders to utilize the Commission's Dispute Resolution Service to help develop a three step dispute resolution process, consisting of negotiation, mediation, and arbitration. In order to facilitate resolution of all disputes related to planning activities, a transmission provider's dispute resolution process must be available to address both procedural and substantive planning issues. The Commission made clear, however, that all affected parties retain any rights they may have under FPA section 206 to file complaints with the Commission.⁴³

33. Southwestern states that a stakeholder having a dispute regarding Southwestern's actions in either local or regional planning may seek dispute resolution with Southwestern using the dispute resolution process outlined in section 12 of Southwestern's OATT.

Commission Determination

34. We find that Southwestern's proposed planning process, with the modification required below, satisfies the requirements of the dispute resolution principle as stated in Order No. 890. Southwestern relies on the existing dispute resolution provisions of its OATT to manage both procedural and substantive disputes that arise from the planning process. However, those provisions apply only to disputes between Southwestern and its transmission customers. Southwestern therefore has not identified a process for resolving disputes that may arise with or among stakeholders, SPP, or other entities with which Southwestern interacts in the transmission planning process. Southwestern must revise its proposed transmission planning process to address this concern within 90 days of issuance of this order in order to satisfy the dispute resolution requirements of Order No. 890.⁴⁴

⁴³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-03.

⁴⁴ We also note that Southwestern's dispute resolution provisions omit the second step, mediation, of a three step dispute resolution process consisting of negotiation, mediation and arbitration. While we are not requiring Southwestern to include mediation, we strongly encourage it to consider including a mediation step in its dispute resolution process. We have found that a high percentage of disputes sent to the Commission's Dispute Resolution Service or another mediator or an Administrative Law Judge serving as a Settlement Judge settle without adjudication. If Southwestern desires to include the mediation step, it should do so in the filing required in this order.

7. Regional Participation

35. The regional participation principle provides that, in addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider is required to coordinate with interconnected systems to: (i) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data; and (ii) identify system enhancements that could relieve congestion or integrate new resources. The Commission stated that the specific features of the regional planning effort should take account of and accommodate, where appropriate, existing institutions, as well as physical characteristics of the region and historical practices. The Commission declined to mandate the geographic scope of particular planning regions, instead stating that the geographic scope of a planning process should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and sub-regions. The Commission also made clear that reliance on existing NERC planning processes may not be sufficient to meet the requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations. To the extent a transmission provider's implementation of NERC processes is not appropriate for economic issues, individual regions or sub-regions must develop alternative processes.⁴⁵

36. In Order No. 890-A, the Commission clarified that while the obligation to engage in regional coordination is directed to transmission providers, participation in such processes is not limited to transmission providers and should be open to all interested customers and stakeholders.⁴⁶ In Order No. 890-A, the Commission also emphasized that effective regional planning should include coordination among regions and sub-regions as necessary, in order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.⁴⁷

37. Southwestern states that it participates in regional planning facilitated by SPP that includes all or portions of the SPP footprint and those transmission facilities that are not a part of SPP, but which are in close electrical vicinity to the Southwestern system and could impact the reliability of the transmission system.⁴⁸ Although Southwestern is not bound by Attachment O of the SPP OATT governing SPP's transmission planning

⁴⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-28.

⁴⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

⁴⁷ *Id.*

⁴⁸ Southwestern Attachment O, section 4.3.

activities,⁴⁹ Southwestern has agreed to voluntarily comply pursuant to the SPP/Southwestern Agreement.⁵⁰ To that end, Southwestern will participate in the annual stakeholder process facilitated by SPP to develop the SPP transmission expansion plan.⁵¹ SPP provides notice of the commencement of its annual stakeholder process via e-mail to the SPP transmission working group, which includes Southwestern and other stakeholders, and postings on the SPP website. For purposes of Southwestern's participation in regional planning, stakeholders are defined to include transmission customers and other entities with load served from Southwestern's system and entities, including neighboring balancing authority areas, and utilities with which Southwestern has transmission and generation interconnections.

38. Southwestern explains that SPP also performs reliability assessments for the Southwestern system and evaluates historical congestion and that Southwestern provides feedback to SPP regarding alternatives based on Southwestern's own assessments of its system.⁵² Southwestern states that SPP uses the same model development and planning criteria for regional transmission planning as Southwestern uses for its local planning.

Commission Determination

39. We find that Southwestern's proposed planning process partially satisfies the requirements of the regional participation principle stated in Order No. 890. Southwestern will participate in SPP's development of a regional transmission expansion plan pursuant to Attachment O of the SPP OATT. The Commission has found that SPP's regional planning activities satisfy the requirements of Order No. 890 as they relate to transmission owners within the SPP footprint, such as Southwestern.⁵³ However, Southwestern does not clearly explain the relationship between the reliability assessment SPP performs for the Southwestern system and Southwestern's participation in the development of SPP's transmission expansion plan. In addition, as discussed in the Coordination section above, Southwestern may alter that planning criteria for local planning activities. To the extent Southwestern intends to rely on SPP procedures for coordinating its local reliability assessments or planning criteria, it should specifically

⁴⁹ The Commission accepted SPP's Attachment O, subject to modification, in *Southwest Power Pool*, 124 FERC ¶ 61,028 (2008).

⁵⁰ Southwestern Attachment O, section 4.4.

⁵¹ Southwestern Attachment O, section 4.4.

⁵² Southwestern Attachment O, section 4.4.3.

⁵³ *Southwest Power Pool*, 124 FERC ¶ 61,028 at P 49.

refer to those procedures, as provided for in Attachment O to SPP's OATT.⁵⁴ Finally, we are concerned that Southwestern's definition of stakeholder for purposes of regional planning may unduly restrict the ability of all interested parties to participate in regional planning activities, such as resource developers and regulators. Southwestern must revise its proposed transmission planning process to address these concerns within 90 days of issuance of this order in order to satisfy the regional participation requirements of Order No. 890.

40. Southwestern also fails to identify a process for coordinating economic studies on a regional basis. As discussed below, Southwestern states that SPP performs any economic planning studies for Southwestern's transmission system, but does not explain whether those studies also relate to other transmission systems within the SPP footprint. In Order No. 890, the Commission required transmission providers to develop open and coordinated regional planning processes that address both reliability and economic considerations.⁵⁵ The Commission concluded that customers must be allowed to request that economic upgrades be studied and, therefore, required transmission providers to coordinate on those issues as necessary in sub-regional or regional planning processes.⁵⁶ Southwestern must revise its proposed transmission planning process to provide for a process to coordinate economic studies on a regional basis within 90 days of issuance of this order in order to satisfy the regional participation requirements of Order No. 890.

8. Economic Planning Studies

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

⁵⁴ If Southwestern intends to rely on SPP documentation for these purposes, it should provide direct links (i.e., URLs) to the appropriate documents on the SPP website.

⁵⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 528.

⁵⁶ *Id.*

42. All transmission providers, including RTOs and ISOs, were directed to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies would be recovered as part of the transmission provider's overall OATT cost of service, while the cost of additional studies would be borne by the stakeholder(s) requesting the study.⁵⁷

43. In Order No. 890-A, the Commission made clear that the transmission provider's planning process must clearly describe the process by which economic planning studies can be requested and how they will be prioritized.⁵⁸ In Order No. 890-A, the Commission also made clear that a transmission provider's affiliates should be treated like any other stakeholder and, therefore, their requests for studies should be considered comparably, pursuant to the process outlined in the transmission provider's planning process.⁵⁹

44. Southwestern states that SPP will perform any economic planning studies for Southwestern's transmission system.⁶⁰ Southwestern's participation in such planning studies is provided for in the SPP/Southwestern Agreement.

Commission Determination

45. We find that Southwestern's proposed planning process partially satisfies the economic planning studies principle stated in Order No. 890. Southwestern states that economic planning studies for Southwestern's transmission system will be performed by SPP, which we recently found has adopted adequate procedures to govern the study of economic upgrades.⁶¹ However, Southwestern fails to identify whether the process for requesting and obtaining economic planning studies for the Southwestern system will differ from requests received pursuant to the economic planning process set forth in Attachment O to SPP's OATT and, if so, what that process will be. Also, to the extent Southwestern intends to rely on SPP procedures for coordinating its economic planning studies, it should specifically refer to those procedures, as provided for in Attachment O to SPP's OATT. Southwestern must revise its proposed transmission planning process to

⁵⁷ *Id.* P 542-51.

⁵⁸ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

⁵⁹ *Id.*

⁶⁰ Southwestern Attachment O, section 4.4.3.

⁶¹ *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028 at P 55.

address these concerns within 90 days of issuance of this order in order to satisfy the economic planning requirements of Order No. 890.

9. Cost Allocation

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

47. The Commission did not prescribe any specific cost allocation methodology in Order No. 890. The Commission instead suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.⁶² In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.⁶³

48. Southwestern states that the cost of reliability upgrades is incorporated into its rates for transmission service. The responsibility of point-to-point customers for requested upgrades is outlined in section 27 of Southwestern's OATT, and Southwestern's responsibility for upgrading its system to serve network customers is outlined in section 28.⁶⁴ Cost allocation for regional projects is outlined in the

⁶² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-61.

⁶³ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

⁶⁴ Southwestern Attachment O, section 7.0.

SPP/Southwestern Agreement, which provides that costs associated with new or upgraded transmission facilities will be allocated in accordance with the SPP OATT.

Commission Determination

49. We find that Southwestern's proposed planning process partially satisfies the cost allocation principle stated in Order No. 890. The cost of facilities constructed in response to requests for service will be recovered pursuant to Southwestern's OATT. Cost allocation for projects identified in SPP's regional transmission expansion plan will be allocated pursuant to the SPP OATT, to which Southwestern has agreed to be bound. However, Southwestern does not address whether SPP's cost allocation methodology will address potential economic upgrades to Southwestern's system identified in its local planning process. Southwestern must revise its proposed transmission planning process to address this concern within 90 days of issuance of this order in order to satisfy the cost allocation requirements of Order No. 890.

C. Recovery of Planning Costs

50. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically addressing that issue after discussing the nine principles that govern the planning process. The Commission directed transmission providers to work with other participants in the planning process to develop cost recovery proposals in order to determine whether all relevant parties, including state agencies, have the ability to recover the costs of participating in the planning process. The Commission also suggested that transmission providers consider whether mechanisms for regional cost recovery may be appropriate, such as through agreements (formal or informal) to incur and allocate costs jointly.⁶⁵

51. Southwestern's Attachment O is silent with respect to recovery of planning costs.

Commission Determination

52. Southwestern has not addressed how it will recover its planning costs. Southwestern must revise its proposed transmission planning process to address the recovery of its planning costs within 90 days of issuance of this order in order to satisfy the cost allocation requirements of Order No. 890.

D. Filing Fee

53. We will grant Southwestern's request for exemption from the filing fee. As we stated in Order No. 888-A, "[the Commission's] regulations specifically exempt states,

⁶⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586.

municipalities, and anyone who is engaged in the official business of the Federal Government from filing fees.”⁶⁶ Because Southwestern is an agency of the United States Department of Energy engaged in the official business of the federal government, we will grant Southwestern’s request that it be excused from paying the filing fee.

The Commission orders:

(A) Southwestern’s petition for declaratory order is hereby granted, subject to modification, as discussed in the body of this order.

(B) Southwestern’s request for exemption from the filing fee is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶⁶ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89.