

143 FERC ¶ 61,254
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.

Tampa Electric Company	Docket Nos. ER13-80-000
Duke Energy Carolinas, LLC	ER13-86-000
Florida Power & Light Company	ER13-104-000
Orlando Utilities Commission	NJ13-2-000

ORDER ON COMPLIANCE FILINGS

(June 20, 2013)

	<u>Paragraph Numbers</u>
I. Background	<u>3.</u>
II. Compliance Filings	<u>6.</u>
III. Notices of Filings and Responsive Pleadings.....	<u>8.</u>
IV. Discussion	<u>11.</u>
A. Procedural Matters	<u>11.</u>
B. Substantive Matters	<u>13.</u>
1. Regional Transmission Planning Requirements.....	<u>16.</u>
a. Transmission Planning Region.....	<u>17.</u>
i. Florida Parties' Filings	<u>20.</u>
ii. Protests/Comments	<u>23.</u>
iii. Commission Determination.....	<u>24.</u>
b. Regional Transmission Planning Process General Requirements	<u>32.</u>
i. Florida Parties' Filings	<u>34.</u>
ii. Protests/Comments	<u>36.</u>
iii. Answers	<u>37.</u>
iv. Commission Determination	<u>39.</u>
c. Requirement to Plan on a Regional Basis to Identify More Efficient or Cost- Effective Transmission Solutions	<u>44.</u>
i. Affirmative Obligation to Plan	<u>47.</u>
(a) Florida Parties' Filings.....	<u>47.</u>
(b) Protests/Comments	<u>48.</u>

(c) Answers.....	<u>51.</u>
(d) Commission Determination	<u>53.</u>
ii. Minimum Threshold Requirements for CEERTS Projects	<u>57.</u>
(a) Florida Parties’ Filings.....	<u>57.</u>
(b) Protests/Comments	<u>58.</u>
(c) Answers.....	<u>61.</u>
(d) Commission Determination	<u>64.</u>
iii. Merchant Transmission Developers	<u>70.</u>
(a) Florida Parties’ Filings.....	<u>70.</u>
(b) Protests/Comments	<u>71.</u>
(c) Commission Determination	<u>72.</u>
d. Consideration of Transmission Needs Driven by Public Policy Requirements	<u>73.</u>
i. Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process	<u>78.</u>
(a) Florida Parties’ Filings.....	<u>78.</u>
(b) Protests/Comments	<u>79.</u>
(c) Answers.....	<u>82.</u>
(d) Commission Determination	<u>84.</u>
ii. Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Local Transmission Planning Process.....	<u>91.</u>
(a) Florida Parties’ Filings.....	<u>91.</u>
(b) Protests/Comments	<u>92.</u>
(c) Commission Determination	<u>93.</u>
2. Nonincumbent Transmission Developer Reforms	<u>94.</u>
a. Federal Rights of First Refusal.....	<u>95.</u>
i. Florida Parties’ Filings	<u>98.</u>
ii. Protests/Comments	<u>101.</u>
iii. Florida Companies’ Answer.....	<u>103.</u>
iv. Commission Determination.....	<u>104.</u>
b. Qualification Criteria.....	<u>110.</u>
i. Technical Criteria	<u>113.</u>
(a) Florida Parties’ Filings.....	<u>113.</u>
(b) Protests/Comments	<u>117.</u>
(c) Florida Companies’ Answer	<u>122.</u>
(d) Commission Determination	<u>128.</u>
ii. Financial Criteria	<u>136.</u>
(a) Florida Parties’ Filings.....	<u>136.</u>
(b) Protests/Comments	<u>139.</u>
(c) Answer	<u>142.</u>
(d) Commission Determination	<u>145.</u>
c. Information Requirements.....	<u>154.</u>
i. Florida Parties’ Filings	<u>156.</u>

ii. Protests/Comments	<u>160.</u>
iii. Florida Companies' Answer.....	<u>163.</u>
iv. Commission Determination.....	<u>165.</u>
d. Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation	<u>172.</u>
i. Florida Parties' Filings	<u>174.</u>
ii. Protests/Comments	<u>179.</u>
iii. Answer.....	<u>185.</u>
iv. Commission Determination.....	<u>194.</u>
e. Reevaluation Process for Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation	<u>201.</u>
i. Florida Parties' Filings	<u>202.</u>
ii. Protests/Comments	<u>205.</u>
iii. Commission Determination.....	<u>206.</u>
f. Cost Allocation for Projects Selected in the Regional Transmission Plan for Purposes of Cost Allocation.....	<u>211.</u>
i. Florida Parties' Filings	<u>213.</u>
ii. Protests/Comments	<u>214.</u>
iii. Commission Determination.....	<u>215.</u>
3. Cost Allocation	<u>217.</u>
a. Cost Allocation Principles.....	<u>228.</u>
i. Florida Parties' Filings	<u>228.</u>
ii. Protests/Comments	<u>233.</u>
iii. Answers	<u>237.</u>
iv. Commission Determination.....	<u>246.</u>
b. Third Party Impact Cost Allocation	<u>256.</u>
i. Florida Parties' Filings	<u>256.</u>
ii. Protests/Comments	<u>257.</u>
iii. Answers	<u>259.</u>
iv. Commission Determination	<u>262.</u>
c. Cost Recovery	<u>264.</u>
i. Florida Parties' Filings	<u>264.</u>
ii. Protests/Comments	<u>268.</u>
iii. Answers	<u>273.</u>
iv. Commission Determination	<u>283.</u>
d. Cost Allocation of Transmission Rights	<u>291.</u>
i. Florida Parties' Filings	<u>291.</u>
ii. Protests/Comments	<u>292.</u>
iii. Answers	<u>293.</u>
iv. Commission Determination.....	<u>295.</u>
C. Non-Substantive Revisions to Attachments K/N-2.....	<u>296.</u>

1. On October 11, 2012, Tampa Electric Company (Tampa Electric), and Florida Power & Light Company (Florida Power & Light) submitted, under section 206 of the Federal Power Act (FPA),¹ revisions to Attachment K² of their Open Access Transmission Tariffs (OATT) to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.³ In addition, on October 11, 2012, Duke Energy Carolinas, LLC submitted on behalf of Florida Power Corporation (Florida Power),⁴ under section 206 of the FPA,⁵ revisions to Attachment N-2⁶ of Duke Energy Carolinas, LLC's OATT to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.⁷ Also, on October 11, 2012, Orlando Utilities Commission (Orlando) submitted revisions to its Attachment K⁸ to update its transmission planning process consistent with the Attachments K/N-2s submitted by Tampa Electric, Florida Power, and Florida Power &

¹ 16 U.S.C. § 824e (2006).

² Tampa Electric Company, OATT, Fourth Rev. Vol. No. 4, Sheet No. 116 (Attachment K Transmission Planning Process) (1.0.0); Florida Power & Light Company, FPL OATT, Attachment K, § 9 (Cost Allocation) (0.0.0); and Duke Energy Florida, Inc., FERC FPA Electric Tariff, Attachment N-2, Transmission Planning Process (FPC Zone).

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

⁴ Effective April 29, 2013, Florida Power changed its name from "Florida Power Corporation" to "Duke Energy Florida, Inc." However for consistency with Florida Power's filing, which was submitted prior to April 29, 2013, we refer to Florida Power throughout this order.

⁵ 16 U.S.C. § 824e (2006).

⁶ Duke Energy Carolinas, LLC, FERC FPA Electric Tariff, Attachment N-2, Transmission Planning Process (FPC Zone) (3.0.0).

⁷ Duke Energy Carolinas, LLC filed on behalf of its affiliate, Florida Power. Florida Power is a subsidiary of Duke Energy Corporation and shares a Joint OATT with Duke Energy Carolinas, LLC.

⁸ Orlando Utilities Commission, FERC Electric Tariff, Attachment K (Transmission Planning Process) (0.0.0).

Light.⁹ In this order, we will refer to Tampa Electric, Florida Power, Florida Power & Light, and Orlando collectively as Florida Parties.¹⁰

2. In this order, we accept Tampa Electric's, Florida Power's, and Florida Power & Light's compliance filings, subject to further compliance filings, as discussed below. We also find that, subject to the modifications discussed below, Orlando's Attachment K fulfills the requirements of Order No. 1000.

I. Background

3. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890¹¹ to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by Public Policy Requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain

⁹ Orlando submitted revisions to its safe harbor OATT transmission planning process under section 206 of the FPA in compliance with Order No. 1000. However, Orlando is not a public utility under section 201 of the FPA and is not subject to the requirements of FPA sections 205 and 206; therefore, we will review Orlando's proposed revisions to its transmission planning process under the reciprocity standard to determine whether such revisions substantially conform or are superior to the *pro forma* OATT, as modified by Order No. 1000.

¹⁰ In this order, we describe Florida Parties' revised Attachments K/N-2 and their compliance or conformance with Order No. 1000 collectively. Because Orlando is not a public utility, it is not subject to Commission directives made pursuant to FPA section 206; however, in reviewing Orlando's Attachment K, the Commission indicates further revisions are needed in order for Orlando's Attachment K to substantially conform to the *pro forma* OATT, as modified by Order No. 1000.

¹¹ *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).

new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

4. 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.

5. 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.¹² Order No. 1000 does not prescribe the exact manner in which public utility transmission providers must fulfill the regional transmission planning requirements.¹³ 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.¹⁴ 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. 1000.¹⁵

II. Compliance Filings

6. Florida Parties submitted, in separate dockets, coordinated compliance filings that revise their respective Order No. 890-compliant transmission planning processes. Their individual filings contain largely uniform transmittal letters and proposed OATT

¹² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

¹³ *Id.* P 157.

¹⁴ *Id.* P 604.

¹⁵ *Id.* P 13.

revisions¹⁶ that seek to establish new transmission planning responsibilities for the Florida Reliability Coordinating Council, Inc. (FRCC), which is the regional entity that, among other duties, currently oversees the development of a ten-year regional transmission plan for the FRCC footprint. Florida Parties propose to revise their transmission planning process to meet Order No. 1000's requirements by adding provisions establishing a new category of transmission facilities, Cost Effective and/or Efficient Regional Transmission Solution (CEERTS) projects, that will be considered for selection in the regional transmission plan for purposes of cost allocation. Florida Parties request that their compliance filings be effective at the start of the transmission planning cycle following the Commission's acceptance of their compliance filings.

7. The FRCC regional transmission planning process begins with the consolidation of the long-term transmission plans of all of the transmission providers in the FRCC region. Currently, each transmission owner in the FRCC is responsible for upgrading its respective transmission system at the local and regional level and, on an annual basis, submits to the FRCC its ten-year site plan, which includes all transmission facilities 69 kV and above, generation expansion plans for load serving entities, firm/network use of transmission, and any planned/proposed transmission system changes, including additions, cancellations, deferrals, and retirements, by transmission owners/providers.¹⁷ Once consolidated, these individual ten-year site plans become the initial regional transmission plan that is reviewed by the FRCC as well as all interested transmission customers.¹⁸

III. Notices of Filings and Responsive Pleadings

8. Notices of Florida Parties' filings were published in the *Federal Register*, 77 Fed. Reg. 64,502 (2012), with interventions and protests due on or before November 26, 2012.

9. American Wind Energy Association, Jacksonville Electric Authority (JEA), Calpine Corporation (Calpine), Reedy Creek Improvement District, Florida Municipal Power Agency and Seminole Electric Cooperative, Inc. (FMPA/Seminole) filed motions to intervene.

¹⁶ Given this uniformity, the Commission will cite to the transmittal letter and OATT of a single filing party, Florida Power & Light Company when referencing Florida Parties' proposal. Where differences between or among the filings are addressed, the Commission will cite to that individual filing party's filing as appropriate.

¹⁷ Florida Power & Light Co., FPL OATT, Attachment K § 7.

¹⁸ *Tampa Electric Co.*, 124 FERC ¶ 61,026 at P 23.

10. LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively LS Power) filed a motion to intervene and protest, FMPA/Seminole filed a protest, and Calpine filed comments. National Rural Electric Cooperative filed an out-of-time motion to intervene. Florida Public Service Commission (Florida Commission) filed a motion to intervene. Tampa Electric, Florida Power, Florida Power & Light and, JEA (collectively Florida Companies) filed an answer to comments and protests.¹⁹ FMPA/Seminole filed an answer to Florida Companies' answer.²⁰

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding, the absence of any undue prejudice or delay, and their interest in this proceeding, we will grant the untimely, unopposed interventions.

12. 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 answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

13. We find that Tampa Electric's, Florida Power's, and Florida Power & Light's compliance filings partially comply with the regional transmission planning and cost

¹⁹ Florida Companies explain that while Orlando's compliance filing is substantially similar to the Florida Parties' compliance filings, no comments or protests were filed in Docket No. NJ13-2-000. Therefore, Florida Companies explain that Orlando is not directly answering the protests submitted in Docket Nos. ER13-80-000, ER13-86-000, or ER13-104-000.

²⁰ On November 28, 2012, as revised on November 29, 2012, FMPA/Seminole submitted a proposed protective agreement and requested that form be used instead of the protective order proposed by the Florida Parties in their compliance filing. Proposed Form of Protective Agreement of Florida Municipal Power Agency and Seminole Electric Cooperative, Inc. under ER13-80, *et al.*, submitted November 28, 2012. FMPA/Seminole subsequently revised their proposed protective agreement. Revised Form of Protective Agreement of Florida Municipal Power Agency and Seminole Electric Cooperative, Inc. under ER13-80, *et al.*, submitted November 29, 2012.

allocation requirements adopted in Order No. 1000. Accordingly, we accept Tampa Electric's, Florida Power's, and Florida Power & Light's compliance filings to be effective as discussed in the body of this order, subject to further compliance filings as discussed below. We direct Tampa Electric, Florida Power, and Florida Power & Light to file the further compliance filings within 120 days of the date of issuance of this order.

14. Orlando's Attachment K is essentially the same as Tampa Electric's, Florida Power's, and Florida Power & Light's Attachments K/N-2 and, therefore, we find that, with the modifications discussed throughout this order, it satisfies the requirements of Order No. 1000.

15. While the Commission finds that Tampa Electric's, Florida Power's, and Florida Power & Light's compliance filings partially comply with the regional transmission planning and cost allocation requirements adopted in Order No. 1000, as discussed throughout this order, we are concerned that Florida Parties' proposed regional transmission planning process does not go beyond Order No. 890's regional transmission planning requirements, as it does not require that the transmission providers in the FRCC region develop a single transmission plan for the region that reflects their determination of the set of transmission facilities that more efficiently or cost-effectively meets the region's transmission needs.²¹

1. Regional Transmission Planning Requirements

16. 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.²² The regional transmission plan will identify transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related²³ needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.²⁴ 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-

²¹ See, e.g., sections on Affirmative Obligation to Plan, IV.B.1.c.i(d); Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation, IV.B.2.d.iv; and Cost Allocation Principles, IV.B.3.a.iv.

²² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

²³ Public Policy Requirements are defined and described below.

²⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 11, 148.

discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet a transmission planning region's needs more efficiently and cost-effectively.²⁵

a. Transmission Planning Region

17. 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.²⁶ 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.²⁷ However, an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements of Order No. 1000.²⁸

18. 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. 1000.²⁹ 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.³⁰ 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.³¹

19. 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

²⁵ *Id.* PP 4, 6.

²⁶ *Id.* P 160.

²⁷ *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

²⁸ *Id.* P 160.

²⁹ *Id.* PP 65, 162.

³⁰ *Id.*

³¹ *Id.*

part of the transmission planning region.³² 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.³³ 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.³⁴

i. Florida Parties' Filings

20. Florida Parties state that the FRCC's transmission planning region complies with the requirements of Order No. 1000. Florida Parties explain that the FRCC transmission planning region was approved by the Commission as a planning region during the Order No. 890 compliance approval process,³⁵ and that the Commission identified the FRCC transmission planning region as an Order No. 890 compliant transmission region in Order No. 1000.³⁶ Thus, Florida Parties assert that the FRCC transmission planning region should continue to be a transmission planning region for purposes of Order No. 1000 compliance.³⁷ Florida Parties state that the scope of the FRCC transmission planning region encompasses three investor-owned public utilities and two large municipal utilities in Florida.³⁸ Florida Parties note that the FRCC already engages in regional transmission planning and facilitates coordinated planning by all transmission providers, owners, and stakeholders within the FRCC transmission planning region.³⁹

³² Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

³³ *Id.*

³⁴ *Id.* PP 276-277.

³⁵ Florida Power & Light Co., Transmittal Letter at 3 (citing *Tampa Electric Co.*, 124 FERC ¶ 61,026 (2008) (Order No. 890 Compliance Order)).

³⁶ *Id.* at 8 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 21 n.16.)

³⁷ *Id.*

³⁸ Florida Power & Light Co., Transmittal Letter at 2 referring to: Tampa Electric, Florida Power, Florida Power & Light, JEA, and Orlando.

³⁹ *Id.* at 3.

21. Florida Parties state that they provide an opportunity for non-public utility transmission providers registered with the North American Electricity Reliability Corporation (NERC) as Transmission Service Providers⁴⁰ to enroll in the FRCC Order No. 1000 transmission planning and cost allocation processes.⁴¹ Florida Parties state that after validating whether non-public utility transmission providers have registered with NERC as Transmission Service Providers, the FRCC will add the qualified applicants to the enrollment list, which will be posted on the FRCC website. Finally, Florida Parties state that public utility transmission providers will be deemed to be enrolled in the transmission planning process for purposes of regional cost allocation.⁴²

22. Florida Parties state that the first regional transmission plan resulting from the Order No. 1000-compliant FRCC regional transmission planning process will take effect at the start of the next planning cycle following the Commission's acceptance of the compliance filing, assuming the Commission's acceptance largely adopts the proposed transmission planning process.⁴³ Florida Parties state that changes to the OATT provisions filed here that require approval by the FRCC will become effective for the next planning cycle following such approval.⁴⁴ In addition, regional transmission projects approved in previous regional transmission plans before changes become effective would not be modified by applying changes retroactively.⁴⁵

ii. Protests/Comments

23. No comments or protests were filed.

⁴⁰ Florida Parties' OATTs adhere to the NERC definition of Transmission Service Provider as it is "modified by NERC and approved by [the Commission] from time to time." Florida Power & Light Co., FPL OATT, Attachment C: Methodology to Assess Available Transfer Capability. *See* NERC Glossary of Terms Used in the Reliability Standards, Definition of Transmission Service Provider. The NERC Glossary of Terms defines a Transmission Service Provider as the entity that administers the transmission tariff and provides transmission service to transmission customers under applicable transmission service agreements.

⁴¹ Florida Power & Light Co., FPL OATT, Attachment K § 5.4.

⁴² *Id.*

⁴³ Florida Power & Light Co., Transmittal Letter at 31.

⁴⁴ *Id.* at 31-32.

⁴⁵ *Id.* at 32.

iii. Commission Determination

24. We find that the scope of the transmission planning region, the description of new transmission facilities that will be subject to the requirements of Order No. 1000, and the enrollment process specified in Florida Parties' filings partially comply with the requirements of Order No. 1000. Therefore, we direct Tampa Electric, Florida Power, and Florida Power & Light to make further compliance filings, as described more fully below. Likewise, Orlando should also submit a further compliance filing to address these issues.

25. In Order No. 1000, the Commission stated that every public utility transmission provider has already included itself in a region for purposes of complying with Order No. 890 and that these existing regional processes should guide public utility transmission providers in formulating transmission planning regions to comply with the requirements of Order No. 1000.⁴⁶ There has been no significant decrease or limitation in the scope or configuration of the FRCC transmission planning region since the Commission accepted Florida Parties' compliance for Order No. 890.⁴⁷ Accordingly, we find that the scope of the FRCC transmission planning region complies with the requirements of Order No. 1000.

26. However, we find that Florida Parties' compliance filings do not comply with Order No. 1000-A's requirement that each public utility transmission provider 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.⁴⁸ Rather than including a list of all public utility and non-public utility transmission providers that have enrolled as transmission providers in the FRCC transmission planning region in their OATTs, Florida Parties propose to maintain this list of entities enrolled in the FRCC transmission planning region on the FRCC website.⁴⁹ Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to comply with Order No. 1000-A by revising 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

⁴⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160.

⁴⁷ *Tampa Electric Co.*, 124 FERC ¶ 61,026, at P 18 (2008); *Tampa Electric Co.*, 127 FERC ¶ 61,277 (2009); *Tampa Electric Co.*, Docket No. OA08-29-002 (May 12, 2010) (unpublished letter order).

⁴⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

⁴⁹ Florida Power & Light Co., FPL OATT, Attachment K § 5.4.

providers in their transmission planning region. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

27. Order No. 1000-A also required that public utility transmission providers in each transmission planning region must have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region.⁵⁰ Florida Parties' Attachments K/N-2 provide that participating public utility transmission providers will be deemed enrolled by the FRCC in the planning process for purposes of regional cost allocation. In addition, Florida Parties' Attachments K/N-2 provide that a non-public utility transmission provider registered with NERC as a Transmission Service Provider that wishes to enroll in the FRCC transmission planning region may do so by requesting enrollment through the FRCC. We find that these procedures do not constitute a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the FRCC transmission planning region, as required by Order No. 1000. While Florida Parties' compliance proposal describes how the FRCC will determine whether transmission providers are qualified to enroll in the FRCC transmission planning region (i.e., the entity is a public utility transmission provider or is registered with NERC as a Transmission Service Provider), it does not provide the procedures through which an existing public utility transmission provider, a future public utility transmission provider, or a non-public utility transmission provider other than the Florida Parties may request to enroll in the FRCC transmission planning region or the information that such transmission providers would be required to provide. Thus, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit a compliance filing that sets forth a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the FRCC transmission planning region. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

28. In addition, the requirement that non-public utility transmission providers register with NERC as Transmission Service Providers in order to enroll in the FRCC transmission planning region for purposes of cost allocation appears to be unnecessary. As we explained in Order No. 1000-A "all owners and operators of bulk-power system transmission facilities, including nonincumbent transmission developers, that successfully develop a transmission project, are required to be registered as Functional Entities and must comply with all applicable reliability standards."⁵¹ Florida Parties have not explained why they have included as a separate criterion a requirement that non-public utility transmission providers must register with NERC as Transmission Service

⁵⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

⁵¹ *Id.* P 365 (footnote omitted).

Providers in order for non-public utility transmission providers to qualify for enrollment in the FRCC transmission planning region. Florida Parties also do not address the implications of the proposed NERC registration requirement for a new transmission developer that has not yet energized any transmission facilities and, therefore, does not yet administer an OATT or provide transmission service.⁵² We require Tampa Electric, Florida Power, and Florida Power & Light to either provide further justification explaining why the additional requirement is needed or remove the additional requirement from their OATTs. Likewise, Orlando also should provide further justification for this provision, or remove this provision, consistent with this directive.

29. Florida Parties propose that transmission projects approved in previous transmission plans before the revisions to their Attachments K/N-2 become effective will not be modified by applying changes retroactively.⁵³ We understand this to mean that transmission projects approved in previous transmission plans as of the effective date of Florida Parties' compliance filings will not be subject to evaluation or reevaluation and, as a result, will not be subject to the requirements of Order No. 1000. Thus, we find that Florida Parties have satisfied Order No. 1000's requirement 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. 1000.⁵⁴

30. However, we find that Florida Parties' proposed effective date does not comply with the requirements of Order No. 1000. Specifically, we reject Florida Parties' proposal to establish an effective date at the start of the next transmission planning cycle following the Commission's acceptance of the compliance filing, which is contingent on the Commission "largely" adopting the proposed regional transmission planning process.⁵⁵ We do not believe that it is necessary to delay the effective date of the proposed revisions until every issue in this proceeding has "largely" been resolved. We direct Tampa Electric, Florida Power, and Florida Power & Light to submit a compliance filing that establishes an appropriate effective date to coincide with the beginning of the

⁵² See NERC Glossary of Terms Used in the Reliability Standards, Definition of Transmission Service Provider. The NERC Glossary of Terms defines a Transmission Service Provider as the entity that administers the transmission tariff and provides Transmission Service to Transmission Customers under applicable transmission service agreements.

⁵³ Florida Power & Light Co., Transmittal Letter at 31.

⁵⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 65, 162.

⁵⁵ Florida Power & Light Co., Transmittal Letter at 31.

next transmission planning cycle following the issuance of this order.⁵⁶ Tampa Electric, Florida Power, and Florida Power & Light may propose a different effective date but must provide a showing demonstrating why such an effective date is more appropriate.

31. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit further compliance filings, within 120 days of the date of this order, that: (1) revise their Attachments K/N-2 to include a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in the FRCC transmission planning region; (2) set forth a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the FRCC transmission planning region; (3) justify the requirement that non-public utility transmission providers register with NERC as Transmission Service Providers in order to enroll in the FRCC transmission planning region for purposes of cost allocation or, alternatively, remove this requirement from their Attachments K/N-2; and (4) establish an appropriate effective date to coincide with the beginning of a transmission planning cycle. Likewise, Orlando should submit further revisions to its Attachment K consistent with the Commission's directives (1) through (3), listed above.

b. Regional Transmission Planning Process General Requirements

32. 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. 1000.⁵⁷ 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.⁵⁸ 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

⁵⁶ *See, e.g., ISO New England Inc.*, 143 FERC ¶ 61,150, at P 26 (2013) (finding that ISO New England Inc.'s proposal to not specify a requested effective date, indicating that a considerable amount of time would be necessary to put in place procedures and hire staff to implement the revised regional transmission planning process, and that an immediate effective date would be inappropriate did not comply with Order No. 1000).

⁵⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 146, 151.

⁵⁸ *Id.* P 148.

or cost-effectively.⁵⁹ 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.⁶⁰ 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.⁶¹

33. 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.⁶² In addition, when evaluating the merits of alternative transmission solutions, proposed non-transmission alternatives must be considered on a comparable basis.⁶³ 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.⁶⁴

i. Florida Parties' Filings

34. Florida Parties state that the Commission previously determined that the FRCC's transmission planning process complies with the requirements of Order No. 890 and describe how their existing process already complies with the coordination,⁶⁵ openness,⁶⁶

⁵⁹ *Id.* P 149.

⁶⁰ *Id.* P 147.

⁶¹ *Id.* P 151. These transmission planning principles are explained more fully in Order No. 890.

⁶² *Id.* P 150. As explained in Order No. 1000, the term "stakeholder" means any interested party. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 151 n.143.

⁶³ *Id.* P 148.

⁶⁴ *Id.* P 155.

⁶⁵ Florida Power & Light Co., Transmittal Letter at 23-24.

⁶⁶ *Id.* at 24-26.

transparency,⁶⁷ information exchange,⁶⁸ comparability,⁶⁹ dispute resolution,⁷⁰ and economic planning principles.⁷¹ Florida Parties propose revisions to the dispute resolution process to incorporate by specific reference the approved FRCC Bylaws' dispute resolution process.

35. Florida Parties explain that proposed changes to the dispute resolution sections conform to FRCC Bylaw changes, were approved by the FRCC Board,⁷² and were submitted to and approved by the NERC Board of Trustees and the Commission.⁷³ Specifically, if a dispute arises involving the FRCC regional transmission planning process and/or cost allocation thereunder, then the dispute resolution process set forth in the FRCC Bylaws shall govern resolution of the dispute and the FRCC will notify the Florida Commission of any such dispute.⁷⁴

ii. Protests/Comments

36. FMPA/Seminole state that they are at odds with the dispute resolution process because it essentially establishes a dichotomy. There are two dispute resolution

⁶⁷ *Id.* at 26-28.

⁶⁸ *Id.* at 28-29.

⁶⁹ *Id.* at 29-30.

⁷⁰ *Id.* at 30-31.

⁷¹ *Id.* at 31.

⁷² The FRCC Board of Directors consists of industry representatives allocated among several sectors including: (1) suppliers – 3 members with 2.5 votes; (2) non-investor owned utilities wholesale – 2 members with 2 votes; (3) load serving entities – 1 member from a municipal with 0.5 votes and 1 member from a cooperative with 0.5 votes; (4) generating load serving entities – 3 members with 3 votes; (5) investor owned utilities – 3 members with 3.5 votes; (6) general – 2 members with 1 vote; (7) and the CEO of FRCC (an ex-officio non-voting member). FRCC Bylaws, section 3.2a, 3.2e.

⁷³ Florida Power & Light Co., Transmittal Letter at 20 (referring to Docket No. RR12-4-000 (June 12, 2012) (unpublished letter order accepting NERC petition to amend NERC's Delegation Agreement with FRCC to revise FRCC's Bylaws and Compliance Monitoring and Enforcement Program); *see also* Florida Power & Light Co., FPL OATT, Attachment K § 6, "Dispute Resolution."

⁷⁴ *Id.*

processes—local and regional—both having significant distinctions in timing, one codified in Florida Parties’ OATTs and the other codified in the FRCC Bylaws.⁷⁵ FMPA/Seminole state that while the local dispute resolution process is governed by the Order No. 890 *pro forma* OATT under which disputed matters may be resolved promptly by binding arbitration or via the Commission complaint process, the proposed regional dispute resolution process, which will be codified in the FRCC Bylaws, has no certain end point at which a binding determination of the merits would be made. In addition, FMPA/Seminole ask the Commission to consider whether the proposed regional dispute resolution procedures may increase the difficulty of resolving planning disputes fairly and quickly as the FRCC Board would have to make judgments against its own original findings.⁷⁶

iii. Answers

37. Florida Companies state that Order No. 1000 adopted the dispute resolution principle without adding additional requirements to it, and that the FRCC dispute resolution procedure is not inconsistent with the Order No. 890 requirements.⁷⁷ Further, Florida Companies state that the Commission has previously accepted the use of dispute resolution procedures using a regional reliability organization’s bylaws when those procedures are clear as to what is subject to the regional reliability organization’s bylaws and what is not.⁷⁸ Florida Companies reiterate that only decisions made by the FRCC Board in the FRCC regional transmission planning process are subject to the FRCC’s dispute resolution process, while disputes regarding local transmission planning will use the current utility’s local transmission planning process dispute resolution procedures.⁷⁹

38. In response to Florida Companies, FMPA/Seminole disagree that the FRCC dispute resolution process is “not inconsistent with Order No. 890,” and state that the process included in section 12 of the respective Florida Parties’ Order No. 890 *pro forma* OATT is more efficient.⁸⁰ In addition, FMPA/Seminole are concerned that the transmission provider’s local projects competing with a proposed CEERTS project may

⁷⁵ FMPA/Seminole Protest at 57-60.

⁷⁶ *Id.*

⁷⁷ Florida Companies’ Answer at 52.

⁷⁸ *Id.* at 53 (citing *Idaho Power Co.*, 128 FERC ¶ 61,064, at P 40 (2009)).

⁷⁹ *Id.*

⁸⁰ FMPA/Seminole Reply to Florida Companies’ Answer at 40-41.

incur further abandonment costs due to a potential delay in the dispute resolution process.⁸¹

iv. **Commission Determination**

39. The Commission previously found that Florida Parties' regional transmission planning process satisfied each of the transmission planning principles of Order No. 890.⁸² The Commission's focus in Florida Parties' Order No. 1000 compliance proceeding is, therefore, on the incremental changes to Florida Parties' regional transmission planning process developed to comply with the requirements of Order No. 1000. We find that the amendments to the regional transmission planning process proposed in Florida Parties' compliance filings partially comply with the requirements of Order No. 1000 and are otherwise just and reasonable and not unduly discriminatory.

40. Regarding the dispute resolution principle, we find that Florida Parties' filings partially comply with this principle. As described in Order No. 1000, the requirements of the dispute resolution principle of Order No. 890 apply to the regional transmission planning process as reformed by Order No. 1000.⁸³ Florida Parties state that the proposed dispute resolution changes incorporate by reference the approved FRCC Bylaws' dispute resolution process.⁸⁴ However, the Florida Parties must incorporate the dispute resolution procedures into their respective OATTs rather than incorporating by reference the dispute resolution procedures in the FRCC Bylaws. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to file a further compliance filing that revises Florida Parties' OATTs to include dispute resolution procedures that address disputes that arise from the regional transmission planning process. Likewise, Orlando should submit further revisions to its Attachment K consistent this directive.

41. Additionally, we are concerned that certain provisions included in the FRCC Bylaws may not comply with the dispute resolution principle for transmission planning disputes established in Order No. 890. For example, Order No. 890 clarified that

⁸¹ *Id.*

⁸² *Tampa Electric Co.*, 124 FERC ¶ 61,026, at P 18 (2008); *Tampa Electric Co.*, 127 FERC ¶ 61,277 (2009); *Tampa Electric Co.*, Docket No. OA08-29-002 (May 12, 2010) (unpublished letter order). We note that, in accepting Florida Parties' Order No. 890 compliance filings, the Commission reviewed the FRCC regional transmission planning process.

⁸³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 330 n.306.

⁸⁴ Florida Power & Light Co., Transmittal Letter at 20.

“affected parties of course would retain any rights they may have under FPA section 206 to file complaints with the Commission.”⁸⁵ The FRCC Bylaws state that, after 30 days from completion of the dispute resolution steps described in the FRCC Bylaws (i.e., settlement, mediation, arbitration, and board proceeding), if parties have not agreed to resolution of any issue in dispute, a party may seek resolution through a regulatory proceeding before a state or federal regulatory agency having jurisdiction of all parties and the subject matter of the dispute.⁸⁶ We find that this provision would significantly limit a party’s rights to file a section 206 complaint with respect to transmission planning disputes. Accordingly, on compliance, Tampa Electric, Florida Power, and Florida Power & Light must revise their OATTs to clarify that nothing limits a party’s rights to file a section 206 complaint. Likewise, Orlando should submit further revisions to clarify its Attachment K consistent with this directive.

42. Further, Order No. 890 recommends a three step dispute resolution process, consisting of negotiation, mediation, and arbitration.⁸⁷ The FRCC Bylaws include a fourth step; specifically, a board proceeding, in which the FRCC Board votes on appropriate resolution of the dispute.⁸⁸ We share commenters’ concerns that this fourth step may unnecessarily lengthen the dispute resolution process. Additionally, we question how the dispute resolution process will result in an impartial decision with respect to disputes between incumbent transmission providers and others who may or may not have adequate representation on the FRCC Board. Therefore, we also direct Tampa Electric, Florida Power, and Florida Power & Light to provide further justification for this fourth step, as well as describe how FRCC Board decision-making in the dispute resolution process will be impartial, or to exclude this provision from their OATTs. Likewise, Orlando should provide this justification or exclude this provision from its Attachment K.

43. Accordingly, Tampa Electric, Florida Power, and Florida Power & Light are directed to submit a further compliance filing that: (1) revises their OATTs to include dispute resolution procedures that address disputes that arise from the transmission planning process; (2) clarifies that nothing in the dispute resolution procedures limits a party’s rights to file a section 206 complaint; and (3) either explains how the fourth step of the FRCC Bylaws’ dispute resolution process (board proceeding) will not unnecessarily lengthen the dispute resolution process or compromise the impartiality of

⁸⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 503.

⁸⁶ FRCC Bylaws § 11.4(e). *See* Docket No. RR12-4-000.

⁸⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 503.

⁸⁸ FRCC Bylaws § 11.4(d). *See* Docket No. RR12-4-000.

the process, or excludes this fourth step from their OATTs. Likewise, Orlando should submit further revisions to its Attachment K consistent with directives (1) through (3), listed above.

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

44. 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.⁸⁹ 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.⁹⁰ In addition, whether or not public utility transmission providers within a transmission planning region selects 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.⁹¹

45. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer⁹² must provide to the regional transmission planning process to allow the public utility transmission providers in the transmission planning region to

⁸⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

⁹⁰ *Id.* P 149.

⁹¹ *Id.* P 331.

⁹² Order No. 1000 defines merchant transmission projects as projects “for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates.” Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 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.

assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.⁹³

46. 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.⁹⁴ Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

i. Affirmative Obligation to Plan

(a) Florida Parties' Filings

47. Florida Parties state that the FRCC transmission planning process already provides for the development of a regional transmission plan as required by Order No. 1000.⁹⁵ Florida Parties state that the FRCC transmission planning process begins with the consolidation of the long-term transmission plans of all of the transmission owners or providers in the FRCC region. Florida Parties state that the FRCC Transmission Working Group⁹⁶ conducts detailed evaluation and analysis of the consolidated transmission plans to ensure a more reliable and robust transmission system. Florida Parties argue that Order No. 1000 permitted a bottom-up approach to regional transmission planning in recognizing the importance of local transmission projects that are not subject to regional cost allocation.⁹⁷

⁹³ *Id.* P 164, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

⁹⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

⁹⁵ Florida Power & Light Co., Transmittal Letter at 4, 8.

⁹⁶ The FRCC Transmission Working Group sets the schedule for data submittal and frequency of information exchange, which starts at the beginning of each calendar year. The members of the Transmission Working Group are: Orlando Utilities Commission/City of Vero Beach, Duke Energy, Florida Municipal Power Agency, Florida Power & Light Company, Florida Keys Electric Cooperative, Gainesville Regional Utilities, City of Homestead, Jacksonville Electric Authority, Lakeland Electric, Lee County Electric Cooperative, Utilities Commission, City of New Smyrna Beach, Reedy Creek Improvement District, Seminole Electric Cooperative, City of Tallahassee, and Tampa Electric Company. See <https://www.frcc.com/twg/default.aspx>.

⁹⁷ Florida Power & Light Co., Transmittal Letter at 9.

(b) Protests/Comments

48. LS Power and FMPA/Seminole assert that Florida Parties' proposal does not comply with Order No. 1000 because it fails to generate a regional transmission plan. FMPA/Seminole assert that Florida Parties are utilizing their Order No. 890 proposal to meet Order No. 1000 compliance requirements. They argue that Florida Parties have only made minor modifications to the Order No. 890 transmission planning process, thus failing to include an independent regional review. FMPA/Seminole state that by continuing the Order No. 890 transmission planning process of rolling-up the Florida Parties' local transmission plans and evaluating them for reliability impacts only, Florida Parties' proposal does not include a process for review or evaluation that will find potential transmission alternatives that could more efficiently or cost-effectively address the region's transmission needs.⁹⁸

49. FMPA/Seminole argue that Florida Parties' proposals are misleading, as their proposals imply that the FRCC transmission planning process already meets its Order No. 1000 compliance obligations through the Florida Commission's ten-year site plan requirements. FMPA/Seminole assert that while the Florida Commission has jurisdiction over transmission planning and development, this does not obviate the need for the FRCC to proactively develop a regional transmission plan. FMPA/Seminole stipulate that the ten-year site plan process in Florida serves an important role in ensuring proper resource planning in Florida, but it is not a proactive regional transmission planning process as Order No. 1000 requires.⁹⁹ Furthermore, the ten-year site plan process focuses on each individual utility's needs and not the region as a whole.¹⁰⁰ FMPA/Seminole argue that the regional transmission plan, which identifies transmission projects for purposes of cost allocation is triggered only if and when a third party (or, potentially, an incumbent) opts to use it, contrary to Order No. 1000's requirements.¹⁰¹

50. FMPA/Seminole contend that Florida Parties' proposal fails to sufficiently address economic projects and places no responsibility on public utility transmission providers to explore potential transmission alternatives that could more efficiently or cost-effectively address the region's transmission needs in the absence of a stakeholder request to do

⁹⁸ LS Power Protest at 13; FMPA/Seminole Protest at 18-19.

⁹⁹ FMPA/Seminole Protest at 24-25.

¹⁰⁰ Affidavit of Glenn A. Spurlock, Appendix B to FMPA/Seminole Protest (Spurlock Affidavit) ¶14; Affidavit of Francis P. Gaffney, Appendix A to FMPA/Seminole Protest (Gaffney Affidavit) ¶20.

¹⁰¹ FMPA/Seminole Protest at 20.

so.¹⁰² FMPA/Seminole argue that, under the existing Order No. 890 transmission planning process, economic planning is not occurring in the FRCC region.¹⁰³ FMPA/Seminole claim that the FRCC region assesses system reliability only under certain conditions, rather than evaluating or identifying solutions to relieve congestion on an aggregated or regional basis. FMPA/Seminole also claim that Florida Parties' compliance proposal includes no provision to integrate the results of economic studies into the annual regional transmission planning process. Finally, FMPA/Seminole state that economic projects in the "rolled up" FRCC regional transmission plan would need to be supported by an individual transmission or interconnection service request that is subject to a cost allocation method that all but guarantees such projects will not be built. Specifically, if the transmission request triggers the need for significant upgrades, the costs of such upgrades are likely too high to be justified by a single transmission customer.¹⁰⁴

(c) Answers

51. Florida Companies argue that the proposed regional transmission planning process involves more than just combining local transmission plans; it includes a regional review and evaluation of the consolidated local transmission plans. This review includes an examination of multiple system conditions, including congestion, impacts of scheduled outages, weather extremes, load levels, generation dispatches, and reactive supply and demand assessments. Florida Companies assert that the Florida Commission independently reviews regional transmission plans. Florida Companies contend that the transmission providers in the FRCC region and other stakeholders already have a process that develops a regional transmission plan that efficiently and cost-effectively meets the region's needs.

52. In response to Florida Companies, FMPA/Seminole disagree with Florida Companies' claim that the existing Order No. 890 transmission planning process, along with the operation of the Florida Commission's ten-year site plan process, satisfies Order No. 1000.¹⁰⁵ FMPA/Seminole reiterate that the ten-year site plan process serves an important role in ensuring adequate resource planning, but is not, nor is intended to be, a proactive regional transmission planning process.¹⁰⁶ Further, FMPA/Seminole state that

¹⁰² *Id.* at 48.

¹⁰³ *Id.* at 47.

¹⁰⁴ *Id.* at 32-33.

¹⁰⁵ FMPA/Seminole Reply to Florida Companies' Answer at 10-11.

¹⁰⁶ *Id.* at 17.

the ten-year site plan process long pre-dates the Order No. 890 transmission planning process and is conducted on a completely different timeline.¹⁰⁷ Therefore, FMPA/Seminole state that the ten-year site plan process does not obviate the need for, or take the place of, compliance with Order No. 1000's requirement for proactive regional transmission planning.

(d) Commission Determination

53. We find that Florida Parties' compliance filings do not comply with the requirement for public utility transmission providers to 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. Accordingly, Tampa Electric, Florida Power, and Florida Power & Light must submit further compliance filings to revise their OATTs, as discussed below. Likewise, Orlando should submit similar revisions to its Attachment K.

54. Order No. 1000 requires public utility transmission providers to 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. It is not sufficient for a transmission planning region to merely "roll-up" local transmission plans without analyzing whether the region's transmission needs, when taken together, can be met more efficiently or cost-effectively by a regional transmission solution.

55. One of the stated purposes of the requirements adopted in Order No. 1000 is "to remedy deficiencies in the requirements of Order No. 890. . . ."¹⁰⁸ 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

¹⁰⁷ *Id.*

¹⁰⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 12.

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.¹⁰⁹

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.¹¹⁰

56. Our review of Florida Parties' compliance filings indicates that as protestors suggest, the proposed regional transmission planning process does not go beyond Order No. 890's regional transmission planning requirements, as it does not require that the transmission providers in the FRCC region 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 transmission needs. In order to comply with Order No. 1000's requirements, Florida Parties along with the other transmission providers in the transmission planning region, 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, Florida Parties may not rely exclusively on proposals from interested parties 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 Tampa Electric, Florida Power, and Florida

¹⁰⁹ *Id.* P 147 (footnotes omitted).

¹¹⁰ *Id.* P 148.

Power & Light 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. 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. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light, within 120 days of the date of issuance of this order, to revise their 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.¹¹¹ Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

ii. **Minimum Threshold Requirements for CEERTS Projects**

(a) **Florida Parties' Filings**

57. Florida Parties state that in an effort to provide the appropriate recognition of both federal and state jurisdictional authority over Florida's electric transmission system, Florida Parties utilize the Florida Transmission Line Siting Act (Florida TLSA) as minimum threshold criteria for proposed CEERTS projects. Specifically, a CEERTS project must be: (1) a transmission line subject to the requirements of the Florida TLSA or successor statute¹¹² (or a substation flexible AC transmission system (FACTS)¹¹³ device, e.g. series compensation or static var compensator, designed to operate at 230 kV

¹¹¹ 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.

¹¹² The Florida TLSA provides that applicable transmission line projects must apply to the Florida Commission for siting approval if they: (1) are 230 kV or above, (2) are 15 miles or longer, (3) cross a county line, and (4) are not entirely limited to established rights-of-way. Ss. 403.52-.5365, F.S. (2012).

¹¹³ A FACTS device is a technology that involves the application of high-speed power electronic controllers based on a variety of thyristor devices that give the ability to control power flows on transmission routes, and allow secure loading of transmission lines to their full thermal capacity. North American Energy Standards Board (NAESB) Wholesale Electric Industry Glossary, *available at* www.naesb.org/pdf/weq_glossary072804w3.doc.

or more); and (2) materially different than projects already in the regional transmission plan. As an example, another transmission developer may not propose a CEERTS project that is not materially different (e.g., change in equipment size, different terminal bus arrangement, slight change in route, etc.).¹¹⁴

(b) Protests/Comments

58. LS Power asserts that it is concerned about the practical mechanics of determining whether a proposed transmission project is materially different from the baseline of the regional transmission plan. LS Power contends that the materially different requirement for regional transmission projects is undefined in Florida Parties' compliance proposal.¹¹⁵ LS Power states that under Florida Parties' compliance proposal, a regional transmission project must be materially different than transmission projects already in the regional transmission plan (i.e., cannot be a "change in equipment size, different terminal bus arrangement, slight change in route, etc.)." LS Power argues that this provision would prohibit opportunities to create more cost-efficiencies in regional transmission project proposals.¹¹⁶ Therefore, LS Power requests that the Commission reject this materially different requirement since 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, as Order No. 1000 preserves the incumbent transmission owner's right to construct and own local projects.¹¹⁷

59. LS Power and FMPA/Seminole also assert that subjecting proposed projects to the Florida TLTA is inappropriate. FMPA/Seminole argue that despite Florida Parties' contention, there is no basis in Order No. 1000 for harmonizing federal and state law. FMPA/Seminole also argue that the Florida Parties violated this principle themselves when exempting a substation FACTS from the Florida TLTA limitation on regional transmission projects. FMPA/Seminole contend that Order No. 1000 requires developing a process in which all regional transmission projects are eligible for consideration for selection in the regional transmission plan for purposes of cost allocation.¹¹⁸ According to LS Power, the Florida TLTA contains several exemptions that are broader than the exceptions in Order No. 1000, and which would be inconsistent with Order No. 1000.

¹¹⁴ Florida Power & Light, Attachment K, § 1.2.3.A.

¹¹⁵ LS Power Protest at 15.

¹¹⁶ *Id.* at 16-17.

¹¹⁷ *Id.* at 16.

¹¹⁸ FMPA/Seminole Protest at 52.

LS Power contends that adopting these threshold criteria would exclude approximately 54 percent of the FRCC region from Order No. 1000.¹¹⁹ Similarly, FMPA/Seminole argue that using eligibility under state siting laws violates the letter and spirit of Order No. 1000 and limits consideration of beneficial regional projects.¹²⁰

60. LS Power contends that the Florida TLSA exempts from participation projects by nonincumbent transmission developers. LS Power adds that the definition of an electric utility under Florida law is limited to the transmission projects over which the Florida Commission has jurisdiction. LS Power concludes that if the FRCC intended to either: (1) prohibit nonincumbent transmission developers from developing any project that is not covered by the Florida TLSA; or (2) require review of proposed projects under the Florida TLSA even when those projects are currently excluded, or not covered, by the Florida TLSA, then Florida Parties' compliance proposal must be rejected. Finally, LS Power objects to the FRCC using a Florida statute to comply with a federal mandate. It argues this process would result in the Florida state legislature re-writing Commission provisions.¹²¹

(c) Answers

61. Florida Companies assert that using the Florida TLSA as a threshold for CEERTS projects is necessary in Florida to respect the Florida Commission's jurisdiction and federal requirements under Order No. 1000. Florida Companies argue that the use of 230 kV as a minimum threshold requirement is not prohibited by Order No. 1000 and recognizes the regional nature of such projects. Furthermore, Florida Companies assert that other jurisdictions have also proposed voltage requirements to distinguish local and regional projects. Florida Companies argue that the voltage requirement along with the "greater than 15 miles" and "crossing county line" requirements ensure that CEERTS projects are regional transmission projects instead of local ones.

62. Regarding the materially different provision, Florida Companies state that this provision is necessary to prevent a developer from bundling several local projects in the existing transmission plan and making only minor revisions from being eligible to claim those projects as CEERTS projects.

63. In response to Florida Companies, FMPA/Seminole state that there is no prohibition against construction of projects that fall outside of the Florida Commission's

¹¹⁹ LS Power Protest at 9-12.

¹²⁰ FMPA/Seminole Protest at 51-52.

¹²¹ LS Power Protest at 11.

TLSA jurisdiction.¹²² Therefore, the Florida Commission's TLSA jurisdiction over siting of a limited set of transmission additions is not "disrespected" by permitting consideration of CEERTS projects that do not fall within the Florida TLSA, but can more cost-effectively and efficiently meet the region's transmission needs.¹²³

(d) Commission Determination

64. We find that Florida Parties' proposed minimum thresholds for CEERTS projects partially comply with Order No. 1000. As discussed below, we require Tampa Electric, Florida Power, and Florida Power & Light to justify their proposed minimum threshold requirements in further compliance filings or, alternatively to remove them from their OATTs. Likewise, Orlando should submit a further compliance filing that justifies or removes the proposed minimum threshold requirements.

65. Florida Parties propose that, to be considered as a CEERTS project, a proposed transmission facility must be a transmission line subject to the requirements of the Florida TLSA or successor statute that would allow the Florida state legislature to set the minimum threshold for a proposed CEERTS project by amending the Florida TLSA statutes. We direct Tampa Electric, Florida Power, and Florida Power & Light to remove the reference to the Florida TLSA and successor statutes in its entirety. While Order No. 1000 does not prohibit public utility transmission providers in a region from proposing minimum thresholds, Florida Parties' OATTs lack clarity because Florida Parties use the Florida TLSA as the sole criterion rather than describing the specific thresholds for eligibility for selection in the regional transmission plan for purposes of cost allocation. If Florida Parties decide to propose minimum thresholds for eligibility for selection in the regional transmission plan for purposes of cost allocation in their OATTs, and justify the minimum thresholds consistent with paragraphs 66-68, then Florida Parties' proposal may be in compliance with Order No. 1000.

66. Order No. 1000 did not establish minimum threshold requirements, such as size, voltage, cost estimate or other physical criteria, that a transmission project must meet to qualify as a regional transmission project that is 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. Accordingly, if Tampa Electric, Florida Power, and Florida Power & Light propose additional minimum thresholds then they must explain in further compliance filings, how their proposed

¹²² FMPA/Seminole Reply to Florida Companies' Answer at 38.

¹²³ *Id.*

minimum threshold requirements identify transmission facilities that are likely to have regional benefits and why they are not so limiting as to preclude from evaluation transmission projects that may provide regional benefits. Likewise, Orlando should provide further explanation in a compliance filing consistent with this directive.

67. Specifically, Florida Parties must balance their objective of excluding clearly local transmission projects that are unlikely to provide regional benefits from being submitted for evaluation in the regional transmission planning process with the need to evaluate in the regional transmission planning process those transmission facilities that are likely to provide regional benefits. Should Tampa Electric, Florida Power, and Florida Power & Light propose to set forth minimum threshold requirements as part of further compliance filings, they must provide justifications as to how their proposed threshold requirements reach this balance and identify transmission facilities that are likely to have regional benefits. For example, they 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 requirements. Tampa Electric, Florida Power, and Florida Power & Light must similarly justify their proposed minimum threshold requirement that a CEERTS project must be materially different than projects already in the regional transmission plan or, in the alternative, remove this requirement from their OATTs. We are concerned that this requirement could exclude from evaluation transmission facilities that provide benefits to the transmission planning region. Moreover, should Tampa Electric, Florida Power, and Florida Power & Light propose to retain this requirement in their OATTs, they must provide additional explanation of how a proposed transmission facility will be determined to be “materially different,” as we are concerned that the proposed OATT revisions provide undue discretion for the transmission providers to determine what transmission facilities may be proposed as CEERTS projects. Likewise, Orlando also should submit a further compliance filing consistent with these directives.

68. Furthermore, to the extent that Florida Parties propose to set forth in their OATTs the same minimum threshold requirements that determine whether a transmission line is subject to the Florida TLISA, we note that a requirement that a transmission facility not be entirely limited to established rights-of-way to be eligible as a CEERTS project would not comply with Order No. 1000. 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.”¹²⁴ However, the Commission did not find that as part of its compliance filing, a public utility transmission provider may preclude a transmission facility from being considered for selection in the regional transmission plan for purposes of cost allocation because it is entirely limited to established rights-of-way.

69. Accordingly, as discussed above, we direct Tampa Electric, Florida Power, and Florida Power & Light to file, within 120 days of the date of issuance of this order, further compliance filings that remove from their OATTs the reference to the Florida TLSA “subject to the requirements of the Florida TLSA or successor statutes.” To the extent that Tampa Electric, Florida Power, and Florida Power & Light propose on compliance to set forth in their OATTs minimum threshold requirements for CEERTS projects, Tampa Electric, Florida Power, and Florida Power & Light must justify the proposed requirements, explaining how they identify transmission facilities that are likely to have regional benefits and why they are not so limiting as to preclude from evaluation transmission projects that may provide regional benefits. In addition, Tampa Electric, Florida Power, and Florida Power & Light must similarly justify their proposed minimum threshold requirement that a CEERTS project must be materially different than projects already in the regional transmission plan or, in the alternative, remove this requirement from their OATTs. Should Tampa Electric, Florida Power, and Florida Power & Light propose to retain this requirement in their OATTs, they must provide additional explanation of how a proposed transmission facility will be determined to be “materially different.” Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

iii. Merchant Transmission Developers

(a) Florida Parties’ Filings

70. Florida Parties state that any transmission developer that is not participating in the regional transmission planning process, and therefore not seeking cost-of-service recovery, that proposes to develop a transmission project in the FRCC transmission planning region must provide to the FRCC Planning Committee¹²⁵ and affected transmission providers in the region such information and data related to its proposed project that is necessary for them to assess the potential reliability and operational

¹²⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

¹²⁵ The FRCC Planning Committee reports directly to the FRCC Board and is responsible for reliability in the FRCC region and assessing and encouraging generation and transmission adequacy. Its membership consists of representatives of the board with each voting member appointing one representative who is empowered to vote on the member’s behalf. FRCC Bylaws, section 5.2.

impacts of the proposed project on the region's transmission system. Florida Parties further state that the FRCC Planning Committee will establish timeframes for the provision of this information and data. Finally, Florida Parties provide that such proposed projects will not be included in long-term planning models or interconnected to the existing transmission system until and unless interconnection service has been requested of affected transmission providers and all interconnection studies have been completed.¹²⁶

(b) **Protests/Comments**

71. No protests or comments were filed.

(c) **Commission Determination**

72. We find that Florida Parties' compliance filings do not comply with Order No. 1000's requirement that public utility transmission providers in each transmission planning region propose what information and data a merchant transmission developer must provide to the regional transmission planning process to 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.¹²⁷ While Florida Parties propose that a merchant transmission developer must provide such information and data related to its proposed project that is necessary for the FRCC Planning Committee and affected transmission providers to assess the potential reliability and operational impacts of the proposed project on the region's transmission system, they do not specify the types of information or data that a merchant transmission developer must provide. Such specificity is necessary to ensure that a merchant transmission developer can understand what information and data it must provide to the FRCC Planning Committee and affected transmission providers when proposing a transmission project in the FRCC transmission planning region. Tampa Electric, Florida Power, and Florida Power & Light must set forth in their OATTs the timeframe for provision of such information and data rather than allowing the FRCC Planning Committee to establish the timeframe. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 120 days of the date of issuance of this order, further compliance filings that revise their OATTs to set forth the specific types of information and data a merchant transmission developer must provide to the regional transmission planning process to allow the public utility transmission providers in the transmission planning region to assess the potential

¹²⁶ Florida Power & Light, Attachment K, § 4.5.

¹²⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 164, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region, as well as the timeframe within which the merchant transmission developer must provide such information and data. Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

d. Consideration of Transmission Needs Driven by Public Policy Requirements

73. 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.¹²⁸ 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.¹²⁹ 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).¹³⁰ 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.¹³¹

74. 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.¹³² The process for identifying transmission needs driven by Public Policy Requirements must allow stakeholders,

¹²⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

¹²⁹ Order No. 1000-A, 139 FERC ¶ 61,132 at PP 204, 206, 208-211, 317-319.

¹³⁰ 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.

¹³¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

¹³² *Id.* PP 206, 207.

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 driven by Public Policy Requirements.¹³³ 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.¹³⁴

75. 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.¹³⁵ 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.¹³⁶ 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.¹³⁷

76. 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.¹³⁸ These procedures must include the evaluation of transmission facilities stakeholders propose to satisfy an

¹³³ *Id.* PP 207, 208.

¹³⁴ *Id.* P 335.

¹³⁵ *Id.* P 209.

¹³⁶ *Id.* P 335.

¹³⁷ *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

¹³⁸ *Id.* P 211.

identified transmission need driven by Public Policy Requirements.¹³⁹ Stakeholders must be provided an opportunity to provide input during the evaluation of potential solutions to identified needs.¹⁴⁰ 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.¹⁴¹ 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.¹⁴²

77. 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.¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵ In addition, public utility transmission providers are not required to consider Public Policy Requirements themselves as part of the transmission planning process.¹⁴⁶

¹³⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211; *see also id.* 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.”).

¹⁴⁰ *Id.* P 220.

¹⁴¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

¹⁴² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

¹⁴³ *Id.* P 203.

¹⁴⁴ *Id.* P 214, *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹⁴⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216.

¹⁴⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at P 204.

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

(a) **Florida Parties' Filings**

78. Florida Parties state that they have included in their OATTs a process for identifying and evaluating public policies that could potentially drive regional transmission needs, but note that all utilities in the FRCC transmission planning region must comply with public policy requirements that are part of their individual integrated resource planning processes.¹⁴⁷ Florida Parties' OATTs provide that to be considered in the transmission planning process, a public policy requirement must "be reflected in state, federal, or local law or regulation (including an order of a state, federal, or local agency)."¹⁴⁸ In addition, the public policy requirement must drive a transmission need that is not readily met through existing approved requests for new transmission service or transmission facilities that have already been planned. Florida Parties have revised their OATTs to state that potential transmission needs driven by public policy requirements may be submitted to the FRCC. Florida Parties propose that the FRCC Planning Committee will evaluate such submittals and determine whether a public policy requirement is driving a transmission need that is not otherwise readily, cost-effectively, and efficiently met through existing requests for new transmission service or transmission facilities that have already been planned. The FRCC Planning Committee will then post its determination and an explanation of that determination on the FRCC website. Finally, Florida Parties' OATTs provide that if a transmission need driven by public policy requirements is identified, CEERTS and local projects may be proposed to address the need.¹⁴⁹

(b) **Protests/Comments**

79. FMPA/Seminole argue that Florida Parties' compliance proposal effectively fails to develop a regional transmission plan that reflects the evaluation of potential transmission solutions to public policy-driven needs.¹⁵⁰ Moreover, FMPA/Seminole argue that Florida Parties' statement that there are currently no public policy requirements driving regional transmission needs indicates that Order No. 1000's

¹⁴⁷ Florida Power & Light Co., Transmittal Letter at 18.

¹⁴⁸ Florida Power & Light Co., FPL OATT, Attachment K § 11.1.

¹⁴⁹ *Id.* § 11.1.

¹⁵⁰ FMPA/Seminole Protest at 30.

requirement to consider transmission needs driven by public policy requirements “will be given short shrift” in the FRCC transmission planning region.¹⁵¹

80. FMPA/Seminole object to Florida Parties’ proposal to identify for consideration only those transmission needs driven by public policy requirements that are not otherwise readily, cost-effectively, and efficiently met through existing requests for new transmission service or planned transmission facilities. First, FMPA/Seminole state that a transmission facility that addresses a transmission need driven by public policy requirements is unlikely to displace a transmission facility already included in the individual transmission provider plans that are rolled up in to the FRCC regional transmission plan. Second, FMPA/Seminole contend that because Florida Parties do not propose to establish a deadline by which the FRCC Planning Committee and Board must make its determination or to integrate the identification of transmission needs driven by public policy requirements into the transmission planning process, a proposed transmission need driven by public policy requirements that when proposed was not otherwise met through existing requests for new transmission service or planned transmission facilities may not be considered if a subsequent request for new transmission service arises, or a new transmission facility is planned, to meet the need before the FRCC Planning Committee and Board make their determination.¹⁵² Finally, FMPA/Seminole argue that Florida Parties’ proposal will lead to a continued reliance on the existing queue process and associated cost allocations rather than providing a more cost-efficient or effective approach to meeting transmission needs driven by public policy requirements.¹⁵³

81. LS Power and FMPA/Seminole argue that they do not support Florida Parties’ compliance proposal because they do not provide any criteria under which the public utility transmission providers will evaluate public policy projects or select such projects in the regional transmission plan for purposes of cost allocation.¹⁵⁴ FMPA/Seminole add that Florida Parties impose on themselves no obligation to evaluate solutions to identified transmission needs driven by Public Policy Requirements.¹⁵⁵ LS Power and

¹⁵¹ *Id.* at 46 (citing, Florida Power & Light Co., Transmittal Letter at 12).

¹⁵² *Id.* at 43-44.

¹⁵³ *Id.* 44 n.42 (citing, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,660, at P 68 (2010) (Moeller, Comm’r, concurring)).

¹⁵⁴ FMPA/Seminole Protest at 40.

¹⁵⁵ *Id.* at 45.

FMPA/Seminole argue that the ten-year site plan process, which is designed to ensure individual utility resource adequacy, will not produce a regional transmission plan that is more cost-efficient or effective in meeting transmission needs driven by public policy requirements.¹⁵⁶

(c) Answers

82. In their answer, Florida Companies argue that their compliance filings' consideration of transmission needs driven by public policy requirements makes reasonable provision for the FRCC to receive and evaluate submittals of public policy transmission needs. In addition, Florida Companies respond that they did not intend the proposal to consider only those transmission needs driven by public policy requirements not readily met through existing approved requests for new transmission service or planned transmission facilities to disqualify less costly alternatives to planned transmission facilities, but instead to prevent consumers from paying the costs of unnecessary transmission facilities. They also contend that a schedule for making determinations regarding transmission needs driven by public policy requirements, as FMPA/Seminole advocate, is unnecessary to address public policy requirements that do not presently exist.¹⁵⁷ Finally, Florida Companies state that because there are no public policy requirements incremental to individual utility integrated resource planning considerations, there are currently no public policy requirements driving regional transmission needs, which they assert "helps explain the difficulty of crafting detailed [OATT] provisions in the abstract."¹⁵⁸

83. In response to Florida Companies, FMPA/Seminole assert that Florida Parties have not met the requirement to consider transmission needs driven by public policy requirements. FMPA/Seminole state that Florida Parties' statement of intent, included in Section 1.3 of Attachments K/N-2, is no substitute for a process that ensures that solutions to identified public policy needs are evaluated.¹⁵⁹ Moreover, FMPA/Seminole state that Florida Parties' proposed process to evaluate transmission needs driven by public policy requirements is hindered by the Florida Parties' declaration that they plan only for firm transmission service reservations because public policy needs not reflected in approved firm transmission service requests will not be planned for.¹⁶⁰ Thus, the

¹⁵⁶ *Id.* at 26-27; LS Power Protest at 29.

¹⁵⁷ Florida Companies' Answer at 32-33.

¹⁵⁸ *Id.* at 34.

¹⁵⁹ FMPA/Seminole Reply to Florida Companies' Answer at 36.

¹⁶⁰ *Id.* at 36.

proposed process cannot satisfy Order No. 1000's requirement to identify transmission needs driven by public policy requirements.

(d) **Commission Determination**

84. We find that Florida Parties' filings partially comply with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements. Accordingly, as described below, we require Tampa Electric, Florida Power, and Florida Power & Light to file further compliance filings revising their OATTs. Likewise, Orlando should submit similar revisions to its Attachment K.

85. Florida Parties propose to define a public policy requirement in the regional transmission planning process as a requirement that is "reflected in state, federal, or local law or regulation (including an order of a state, federal, or local agency)."¹⁶¹ We find this proposed definition of public policy requirements consistent with the definition of public policy requirements in Order No. 1000.

86. However, we share FMPA/Seminole's concerns about Florida Parties' proposal to limit the consideration of transmission needs driven by public policy requirements to those not readily met through existing approved requests for new transmission service or planned transmission facilities. 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,¹⁶² we are concerned that Florida Parties' compliance proposal categorically precludes Florida Parties from considering 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 met through an existing approved request for new transmission service or planned transmission facilities, there may be another more efficient or cost-effective transmission solution to that need that should be considered. We note that Florida Parties state that they did not intend this proposal to disqualify less costly alternatives to planned transmission facilities; however, we are concerned that in practice, Florida Parties' proposal will do exactly that because, by limiting the transmission needs that will be considered, Florida Parties may exclude potential regional transmission facilities. We, therefore, find that Florida Parties' proposal to limit the consideration of transmission needs driven by public policy requirements to those not readily met through existing approved requests for new transmission service or planned transmission facilities does not fully comply with Order No. 1000's requirement to consider transmission needs. Accordingly, we direct

¹⁶¹ Florida Power & Light Co., FPL OATT, Attachment K § 11.1.

¹⁶² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 210.

Tampa Electric, Florida Power, and Florida Power & Light to remove this aspect of the proposal from their OATTs. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

87. Regarding the identification of transmission needs driven by public policy requirements, Florida Parties have revised their OATTs to state that potential transmission needs driven by public policy requirements may be submitted to the FRCC. However, Florida Parties do not describe in their respective OATTs whether this opportunity to submit transmission needs driven by public policy requirements is open to all stakeholders. Moreover, Florida Parties do not describe in their OATTs when and how stakeholders can provide input and offer proposals to the FRCC regarding transmission needs they believe are driven by public policy requirements in the regional transmission planning process such that the process for doing so is transparent to all interested stakeholders. Therefore, we find that Florida Parties' compliance proposal does not comply with Order No. 1000's requirement that each public utility transmission provider establish procedures in the regional transmission planning process to identify transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by public policy requirements.¹⁶³ We require Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to establish procedures in the regional transmission planning process to identify transmission needs driven by public policy requirements, including a description of when and how stakeholders can submit what the stakeholders believe are transmission needs driven by public policy requirements.¹⁶⁴ Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

88. Florida Parties also do not propose 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, as required by Order No. 1000.¹⁶⁵ Florida Parties have revised their OATTs to provide that the FRCC Planning Committee will determine whether a public policy requirement is driving a transmission need that is not otherwise readily, cost-effectively, and efficiently met through existing requests for new transmission service or transmission facilities that have already been planned. As discussed above, we reject Florida Parties' proposal to consider only those transmission needs driven by public policy requirements not readily met through existing approved

¹⁶³ *Id.* PP 206, 207, and 208.

¹⁶⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

¹⁶⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

requests for new transmission service or planned transmission facilities. Thus, we direct Florida Parties, in further compliance filings, to revise their OATTs to include 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. 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.¹⁶⁶ We also note that 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.¹⁶⁷ If the intent of Florida Parties is that the FRCC will evaluate *all* potential transmission needs driven by public policy requirements identified by stakeholders, then this should be clearly stated in the further compliance filings. In these same compliance filings, Tampa Electric, Florida Power, and Florida Power & Light must revise their OATTs to comply with Order No. 1000's requirement that each public utility transmission provider 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 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.¹⁶⁸ Likewise, Orlando should submit revisions to its Attachment K consistent with these directives.

89. Moreover, we agree with LS Power and FMPA/Seminole that Florida Parties' compliance proposal does not explain how the public utility transmission providers will evaluate potential transmission solutions to identified transmission needs driven by public policy requirements and will not produce a regional transmission plan that more efficiently or cost-effectively meets such needs. Florida Parties propose to revise their OATTs to state that if a transmission need driven by public policy requirements is identified, CEERTS and local transmission projects may be proposed to address such need. However, Florida Parties have not described in their OATTs: (1) how potential transmission solutions to identified transmission needs driven by public policy requirements will be evaluated; (2) who may propose such solutions, as well as when and how they may do so; and (3) when and how stakeholders may provide input during the evaluation of potential transmission solutions to identified transmission needs driven by public policy requirements. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to establish procedures to evaluate at the

¹⁶⁶ Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

¹⁶⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

¹⁶⁸ *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

regional level potential transmission solutions to identified transmission needs driven by public policy requirements.¹⁶⁹ 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. Likewise, Orlando should submit revisions to its Attachment K consistent with the Commission's directives listed above.

90. In sum, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 120 days of the date of issuance of this order, further compliance filings that include the following OATT revisions. First, Tampa Electric, Florida Power, and Florida Power & Light must remove from their OATTs the provisions limiting the consideration of transmission needs driven by public policy requirements to those not readily met through existing approved requests for new transmission service or planned transmission facilities. Second, Tampa Electric, Florida Power, and Florida Power & Light must revise their OATTs to establish procedures in the regional transmission planning process to identify transmission needs driven by public policy requirements that allow stakeholders an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by public policy requirements. Third, Tampa Electric, Florida Power, and Florida Power & Light must revise their OATTs to include a just and reasonable and not unduly discriminatory process by which they will identify, out of the larger set of transmission needs driven by public policy requirements proposed by stakeholders, those transmission needs for which transmission solutions will be evaluated. Fourth, Tampa Electric, Florida Power, and Florida Power & Light must revise their OATTs to comply with Order No. 1000's requirement that each public utility transmission provider 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 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. Finally, Tampa Electric, Florida Power, and Florida Power & Light must revise their OATTs to establish 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. Likewise, Orlando should submit revisions to its Attachment K consistent with the Commission's directives listed above.

¹⁶⁹ See *supra* Part IV.B.1.c for further discussion of the evaluation process.

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

(a) **Florida Parties' Filings**

91. Florida Parties propose to revise their OATTs to comply with the requirement to consider transmission needs driven by public policy requirements in their local transmission planning process. Florida Parties state that if a public policy transmission need is identified, CEERTS and local projects may be proposed to address such a need.¹⁷⁰ In addition, Florida Parties' OATTs provide that to be considered in the transmission planning process, a public policy requirement must "be reflected in state, federal, or local law or regulation (including an order of a state, federal, or local agency)."¹⁷¹

(b) **Protests/Comments**

92. No protests or comments were filed.

(c) **Commission Determination**

93. We find that, as discussed below, Florida Parties' filings may not comply with the provisions of Order No. 1000 addressing consideration of transmission needs driven by public policy requirements in the local transmission planning process. 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.¹⁷² Florida Parties provide that if a transmission need driven by public policy requirements is identified in the regional transmission planning process, local transmission projects may be proposed to address such a need. However, Florida Parties 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. Thus, we direct Tampa Electric, Florida Power, and Florida Power & Light to file, within 120 days of the date of issuance of this order, further compliance filings explaining how the local transmission planning process complies with the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements. Likewise, Orlando should provide further explanation consistent with this directive.

¹⁷⁰ Florida Power & Light Co., FPL OATT, Attachment K § 11.1.

¹⁷¹ *Id.*

¹⁷² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

2. Nonincumbent Transmission Developer Reforms

94. 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 the development of requirements regarding qualification criteria for transmission developers and processes for evaluating proposals for new transmission facilities.

a. Federal Rights of First Refusal

95. 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.¹⁷³ 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.¹⁷⁴ 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.¹⁷⁵

96. The requirement in Order No. 1000 to eliminate a federal right of first refusal does not apply to local transmission facilities,¹⁷⁶ 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

¹⁷³ *Id.* 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.

¹⁷⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 5, 63.

¹⁷⁵ *Id.* P 314 n.294.

¹⁷⁶ *Id.* PP 226, 258, and 318.

cost allocation.¹⁷⁷ 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.¹⁷⁸ In addition, the Commission noted that 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.¹⁷⁹

97. 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.¹⁸⁰ The Commission also clarified in Order No. 1000-A that the phrase "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.¹⁸¹ However, the Commission acknowledged in Order No. 1000-A that that there may be a range of

¹⁷⁷ *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.

¹⁷⁸ 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.

¹⁷⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

¹⁸⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 423.

¹⁸¹ *Id.* P 423.

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.¹⁸²

i. Florida Parties' Filings

98. To comply with the requirements of Order No. 1000, Florida Parties propose to add a new section 1.2 to their Attachments K/N-2 governing the regional transmission planning process, as well as a transmission developer's ability to propose transmission projects for consideration in the regional transmission planning process for purposes of cost allocation. Florida Parties state that transmission providers retain the right of first refusal respective to the development of transmission projects; specifically, "[i]f the CEERTS project requires upgrades to Transmission Provider's existing facilities Transmission Provider retains a right-of-first refusal to build those portions of the CEERTS project. Nothing herein affects Transmission Provider's rights under state law with regard to its real property (including rights of way and easements)."¹⁸³ Attachments K/N-2, section 1.2.18 provide that, "nothing herein shall adversely affect the ability of Transmission Provider to comply with state and federal law, including its service obligations under the laws and regulations of the [Florida Commission] and its reliability obligations under section 215 of the [FPA]."¹⁸⁴

99. Florida Parties state that if a single transmission developer submits a proposal for a given CEERTS project then that transmission developer is accepted by default, subject to a qualification review.¹⁸⁵ Florida Parties provide greater context as to which projects are eligible for CEERTS status and which projects are solely the responsibility of the transmission provider:

Local transmission facilities located solely within a Transmission Provider's footprint (*e.g.* Control Area) that are not selected in the regional transmission plan for purposes of cost allocation cannot qualify as CEERTS projects. Such facilities are the responsibility of the Transmission Provider

¹⁸² *Id.* P 424, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 at P 40.

¹⁸³ Florida Power & Light Co., FPL OATT, Attachment K § 1.2.10.A.

¹⁸⁴ *Id.* at § 1.2.18.

¹⁸⁵ *Id.* at § 1.2.10.B.

to meet reliability needs and/or other obligations within its retail distribution service territory or footprint.¹⁸⁶

100. Finally, Attachments K/N-2, sections 9.3.1, 9.3.3, and 9.3.4 provide additional detail on the responsibilities of transmission owners regarding upgrades to their respective transmission systems. In section 9.3.1, a "Transmission Owner" is obligated to build or expand its respective transmission system and participate, directly or indirectly, in the FRCC regional transmission planning process.¹⁸⁷ Sections 9.3.3 - 9.3.4, provide that "Transmission Owners" shall be responsible for all costs of upgrades to, and expansions of their respective transmission systems, provided however, that "Transmission Owners" are not entitled to financial or contractual assistance from other parties.

ii. Protests/Comments

101. LS Power objects to Florida Parties' proposal that if a transmission facility selected in the regional transmission plan for purposes of cost allocation requires upgrades to a transmission provider's existing facilities, the transmission provider will retain a right of first refusal to build upgrades to their respective transmission systems, arguing that the reference to upgrades is too vague. Accordingly, LS Power requests that this proposal be modified to include the following definition of upgrades consistent with the definition that the Commission adopted in Order No. 1000-A: "[t]he term upgrade means an improvement to, addition to, or replacement of, an existing transmission facility. The term does not refer to an entirely new transmission facility."¹⁸⁸

102. LS Power also objects to Florida Parties' proposal to include in section 1.2.10(a) a statement that nothing affects a transmission provider's rights under state law as unnecessary. LS Power requests that this statement be deleted, or at least revised to be consistent with Order No. 1000, which stated that, "nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulation with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities."¹⁸⁹ Finally, LS Power argues that the language in

¹⁸⁶ *Id.* at § 1.2.3.

¹⁸⁷ *Id.* at § 9.2 defines Transmission Owner, for this purpose, as an electric utility owning transmission facilities in the FRCC region.

¹⁸⁸ LS Power Protest at 17-18.

¹⁸⁹ *Id.* at 18 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 227).

section 1.2.18 is unnecessary.¹⁹⁰ It adds that the phrase “adversely affect” is vague and has the potential to undermine the entire filing.

iii. Florida Companies’ Answer

103. Though they do not believe the modified language is necessary, Florida Companies do not object to LS Power’s suggested edits clarifying the term “upgrades.” However, Florida Companies object to LS Power’s proposal that Florida Parties delete the sentence, “[n]othing herein affects Transmission Provider’s rights under state law with respect to its real property (including rights of way and easements)” since, as Florida Companies argue, the statement is compliant with Order Nos. 1000 and 1000-A and describes how state law is relevant to transmission development.¹⁹¹ Florida Companies argue that section 1.2.18, which they refer to as a savings clause, appropriately acknowledges that the transmission providers need to abide by state and federal laws. They add that any transmission planning environment should not impair a transmission provider’s ability to fulfill these obligations.¹⁹²

iv. Commission Determination

104. We find that the provisions concerning federal rights of first refusal in Florida Parties’ filings partially comply with the requirements of Order No. 1000. Accordingly, as described below, we require Tampa Electric, Florida Power, and Florida Power & Light to file further compliance filings revising their OATTs. Likewise, Orlando should also submit a further compliance filing.

105. Specifically, we find that sections 9.3.1, 9.3.3, and 9.3.4 are unclear and appear to designate “Transmission Owners” to construct expansions to their own transmission system and receive cost recovery for these expansions, regardless of whether the project is a local project or a CEERTS project that has been selected in the regional transmission plan for the purposes of cost allocation. Therefore, we require Tampa Electric, Florida Power, and Florida Power & Light to clarify that these construction and cost recovery provisions for Transmission Owners do not apply to CEERTS projects, consistent with Order No. 1000’s requirement 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

¹⁹⁰ *Id.* at 41.

¹⁹¹ Florida Companies’ Answer at 63.

¹⁹² *Id.* at 68.

facilities selected in a regional transmission plan for purposes of cost allocation. Likewise, Orlando should provide further clarification consistent with this directive.

106. Regarding Florida Parties' proposal that a transmission provider will retain a right of first refusal for those portions of a CEERTS project that are upgrades to the transmission provider's existing facilities, 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.¹⁹³ We therefore find that Florida Parties' compliance proposal partially complies with Order No. 1000. However, as noted by LS Power, Florida Parties do not define the term "upgrade." Florida Parties do not object to LS Power's proposal to revise section 1.2.10(A) of their Attachments K/N-2 to include the following definition of upgrades consistent with the definition that the Commission adopted in Order No. 1000-A: "[t]he term upgrade means an improvement to, addition to, or replacement of, an existing transmission facility. The term does not refer to an entirely new transmission facility."¹⁹⁴ Thus, we direct Tampa Electric, Florida Power, and Florida Power & Light to define the term "upgrade" in their OATTs, consistent with the definition of upgrade in Order No. 1000-A. Likewise, Orlando should define the term "upgrade" consistent with this directive.

107. In addition, proposed section 1.2.10(A) of Florida Parties' Attachments K/N-2 provide that "[n]othing herein affects Transmission Provider's right under state law with regard to its real property (including rights of way and easements)."¹⁹⁵ We find that this provision is consistent with Order No. 1000's conclusion that the "retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way."¹⁹⁶ This provision is also consistent with Order No. 1000's statement that its reforms "are not intended to alter an incumbent transmission provider's use and control of its existing rights-of-way."¹⁹⁷ We note that Florida Parties' proposed language does not raise the same concerns as the language the Commission addressed in

¹⁹³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

¹⁹⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

¹⁹⁵ *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.10.A.

¹⁹⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31, 323 at P 319.

¹⁹⁷ *Id.*

*PJM Interconnection, L.L.C.*¹⁹⁸ and *Midwest Independent Transmission System Operator, Inc.*¹⁹⁹ Unlike the provisions at issue in *PJM Interconnection, L.L.C.* and *Midwest Independent Transmission System Operator, Inc.*, Florida Parties' compliance proposal simply reiterates the Commission's statements in Order No. 1000, by affirming that "[n]othing herein affects Transmission Provider's right under state law with regard to its real property (including rights of way and easements)."²⁰⁰

108. Florida Parties' proposal also includes a new section 1.2.18, which states that "[n]othing herein shall adversely affect the ability of Transmission Provider to comply with state and federal law, including its service obligations under the laws and regulations of the [Florida Commission] and its reliability obligations under [s]ection 215 of the Federal Power Act."²⁰¹ 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."²⁰² We find that, given our

¹⁹⁸ 142 FERC ¶ 61,214, at P 229 (2013) (finding that PJM Interconnection, L.L.C.'s (PJM) proposal "to designate an incumbent transmission owner as the [entity to construct, own, operate, maintain, and finance] a transmission project when the transmission project at issue is 'proposed to be located on a Transmission Owner's existing right of way and the project would alter the Transmission Owner's use and control of its existing rights of way under state law' . . . establishes a federal right of first refusal in PJM's [Operating Agreement] that is not permitted by Order No. 1000.").

¹⁹⁹ 142 FERC ¶ 61,215, at P 244 (2013) (finding that "[Midwest Independent Transmission System Operator's] proposal to allow [an incumbent transmission owner] to maintain a federal right of first refusal for any new transmission facility built on that [incumbent transmission owner's] right-of-way if such right-of-way contains improvements owned by the [incumbent transmission owner] and is classified as transmission plant is not permitted by Order No. 1000" and that the Commission, in Order No. 1000, "did not find that as part of its compliance filing, a public utility transmission provider may add a federal right of first refusal for a new transmission facility built on an existing right-of-way.").

²⁰⁰ Florida Power & Light Co., FPL OATT, Attachment K § 1.2.10.A.

²⁰¹ *Id.* at § 1.2.18.

²⁰² See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 253, n.231; see also Order No. 1000-A, 139 FERC ¶ 61,132 at P 381.

interpretation of the provision, section 1.2.18 is consistent with Order No. 1000.²⁰³ In addition, we find that Florida Parties' proposed definition of local transmission projects complies with Order No. 1000.

109. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit within 120 days of the date of issuance of this order further compliance filings that revise their OATTs to clarify that the construction and cost recovery reservations for transmission owners do not apply to CEERTS projects and to define the term "upgrade" consistent with the definition of upgrade in Order No. 1000-A. Likewise, Orlando should provide similar clarifications and revisions consistent with the Commission's directives identified above.

b. Qualification Criteria

110. 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.²⁰⁴ Appropriate qualification criteria must be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developer.²⁰⁵ 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.²⁰⁶

²⁰³ See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 253, n.231:

Nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities. This Final Rule does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements.

See also Order No. 1000-A, 139 FERC ¶ 61,132 at P 381.

²⁰⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

²⁰⁵ *Id.* P 324.

²⁰⁶ *Id.* P 323.

111. The qualification criteria should also allow for the possibility that an existing public utility transmission provider already satisfies the criteria.²⁰⁷ 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.²⁰⁸ 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.²⁰⁹

112. 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 state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.²¹⁰

i. Technical Criteria

(a) Florida Parties' Filings

113. Under Florida Parties' compliance proposal, an incumbent transmission provider or a nonincumbent transmission developer may submit a transmission project for potential selection in the FRCC regional transmission plan for purposes of cost allocation. Potential transmission developers must be physically, technically and financially capable of: (1) completing the regional transmission project in a timely and competent manner; and (2) operating and maintaining the transmission facilities consistent with Good Utility Practice and applicable reliability criteria for the life of the project.²¹¹

114. Florida Parties propose a new section 1.2.11.A "Project Developer Qualifications Review" that provides qualification criteria for transmission developers proposing reliability-based transmission projects within their own service territories. Florida Parties propose that an entity obligated under state law to provide, directly or indirectly, electric service to retail customers within its service territory shall be deemed to satisfy the

²⁰⁷ *Id.* P 324.

²⁰⁸ *Id.*

²⁰⁹ *Id.* P 324 n.304, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at n.520.

²¹⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

²¹¹ Florida Power & Light Co., FPL OATT, Attachment K, Appendix 3.

qualification criteria with regard to reliability-based projects in its service territory.²¹² Otherwise, a transmission developer must provide the following information to demonstrate that it meets the technical transmission developer qualification criteria: (1) a demonstration that the transmission developer's business practices are consistent with Good Utility Practices for proper licensing, designing, right-of-way acquisition, constructing, operating, and maintaining transmission facilities; (2) a summary of any violations of law by the transmission developer found by federal or state courts, federal regulatory agencies, state public utility commissions, other regulatory agencies, or attorneys general for the current calendar year and the previous five calendar years; (3) a summary of any instances in which the transmission developer is currently under investigation or is a defendant in a proceeding involving an attorney general or any state or federal regulatory agency for violation of any laws, including regulatory requirements, for the current calendar year and the previous five calendar years; (4) the transmission developer's technical and engineering qualifications and experience; (5) the transmission developer's past history of meeting transmission project schedules; (6) the transmission developer's past history regarding providing construction and maintenance of transmission facilities and/or contracting for the construction and maintenance of transmission facilities; (7) the transmission developer's capability to adhere to standardized construction, maintenance and operating practices; (8) the transmission developer's plans for compliance with all applicable reliability standards; (9) discussion of planning standards that the transmission developer will use to develop the transmission project; and (10) the transmission developer's plans to obtain the appropriate NERC certifications.²¹³ In addition, a transmission developer must submit an attestation stating that the information provided is true and that the transmission developer will "comply with the provisions identified in the qualification data submittal."²¹⁴

115. Florida Parties explain that the FRCC Board will determine whether a transmission developer meets the qualification criteria for proposed transmission developers that do not meet the 1.2.11.A. condition.²¹⁵ Florida Parties state that a potential transmission developer must file an application for project sponsorship with the FRCC. After filing the application, an independent consultant will evaluate and make a recommendation to the FRCC Board whether the transmission developer has met the qualification criteria. The FRCC Board will provide its own determination as to the

²¹² *Id.* § 1.2.11.A.

²¹³ *Id.* at Appendix 3§ 1.C-1.J.

²¹⁴ *Id.* § 2.

²¹⁵ *Id.* at Attachment K, § 1.2.11.C.

transmission developer's qualifications on a nondiscriminatory basis.²¹⁶ For joint ventures, partnerships, or other multi-party transmission developer arrangements, Florida Parties state that the qualification criteria will be applied to the designated lead entity, which will be responsible for meeting the qualification criteria. Florida Parties provide, however, that the designated lead entity and its partners may contractually share such responsibilities.²¹⁷

116. If the FRCC Board determines that the qualification criteria are satisfied, the qualification process is a one-time process for each transmission developer, subject to an annual update.²¹⁸ Specifically, each year that a transmission developer has a transmission project under consideration in the regional transmission planning process or under construction or in-service in the FRCC transmission planning region, the transmission developer must also submit an annual (or more often if the information provided has materially changed) update of the qualification information submitted, accompanied by an attestation that the previously submitted information remains correct and has not materially changed since the last attestation.²¹⁹ However, Florida Parties explain that if the FRCC Board determines that a transmission developer has not met the qualification criteria, the FRCC Board will notify the transmission developer of the qualification deficiencies and provide 30 days for the transmission developer to cure the deficiencies. Florida Parties further explain that if a transmission developer does not agree with the FRCC Board's determination, then the FRCC Bylaws' dispute resolution process is available to resolve the dispute.²²⁰

(b) Protests/Comments

117. LS Power objects to Florida Parties' proposal to include in the qualification criteria a provision that requires a transmission developer to demonstrate how it can meet the qualification criteria for the "life of the project." LS Power argues that the term is inappropriately vague and a barrier to entry. LS Power notes that independent transmission developers will most likely not have sufficient affiliate history to make such

²¹⁶ *Id.* § 1.2.11.C.

²¹⁷ *Id.* at Appendix 3§ 3.

²¹⁸ *Id.* at Attachment K, § 1.2.11, Appendix 3.

²¹⁹ *Id.* at Attachment K, Appendix 3§ 2.

²²⁰ *Id.* § 1.2.11.C.

a demonstration.²²¹ LS Power also objects to the Florida Parties' proposal to exempt incumbent transmission providers from this qualification process.

118. LS Power objects to the requirement that a prospective transmission developer provide a history of meeting transmission project schedules as a qualification criterion, stating that such a factor should only be used to assess competing transmission projects in the project evaluation stage and not in the transmission developer qualification stage. It argues that if this requirement remains in the qualification criteria, then the incumbent transmission providers should have to provide the same information instead of being automatically qualified.²²²

119. LS Power recommends that transmission developer qualification review occur before a transmission project is submitted to the regional transmission planning process. Further, LS Power believes that the transmission developer qualification review should be structured in a way that allows only qualified transmission developers or those transmission developers that are not seeking to build or own proposed transmission projects to submit regional transmission projects.²²³

120. LS Power argues that the requirements that a transmission developer provide its plans for compliance with all applicable reliability standards and its plans to obtain appropriate NERC certifications are inappropriate qualification criteria and inconsistent with Order No. 1000-A.²²⁴ LS Power contends that it is not appropriate for the Commission to amend or interpret NERC registration requirements as part of a generic rulemaking.²²⁵

121. Finally, LS Power objects to the use of the term "physically" in Appendix 3, section 1 to Attachments K/N-2, which states that the project developer must be: physically, technically, and financially capable of: (i) completing the CEERTS project in a timely and competent manner; and (ii) operating and maintaining the CEERTS facilities consistent with Good Utility Practice and applicable reliability criteria for the life of the project." LS Power argues that the term physically is vague and should be removed.²²⁶

²²¹ LS Power Protest at 21-22.

²²² *Id.* at 23.

²²³ *Id.* at 19.

²²⁴ *Id.* at 23-24 (citing at Order No. 1000-A, 139 FERC ¶ 61,132 at P 444).

²²⁵ *Id.*

²²⁶ LS Power Protest at 21.

(c) **Florida Companies' Answer**

122. Florida Companies state that requiring transmission developers to submit qualifications at the time of project submission is an efficient process that appropriately focuses on the transmission developers who are submitting CEERTS projects. Florida Companies state that they do not believe that the FRCC should spend time and resources reviewing a transmission developer's qualifications until the developer has proposed a CEERTS project.²²⁷ Furthermore, Florida Companies argue that this requirement is consistent with Order No. 1000.

123. Florida Companies state that requiring transmission developers to describe how they can meet the qualification criteria for the "life of the project" is appropriate and needed. Florida Companies assert that this language is not intended to limit the analysis to the short-term capabilities of a transmission developer. Florida Companies contend that any entity purchasing a multi-million dollar product or service intended to last at least 40 years would consider the likelihood of the seller to be able to stand behind its product or service. Florida Companies affirm they are not requiring that a transmission developer have been in business any particular length of time, but rather intend to rule out a transmission developer that appears to have no plans as to how it will operate and maintain the proposed transmission facility once constructed or that is managed by executives who have no experience in running projects of a scale comparable to regional transmission projects.²²⁸

124. In response to LS Power's objection to the requirement that prospective transmission developers provide a history of meeting transmission project schedules as a qualification criterion, Florida Companies assert that a transmission developer's demonstrated record over time is a good indicator of how the developer will perform in the future. They state that this is an important consideration in choosing a transmission developer.²²⁹

125. Florida Companies argue that a transmission developer's understanding of NERC policies, standards and certifications, as well as its compliance plans, is an important part of the transmission developer selection process. However, Florida Companies clarify that they are not requiring that a transmission developer obtain NERC certifications during the transmission developer qualification stage, but only requiring the transmission

²²⁷ Florida Companies' Answer at 46.

²²⁸ *Id.* at 48-49.

²²⁹ *Id.* at 51.

developer to explain which certifications it expects to obtain and its plan for assembling the resources to ensure compliance.²³⁰

126. Florida Companies agree to LS Power's request to delete "physically" in the below sentence:

"Demonstration that the project developer is physically, technically, and financially capable of (i) completing the CEERTS project in a timely and competent manner; and (ii) operating and maintaining the CEERTS facilities consistent with Good Utility Practice and applicable reliability criteria for the life of the project."²³¹

127. In response to LS Power's objection to the qualification exemption for incumbent transmission providers, Florida Companies assert that incumbent transmission providers have a long history of building transmission, and are well versed in Florida state siting laws and all other facets of building transmission in the state. Florida Companies state that the Florida Commission has already authorized these entities to build transmission in Florida, and Florida Companies state that they have determined that no further qualification review is needed for the incumbent transmission providers in Florida.²³²

(d) Commission Determination

128. We find that the technical qualification criteria in Florida Parties' filings partially comply with the requirements of Order No. 1000. We conclude that as modified below, Florida 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.²³³ Moreover, Florida Parties' proposal satisfies Order No. 1000's requirement that there be opportunities for a prospective transmission developer to remedy any deficiencies, as the FRCC Board will provide 30 days for the transmission developer to cure any deficiencies with respect to the qualification criteria after notification of such deficiencies.

²³⁰ *Id.* at 51-52.

²³¹ *Id.* at 48 (citing Florida Power & Light Co., FPL OATT, Attachment K, Appendix 3§ 1).

²³² *Id.* at 47.

²³³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324.

129. First, we agree with Florida Parties that requiring each potential transmission developer to demonstrate that it has the necessary financial resources and technical expertise to operate and maintain the proposed transmission facilities consistent with Good Utility Practice and applicable reliability criteria for the life of the project is an appropriate qualification criterion. We find that it is reasonable that the FRCC Board, in evaluating the qualifications of a transmission developer, consider whether the transmission developer's existing resources and commitments provide sufficient assurance that the transmission developer will be able to operate and maintain a facility for the life of the project.

130. However, we find that Florida Parties' proposal that an entity that is obligated under state law to provide, directly or indirectly, electric service to retail customers within its service territory shall be deemed to satisfy the qualification criteria with regard to reliability-based projects in its service territory does not comply with Order No. 1000. Although Order No. 1000 states that qualification criteria should allow for the possibility that an existing public utility transmission provider already satisfies the criteria,²³⁴ this does not mean that Florida Parties can exempt an incumbent transmission owner from having to meet the qualification criteria if it is proposing a transmission facility for selection in the regional transmission plan for purposes of cost allocation. Appropriate qualification criteria must be fair and not unreasonably stringent when applied to either an incumbent transmission owner or a nonincumbent transmission developer.²³⁵ 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.²³⁶ Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit further compliance filings that provide fair and not unreasonably stringent qualification criteria that apply to both incumbent transmission owners and nonincumbent transmission developers. We find that this compliance directive addresses LS Power's contention that the qualification criterion requiring a prospective transmission developer to provide a history of meeting transmission project schedules should apply to incumbent transmission providers. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

131. We find Florida Parties' proposal that a potential transmission developer provide its plans for compliance with all applicable reliability standards and its plans to obtain the appropriate NERC certifications to be just and reasonable. While Order No. 1000-A

²³⁴ *Id.* P 324.

²³⁵ *Id.*

²³⁶ *Id.* P 323.

clarified that NERC registration is not an appropriate qualification criterion for the developer qualification stage, we find that a description of how an entity intends to comply, if necessary, with NERC registration requirements is reasonable as a qualification criterion.

132. However, we agree with LS Power that Florida Parties should notify a transmission developer whether it has demonstrated appropriate qualification criteria to develop transmission projects before the transmission developer submits a transmission project for consideration in the regional transmission plan for purposes of cost allocation.²³⁷ We find that Florida Parties' proposed OATT revisions do not describe when a prospective transmission developer must submit information to demonstrate that it satisfies the qualification criteria, when the FRCC Board will make a determination whether a prospective transmission developer satisfies the qualification criteria so that the developer may propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, or that the FRCC Board will make such determination before a prospective transmission developer may propose a transmission project. Florida Parties' proposed revisions state simply that the FRCC Board will make a determination whether a prospective transmission developer met the qualification criteria, and will notify the developer if it determines that an entity's application is deficient.²³⁸ We therefore direct Tampa Electric, Florida Power, and Florida Power & Light to file further compliance filings that explain when a prospective transmission developer must submit this information, when the FRCC Board will make a determination as to whether a prospective transmission developer satisfies the qualification criteria, and that the FRCC Board will make such determination before a prospective transmission developer may propose a transmission project. Additionally, we direct Tampa Electric, Florida Power, and Florida Power & Light to explain when the FRCC Board will inform an entity whether it has met the qualification criteria. Likewise, Orlando also should submit further revisions to its Attachment K consistent with these directives.

133. In addition, Florida Parties' propose a qualification criterion that a prospective transmission developer must "demonstrate that its business practices are consistent with Good Utility Practices for proper licensing, designing, right-of-way acquisition, constructing, operating, and maintaining transmission facilities."²³⁹ We find that this qualification criterion is consistent with Order No. 1000 because it does not require a potential transmission developer to demonstrate that it has, or can obtain proper licensing

²³⁷ *Id.* PP 225, 323.

²³⁸ *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.11.C.

²³⁹ Florida Power & Light Co., FPL OATT, Attachment K, Appendix 3§ 1.C.

and rights-of-way at the qualification stage. Rather, a potential transmission developer must demonstrate that its business practices are consistent with Good Utility Practices²⁴⁰ for proper licensing and right-of-way acquisition.

134. Finally, we accept Florida Parties' offer in response to LS Power to remove the term "physically" from the proposed qualification criterion that a prospective transmission developer must demonstrate its physical, technical, and financial capability to complete and operate CEERTS. We therefore direct Tampa Electric, Florida Power, and Florida Power & Light to file further compliance filings reflecting this revision. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

135. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 120 days of the date of issuance of this order, further compliance filings to establish in their OATTs fair and not unreasonably stringent qualification criteria that apply to both incumbent transmission owners and nonincumbent transmission developers. In these same compliance filings, Tampa Electric, Florida Power, and Florida Power & Light must: (1) revise their OATTs to describe when a prospective transmission developer must submit information to demonstrate that it satisfies the qualification criteria, when the FRCC Board will make a determination whether a prospective transmission developer satisfies the qualification criteria such that it may propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, and that the FRCC Board will make such determination before a prospective transmission developer may propose a transmission project; (2) explain when the FRCC

²⁴⁰ Tampa Electric Company, OATT §1.15 defines Good Utility Practice:

Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally. *Id.*

Board will inform an entity whether it has met the qualification criteria;²⁴¹ and (3) remove the term “physically” from the proposed qualification criterion that a prospective transmission developer must demonstrate its physical, technical, and financial capability to complete and operate CEERTS facilities, consistent with Florida Companies’ answer. Likewise, Orlando also should submit further revisions to its Attachment K consistent with the Commission’s directives listed above.

ii. Financial Criteria

(a) Florida Parties’ Filings

136. Florida Parties state that the sponsorship of regional transmission projects will result in incremental costs to the FRCC. Therefore, Florida Parties propose that each potential transmission developer must provide a one-time deposit of \$50,000 for outside consultants to review its qualifications. Florida Parties indicate that the qualification process is a one-time event for each new transmission developer and that unexpended amounts shall be refunded to the transmission developer.²⁴² Florida Parties propose that if the transmission developer is an entity that is obligated under state law to provide, directly or indirectly, electric service to retail customers within its service territory, the transmission developer shall be deemed to satisfy the qualification criteria with regard to reliability-based projects in its service territory (and not subject to the deposit fee).²⁴³

137. Florida Parties outline the specific financial criteria required for CEERTS project developers in Appendix 3 to Attachments K/N-2. Specifically, potential transmission developers must provide: (1) current Moody’s Investor Services and Standard & Poors

²⁴¹ These requirements likewise apply not only to Florida Parties’ proposed technical qualification criteria, but also to its proposed financial qualification criteria as discussed in Part IV.B.2.b.ii.(d) below.

²⁴² We note that Florida Parties require a transmission developer which has a CEERTS project under consideration, under construction, or in-service to submit an annual (or more often if the information provided has materially changed) update of the qualification information submitted, accompanied by an attestation that the previously submitted information remains correct and has not materially changed since the last attestation. Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.11, Appendix 3. We also note that the annual status update for material changes regarding a transmission developer’s qualifications apply not only to Florida Parties’ proposed financial qualification criteria, but also to its proposed technical qualification criteria as discussed in Part IV.B.2.b.i.(d) above.

²⁴³ Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.11.

credit ratings, if available; (2) the ability to assume liability for major losses resulting from failure of facilities; (3) for electric utilities that rely on affiliated utilities for credit, investment, or other financing arrangements, demonstration that these arrangements comply with applicable legal and regulatory requirements and restrictions; (4) a summary of any history of bankruptcy, dissolution, merger, or acquisition; (5) a summary of outstanding liens; and (6) a demonstration that the developer can obtain the necessary professional business and/or construction licensing in the applicable geographic locations.²⁴⁴

138. Finally, Florida Parties state that their transmission developer selection criteria enable transmission developers to demonstrate their cost containment capabilities and propose any binding agreements to contain their overall costs (cost cap). Florida Parties maintain that their new OATT language precludes project costs above the cost cap from being recovered from the beneficiaries of transmission facilities.²⁴⁵

(b) Protests/Comments

139. LS Power claims that exempting incumbent transmission providers from the proposed qualification process and \$50,000 project developer qualification review deposit is discriminatory. It argues that the exempted entities may not have built transmission in the last 10 or 15 years or may have only completed small transmission projects that do not match the scope or financial commitment of the regional transmission projects for which they will be exempted. LS Power recommends that the Commission require Florida Parties to eliminate the deposit and require all transmission developers to establish their financial and technical qualifications for regional transmission projects.²⁴⁶ FMPA/Seminole also question the reasonableness of the \$50,000 deposit for assessing a nonincumbent transmission developer's qualifications.²⁴⁷

140. LS Power states that the "cost containment" criterion and willingness to accept cost caps are inappropriate qualification criteria.²⁴⁸ LS Power "is not opposed to such an

²⁴⁴ *Id.* Appendix 3 § 1.A.1-6.

²⁴⁵ *Id.* § 1.B.

²⁴⁶ LS Power Protest at 20-21.

²⁴⁷ FMPA/Seminole Protest at 62.

²⁴⁸ Florida Power & Light Co., FPL OATT, Attachment K, Appendix 3§ 1.B.

inquiry, but it would be better conducted, by all entities, in the proposal stage of the process.”²⁴⁹

141. Finally, LS Power objects to the qualification criterion requiring proposed transmission developers to demonstrate that the developer can obtain the necessary professional business and/or construction licensing in the applicable cities, counties, or states (Florida, and any others if the project crosses state boundaries). In addition, LS Power objects to the qualification criterion requiring the “[a]bility to assume liability for major losses resulting from failure of facilities.” LS Power states that it is unclear what would be required to meet the qualification criterion or how it would be evaluated. LS Power requests that the Commission order Florida Parties to provide additional detail as to the intent of the criterion and how incumbent transmission providers currently demonstrate their own “ability to assume liability for major losses.”²⁵⁰

(c) Answer

142. Florida Companies state that it is appropriate to provide an additional deposit for assessing nonincumbent qualifications because incumbent transmission owners with an obligation to serve retail load have a legal obligation and a demonstrated ability to construct, own, and operate transmission facilities, while nonincumbent transmission developers have no such obligation or track record.²⁵¹ This deposit would only be required the first time a transmission developer is proposing to build a project, and is designed to support the expense that would be incurred by the FRCC hiring an outside consultant to review the transmission developer’s qualifications.²⁵² Moreover, Florida Companies assert that this deposit is consistent with the Commission’s approach to deposit requirements related to generator interconnections.²⁵³

143. Florida Companies agree to delete the language regarding cost containment and cost caps as long as this concept is included in a proposed addition in section 1.2.4.A.5 that reads “[a] cost estimate (including any cost containment proposals) and a recommended in-service date for the project.”²⁵⁴

²⁴⁹ LS Power Protest at 23.

²⁵⁰ *Id.* at 22.

²⁵¹ Florida Companies’ Answer at 55.

²⁵² *Id.* at 55.

²⁵³ *Id.*

²⁵⁴ *Id.* at 50-51.

144. Florida Companies do not object to LS Power's request to delete proposed criterion 1.A.6. of Appendix 3 to Attachments K/N-2, requiring transmission developers to demonstrate they can obtain the necessary professional business and/or construction licensing in the applicable cities, counties, or states (Florida and any others if the project crosses state boundaries). However, Florida Companies state their concern that a new transmission developer in Florida might not fully understand the regulatory process that must be followed to build a transmission project in Florida.²⁵⁵ Florida Companies therefore propose a new provision in section 1.2.13, along with other information to be submitted prior to final approval by the FRCC Board, as follows, "[p]rovision of a development schedule that indicates the required steps, such as the granting of state approvals, necessary to develop and construct the transmission facility."²⁵⁶

(d) Commission Determination

145. We find that the financial qualification provisions in Florida Parties' filings partially comply with the requirements of Order No. 1000. We conclude that as modified below, Florida Parties' proposed financial 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 financial resources to develop, construct, own, operate, and maintain transmission facilities.²⁵⁷

146. At the outset, we note that some of the requirements that we are directing above with respect to the technical qualification criteria also apply to the financial qualification criteria. Specifically, Tampa Electric, Florida Power, and Florida Power & Light must revise their OATTs to: (1) establish fair and not unreasonably stringent qualification criteria that apply to both incumbent transmission owners and nonincumbent transmission developers; (2) describe when a prospective transmission developer must submit information to demonstrate that it satisfies the qualification criteria, when the FRCC Board will make a determination whether a prospective transmission developer satisfies the qualification criteria such that it may propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, and that the FRCC Board will make such determination before a prospective transmission developer may propose a transmission project; and (3) explain when the FRCC Board will inform an entity

²⁵⁵ Florida Companies' Answer at 50.

²⁵⁶ *Id.*, citing Florida Power & Light Co., FPL OATT, Attachment K, Appendix 3 § 1.

²⁵⁷ Florida Power & Light Co., FPL OATT, Attachment K Appendix 3.

whether it has met the qualification criteria.²⁵⁸ Likewise, Orlando also should submit further revisions to its Attachment K consistent with these directives.

147. Subject to our directive that Florida Parties revise their OATTs such that both incumbent transmission providers and nonincumbent transmission developers are subject to the same qualification criteria and deposits, we find that Florida Parties' proposed deposit complies with Order No. 1000 since it will apply comparably to incumbent transmission owners and nonincumbent transmission developers.

148. However, consistent with the Commission's policy to require payment of interest on deposits or study costs that are refunded to a generator interconnection customer, we require Florida Parties to provide to each transmission developer a description of which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied.²⁵⁹ Also, we direct Tampa Electric, Florida Power, and Florida Power & Light to modify their transmission developer qualification review process to provide for the refund of interest on the excess deposited funds where that payment is refunded to a proposed transmission developer.²⁶⁰ Furthermore, any disputes regarding the accounting for specific deposits should be addressed under Florida Parties' dispute resolution procedures, which are discussed above. Likewise, Orlando should submit similar revisions to its Attachment K.

²⁵⁸ These requirements likewise apply not only to Florida Parties' proposed financial qualification criteria, but also to its proposed technical qualification criteria.

²⁵⁹ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 220 (2003) (Commission requires Transmission Provider to provide "detailed and itemized accounting" of Interconnection Study costs), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

²⁶⁰ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 123 (if Interconnection Customer withdraws request for studies, Transmission Provider must refund Interconnection Customer any portion of Interconnection Customer's deposits or study costs that exceeds the costs that Transmission Provider has incurred, including interest); see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at PP 166-168 (2012) (rejecting MISO's proposal to eliminate the payment of interest on refunded portions of generator interconnection study deposits).

149. In response to commenter's objections on the proposed transmission developer qualification deposit, we note that Florida Parties indicate that the deposit provides funding for FRCC internal analysis costs and any out-of-pocket expenses, such as for independent consultants (with unexpended amounts refunded to the project sponsor). The actual costs incurred by the FRCC to analyze the regional transmission project will be borne by the transmission developer and the deposit will be trued up based on the documented cost of the analysis. To arrive at this deposit amount, Florida Parties reviewed the typical study costs incurred by the utilities to perform generation interconnection requisitions, recognizing that regional transmission projects typically span multiple utility footprints and interconnect at multiple locations.²⁶¹ Based on this information, we find the transmission developer qualification proposed will result in additional incremental costs to the FRCC.

150. We find that Florida Parties' proposed criterion 1.A.6 of Appendix 3 to Attachments K/N-2, which would require a demonstration that a prospective transmission developer can obtain the necessary licensing in applicable cities, counties, and states, is inconsistent with Order No. 1000-A. In Order No. 1000-A, the Commission clarified that "it would be an impermissible barrier to entry, to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain state approvals necessary to operate in a state, including state public utility status or the right of eminent domain, to be eligible to propose a transmission facility."²⁶² Therefore, on compliance, we accept Tampa Electric, Florida Power, and Florida Power & Light's offer to remove criterion 1.A.6, which addresses a prospective transmission developer's ability to obtain licensing. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

151. We find unclear what is intended by Florida Parties' proposed qualification criterion that a transmission developer demonstrate its ability to assume liability for major losses resulting from any failure of transmission facilities. Florida Parties have failed to explain how a prospective transmission developer would demonstrate such ability. We therefore direct Tampa Electric, Florida Power, and Florida Power & Light in further compliance filings to explain why this proposed criterion is necessary and not unduly discriminatory when transmission developers are already required to demonstrate their financial resources or remove this financial qualification criterion from their OATTs. We also find unclear what is intended by Florida Parties' proposed qualification criterion that a transmission developer demonstrate that its credit, investment, or other financing arrangements comply with applicable legal and regulatory requirements and restrictions. Specifically, we find that Florida Parties have not explained what

²⁶¹ Florida Power & Light Co., Transmittal Letter at 14.

²⁶² Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

“applicable legal and regulatory requirements and restrictions” to which this qualification criterion refers such that it is clear how a prospective transmission developer would make the required demonstration. We also direct Tampa Electric, Florida Power, and Florida Power & Light to clarify how electric utilities that rely on affiliated utilities for credit, investment or other financing arrangements can demonstrate that these arrangements “comply with applicable legal and regulatory requirements and restrictions” or, in the alternative, to remove this qualification criterion from their OATTs. Likewise, Orlando also should provide further justification for these provisions, or remove these provisions from its Attachment K, consistent with this directive.

152. In response to LS Power’s protest that the qualification criterion under which a transmission developer may demonstrate its cost containment capability, including any binding agreement to accept a cost cap, should instead be a part of proposals for transmission projects for selection in the regional transmission plan for purposes of cost allocation, Florida Parties agree to delete this criterion as long as the concept is included in a proposed addition to the information requirements in section 1.2.4. We agree with Florida Parties’ proposed approach in their answer, and will require Tampa Electric, Florida Power, and Florida Power & Light to revise the proposed information requirements to include in the required cost estimate any demonstration of a transmission developer’s cost containment capability, including any binding agreement to accept a cost cap, for a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

153. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit, within 120 days of the date of issuance of this order, further compliance filings to: (1) modify their transmission developer deposit requirements to (i) provide to each transmission developer a description of which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied, (ii) provide a refund of interest on the excess deposited funds where the payment is refunded, and (iii) provide a provision that any disputes arising from this process be addressed under the Florida Parties’ dispute resolution process; (2) remove proposed criterion 1.A.6 of Appendix 3 to Attachments K/N-2, which would require a demonstration that a prospective transmission developer can obtain the necessary licensing in applicable cities, counties, and states; (3) explain why their proposal that a prospective transmission developer must demonstrate its ability to assume liability for major losses resulting from any failure of transmission facilities is necessary and not unduly discriminatory when transmission developers are already required to demonstrate their financial resources or remove this financial qualification criterion from their OATTs; (4) revise the proposed information requirements to include in the required cost estimate any demonstration of a transmission developer’s cost containment capability, including any binding agreement to accept a cost cap, for a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation; and

(5) clarify how electric utilities demonstrate that its arrangements with affiliated utilities comply with the applicable legal and regulatory requirements and restrictions or remove this qualification criterion from their OATTs. Likewise, Orlando also should submit further revisions to its Attachment K consistent with the Commission's directives listed above.

c. Information Requirements

154. 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.²⁶³ 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.²⁶⁴ 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.²⁶⁵ 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.²⁶⁶

155. 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.²⁶⁷ Each transmission planning region 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.²⁶⁸

²⁶³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

²⁶⁴ *Id.* P 326.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.* P 325.

²⁶⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 327.

i. Florida Parties' Filings

156. Florida Parties propose June 1 as the date for which proposed CEERTS projects must be submitted for review each planning year.²⁶⁹ For an initial screening of a CEERTS project submittal, Florida Parties require the following elements: (1) project technical information (i.e., voltage levels, general path of the lines, interconnection points within the existing system); (2) reliability impact assessment; (3) load flow analysis that demonstrates performance utilizing the FRCC load flow model; (4) avoided or affected projects, as well as any additional projects that may be required; (5) a cost estimate, and recommended in-service date; and (6) identification of the proposed project developer (if known), specifying who will own, operate and maintain the CEERTS project, and what contractual arrangements would be made for such purpose. Florida Parties also propose that transmission developers demonstrate that a CEERTS projects is equal or superior to the proposed avoided project.

157. For CEERTS project submittal, Florida Parties also require a study evaluation deposit of \$100,000 for each \$10,000,000 of estimated project cost, capped at a maximum deposit of \$500,000 for each CEERTS project, which according to Florida Parties, will be used for FRCC internal analysis costs as well as any out-of-pocket expenses such as for independent consultants; unexpended amounts shall be refunded to the project sponsor. Florida Parties state that the actual costs incurred by the FRCC to analyze the CEERTS project will be borne by the project sponsor and the deposit will be trued-up based on the documented cost of the analysis.

158. Florida Parties state that the transmission developer proposing a regional transmission project must present the CEERTS overview (a minimum of section 1.2.4.A.1 through 1.2.4.A.7, in Attachments K/N-2, which encompasses the initial technical screening process described above) to the FRCC Planning Committee and request that the FRCC Planning Committee obtain cost information for the projects that are proposed to be avoided or modified from the entities responsible for those projects. With this cost information, the transmission developer shall fully assess the cost of its proposed transmission project and its rationale for why the project is a more cost-effective and efficient regional transmission solution.²⁷⁰

159. The FRCC Planning Committee shall review transmission proposal submittals to ensure that they meet the threshold criteria and minimum requirements. If the FRCC Planning Committee determines that a submittal is incomplete, the FRCC Planning Committee shall inform the transmission developer in writing within 15 days of the next

²⁶⁹ Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.

²⁷⁰ *Id.* § 1.2.4.

regularly scheduled FRCC Planning Committee meeting of the specific deficiencies. The transmission developer proposing a regional transmission project shall be given an opportunity, within 30 days, to submit the information required for a complete submittal.²⁷¹ For those projects that have cleared all required steps and are deemed complete, the FRCC Planning Committee shall post this information on the FRCC website.²⁷²

ii. Protests/Comments

160. LS Power finds it inappropriate to require a transmission developer to demonstrate “through a technical evaluation that the CEERTS project is equal or superior to avoided projects from the current regional transmission plan,” as the existing project has had only limited study before being included in the regional transmission plan. LS Power states it should be the burden of the FRCC to make such a judgment.²⁷³

161. Although LS Power supports the use of study evaluation deposits to ensure “real” project proposals, LS Power states that the deposit amount should be equal for all project proposals included in the plan. LS Power objects strongly to the magnitude of the deposit requested, declaring it to be a barrier to entry. In its protest, LS Power presented a chart reflecting the maximum deposit amounts required for the study evaluation process in the other Order No. 1000 transmission planning regions. According to LS Power, Florida Parties propose the highest maximum deposit of all the Order No. 1000 transmission planning regions — \$500,000. The next highest deposit proposed by other Order No. 1000 transmission planning regions is \$25,000 (e.g., South Carolina Electric & Gas Company - \$25,000 and New York Independent System Operator, Inc. and New York Transmission Owners - \$25,000).²⁷⁴

162. LS Power states that Florida Parties provide no factual support for the assertion that the deposit amount is based on actual cost expectations. Additionally, LS Power asserts that “where the Florida [Parties] have paid no deposit for inclusion of their projects in the regional plan,”²⁷⁵ the excessive deposit on transmission projects that may compete with their projects is clearly designed to discourage the submission of proposals in the regional transmission planning process. LS Power recommends that the

²⁷¹ *Id.* § 1.2.5.

²⁷² *Id.* § 1.2.6.

²⁷³ LS Power Protest at 24.

²⁷⁴ LS Power Protest at 25-26.

²⁷⁵ *Id.* at 27.

Commission require Florida Parties to adopt a \$25,000 deposit for each CEERTS project submittal.²⁷⁶ FMPA/Seminole recommend a similar deposit amount as LS Power with a provision for additional contributions to be required based upon a demonstration by the FRCC Planning Committee that the deposit has been spent and that additional dollars in a specified (and justifiable) amount are required to complete the evaluation process.²⁷⁷

iii. Florida Companies' Answer

163. Florida Companies assert that a CEERTS project submittal including “[a] demonstration through a technical evaluation that the CEERTS project is equal or superior to avoided projects from the current regional transmission plan” is an important provision and it should be something that the transmission developer completes before proposing a transmission project even if not required by the OATT. Florida Companies state that the transmission developer would need to have some basis for believing that the proposed transmission project was more cost-effective than projects that are currently in the regional transmission plan.²⁷⁸

164. Florida Companies state that the study evaluation deposit requirement of \$100,000 for each \$10 million of estimated project cost, with a \$500,000 cap, is used to support FRCC’s internal analysis costs, including amount spent on outside consultants.²⁷⁹ According to Florida Companies, this amount is based on the typical study costs incurred by utilities in FRCC to perform generation interconnection requests, while recognizing that a CEERTS project would typically span multiple utility footprints and interconnect at multiple locations.²⁸⁰ Moreover, the cap provides that FRCC bears the risk of analysis cost overruns.²⁸¹

iv. Commission Determination

165. We find that the provisions in Florida Parties’ filings addressing information requirements for submitting proposals partially comply with the requirements of Order No. 1000.

²⁷⁶ *Id.*

²⁷⁷ FMPA/Seminole Protest at 61.

²⁷⁸ Florida Companies’ Answer at 63.

²⁷⁹ *Id.* at 54.

²⁸⁰ *Id.*

²⁸¹ *Id.*

166. Some of Florida 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. 1000.²⁸² Specifically, we find that the following proposed information requirements comply with Order No. 1000: (1) project technical information (i.e., voltage levels, general path of the lines, interconnection points within the existing system); (2) a cost estimate, and recommended in-service date; and (3) identification of the proposed project developer (if known), specifying who will own, operate and maintain the CEERTS project, and what contractual arrangements would be made for such purpose. In addition, Florida Parties have met Order No. 1000's requirement that they revise their Attachments K/N-2 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, identifying such date as June 1.

167. We find that the information requirements will apply to all potential transmission developers, including incumbent and nonincumbent developers. However, we also find that Florida Parties' proposal that the information requirements will apply to any entity that proposes a CEERTS project, regardless of whether that entity intends to develop the transmission project, is inconsistent with Order No. 1000. Order No. 1000 requires that each public utility transmission provider revise its OATT to identify "the information that must be submitted by a *prospective transmission developer* in support of a transmission project it proposes in the regional transmission planning process."²⁸³ Order No. 1000 does not require that such information requirements apply to proposals submitted by stakeholders that do not intend to develop the proposed transmission project. Therefore, we direct Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to clarify that the proposed information requirements apply only to transmission developers proposing a CEERTS project in the regional transmission planning process for selection in the regional transmission plan for purposes of cost allocation. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

²⁸² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 326.

²⁸³ *Id.* P 325 (emphasis added). Similarly, 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." 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.520.

168. Florida Parties propose to require, among other items listed as part of their information requirements for proposing a transmission project for selection in the regional transmission plan for purposes of cost allocation, that transmission developers provide: (1) a reliability impact assessment; (2) a load flow analysis; (3) an identification of transmission projects in the regional transmission plan that would be affected or avoided, as well as any additional transmission projects that may be required; and (4) a demonstration through a technical evaluation process that the CEERTS project is equal to or superior to avoided transmission projects from the current regional transmission plan.²⁸⁴ Moreover, Florida Parties propose to require the transmission developer to fully assess why its proposed transmission facility is a more cost-effective and efficient regional transmission solution. We find that requiring the prospective transmission developer to perform planning studies and provide the information listed in sections 1.2.4.A.2 - 1.2.4.A.4 to propose a transmission project for consideration in the regional transmission planning process is unreasonable and that the Florida Parties' information requirements could be so cumbersome that they effectively prohibit transmission developers from proposing transmission projects.

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 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 a transmission planning 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 in Part IV.B.1.c.i above. Consequently, we direct Tampa Electric, Florida Power, and Florida Power & Light to remove these information requirements from their OATTs or to clarify that such studies are not required, but are permitted to the extent the transmission developer voluntarily performed studies supporting its proposed transmission project's selection as a more efficient or cost-effective solution or identifying transmission projects in the regional transmission plan that would be affected or avoided, as well as any additional transmission projects that may be required due to its proposed project. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

170. With respect to the proposed transmission project evaluation deposit, we note that in Order No. 2003, the Commission rejected the proposal that the interconnection customer fully prepay the costs of interconnection studies because the advance payment

²⁸⁴ Florida Power & Light Co., FPL OATT, Attachment K, §§ 1.2.4.A.2 - 1.2.4.A.4.

would be based on transmission provider estimates instead of actual costs. Order No. 2003 states:

The unique feature of each interconnection should be identified either in the Scoping Meeting or early in the Interconnection Study process so that the Transmission Provider can offer the Interconnection Customer a reasonable estimate of what the actual study costs will be. However, we will require the Transmission Provider to provide a detailed and itemized accounting of the Interconnection Study costs in the relevant invoices. If the Interconnection Customer disputes the study costs, it may pursue dispute resolution procedures.²⁸⁵

171. Here, Florida Parties propose that, with each CEERTS project submittal, the project sponsor provide an advance payment for study costs of between \$100,000 and \$500,000. Florida Parties have not provided justification that supports the use of a project evaluation deposit of such an amount and the associated step function that increases with estimated project costs. However, recognizing that the Commission has approved a variety of project study costs deposits or fees for other regions, we direct Tampa Electric, Florida Power, and Florida Power & Light to provide further justification for the project evaluation deposit. Specifically, we require Tampa Electric, Florida Power, and Florida Power & Light to: (1) clarify why the full deposit is required in the initial stages of the project review process rather than once a transmission project is selected in the regional transmission plan for purposes of cost allocation; and (2) clarify the timing at which the deposit would apply and whether deposit milestones might be more appropriate. If the deposit requirement is retained, Tampa Electric, Florida Power, and Florida Power & Light must provide to each transmission developer a description of which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied.²⁸⁶ Also, we direct Tampa Electric, Florida Power, and Florida Power & Light to modify their transmission developer qualification review process to provide for the refund of interest on the excess

²⁸⁵ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 220.

²⁸⁶ *See id.*

deposited funds where that payment is refunded to a proposed transmission developer.²⁸⁷ Furthermore, any disputes regarding the accounting for specific deposits should be addressed under Florida Parties' dispute resolution procedures, which are discussed above. Likewise, Orlando also should submit further revisions to its Attachment K consistent with these directives

172. As discussed above, we therefore direct Tampa Electric, Florida Power, and Florida Power & Light to file, within 120 days of the date of issuance of this order, further compliance filings that revise their Attachments K/N-2 to remove the following information requirements from their OATTs: a reliability impact assessment; a load flow analysis; an identification of transmission projects in the regional transmission plan that would be affected or avoided, as well as any additional transmission projects that may be required; and a demonstration through a technical evaluation process that the CEERTS project is equal to or superior to avoided transmission projects from the current regional transmission plan. In the alternative, Tampa Electric, Florida Power, and Florida Power & Light may revise their Attachments K/N-2 clarify that such studies are not required, but are permitted to the extent the transmission developer voluntarily performed studies supporting its proposed transmission project's selection as a more efficient or cost-effective solution or identifying transmission projects in the regional transmission plan that would be affected or avoided, as well as any additional transmission projects that may be required due to its proposed project. In these same compliance filings, we also require Tampa Electric, Florida Power, and Florida Power & Light to justify the project evaluation deposits and modify their project evaluation deposit proposal to: provide to each transmission developer a description of which costs the deposit will be applied to, how those costs will be calculated, and an accounting of the actual costs to which the deposit is applied; provide a refund of interest on the excess deposited funds where the payment is refunded; and provide a provision that any disputes arising from this process be addressed under the Florida Parties' dispute resolution process. Finally, Tampa Electric, Florida Power, and Florida Power & Light must revise their OATTs to clarify that the proposed information requirements apply only to transmission developers proposing a CEERTS project in the regional transmission planning process for selection in the regional transmission plan for purposes of cost allocation. Likewise, Orlando also should submit further revisions to its Attachment K consistent with the Commission's directives listed above.

²⁸⁷ *Id.* at P 123 (if Interconnection Customer withdraws request for studies, Transmission Provider must refund Interconnection Customer any portion of Interconnection Customer's deposits or study costs that exceeds the costs that Transmission Provider has incurred, including interest); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at PP 166-168 (2012) (rejecting MISO's proposal to eliminate the payment of interest on refunded portions of generator interconnection study deposits).

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

173. 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.²⁸⁸ Public utility transmission providers should both explain and justify the nondiscriminatory evaluation process proposed in their compliance filings.²⁸⁹

174. The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.²⁹⁰ The public utility transmission providers in a transmission 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.²⁹¹ 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.²⁹² 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.²⁹³

i. Florida Parties' Filings

175. Florida Parties propose a project sponsorship model for the submission of CEERTS projects, except where there is more than one transmission developer for the same CEERTS project (or if there are different proposed CEERTS projects to address the

²⁸⁸ 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.

²⁸⁹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 268.

²⁹⁰ 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.

²⁹¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

²⁹² *Id.* P 455.

²⁹³ 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.

same need). Where there is more than one transmission developer for the same CEERTS project (or if there are different proposed CEERTS projects to address the same need) section 1.2.10.C provides an opportunity for transmission developers to collaborate with each other to determine how each of the transmission developers may share portions of the CEERTS project(s), and if agreement is reached, then these developers will be selected. However, if no agreement is reached, further evaluation of the transmission developer's qualifications and competing transmission projects are conducted, and the Florida Commission shall be requested to select the transmission developer(s) and the project(s) during its need determination proceeding.²⁹⁴

176. Florida Parties require new CEERTS projects to be submitted by June 1 of each year and state that the evaluation of a new CEERTS project will occur within a one-year period concurrent with the evaluation of the initial FRCC regional transmission plan, while final approval will be achieved within 21 months. Florida Parties predict that this time period may be shorter for some CEERTS projects, such as where the transmission developer has previously satisfied the qualification criteria or the transmission project is relatively small in scale. Florida Parties state that a transmission developer proposing a regional transmission project can expect the project to be added to the regional transmission plan as a tentative project in the spring or summer of the following year. A proposed CEERTS project will receive final approval following the developer review and selection process. Florida Parties predict this to occur in the winter after the project has been included in the regional transmission plan as a tentative project.²⁹⁵ The details of the evaluations process are described below.

177. Florida Parties state that regional transmission project submittals deemed to be complete by the FRCC Planning Committee after the initial screening will be further evaluated for reliability performance and potential impact on other FRCC transmission projects currently in the FRCC regional transmission plan. According to Florida Parties, the FRCC Planning Committee will also consider any proposed non-transmission alternatives on a comparable basis with the CEERTS project. The FRCC Planning Committee will provide a recommendation to the FRCC Board as to which projects should move forward to the next evaluation step. Florida Parties affirm that the CEERTS transmission developer shall be given an opportunity to provide written comments to the FRCC Board on the findings of the technical analysis.²⁹⁶

²⁹⁴ *E.g.*, Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.10.C.3.

²⁹⁵ *Id.* § 1.2.14.

²⁹⁶ *Id.* § 1.2.7.

178. Once the FRCC Board approves the continuation of a proposed project, Florida Parties state that the FRCC Planning Committee will then perform a final project evaluation of updated technical specifications as well as a cost benefit analysis that must demonstrate: (1) a regional benefit-to-cost ratio greater than 1.0; and (2) that no affected individual transmission provider would incur unmitigated costs (adverse reliability or other impact) as a result of the project. If the result of the final project evaluation is a benefit-to-cost ratio greater than 1.25, the CEERTS project will move forward in the process. If the result of the final project evaluation is a benefit-to-cost ratio between 1.0 and 1.25, an independent consultant will conduct a comprehensive long-term net present value revenue requirements analysis in current plan year dollars using consistent assumptions, and if the result is a benefit-to-cost ratio of greater than 1.0, the CEERTS project will move forward in the process. Florida Parties add that a transmission project that would otherwise cause unmitigated costs, including any abandonment costs that would otherwise have been reasonable, may go forward if the project beneficiaries agree to mitigate the otherwise unmitigated costs and the mitigation costs will be included in the CEERTS project cost.²⁹⁷

179. According to Florida Parties, the FRCC Planning Committee will provide a report to the FRCC Board of its recommendation. The FRCC Planning Committee report shall also be simultaneously provided to the CEERTS sponsor, which shall be given an opportunity to provide written comments to the FRCC Board. If the FRCC Board approves the CEERTS project, it will be included in the regional transmission plan, subject to completion of the remainder of the process.²⁹⁸ This includes transmission developer selection and the transmission developer qualification review, as described above. Once the preceding steps are complete, the FRCC Board will notify the transmission developer to proceed with the transmission project, which includes obtaining the necessary approvals and/or permits required to construct, own, and operate the transmission project, including certification under the Florida TLSA. The FRCC Planning Committee, under oversight of the FRCC Board, will verify that required reliability, operational OATT, cost recovery, liability and contract provisions are in place, or reasonably planned for, prior to final approval by the FRCC Board for inclusion in the regional transmission plan.²⁹⁹ These provisions include: (1) all certification and other requirements under the NERC Standards and rules of procedure; (2) implementation of communications and operational control features; (3) Commission requirements for providing transmission service over CEERTS facilities; (4) cost recovery treatment; (5) responsibility for operation and maintenance, including any plans to turn over

²⁹⁷ *Id.* § 1.2.9.B.1.

²⁹⁸ *Id.* § 1.2.9.

²⁹⁹ *Id.* § 1.2.13.

responsibilities to another entity; (6) liability issues associated with CEERTS facilities; (7) provision for necessary enabling agreements among all affected entities; and (8) acquisition of the property rights necessary to construct the CEERTS facilities, or reasonable expectation of the ability to acquire such rights.³⁰⁰ According to Florida Parties, successful completion would qualify the transmission project for final approval.³⁰¹

ii. Protests/Comments

180. FMPA/Seminole argue that the FRCC Board process for approving projects to continue in the evaluation process is not transparent.³⁰² LS Power and Calpine request that the Commission require the FRCC Board to specifically confirm that CEERTS submissions were evaluated by the FRCC Planning Committee and the FRCC Board in a non-discriminatory manner. Calpine further requests that the Commission require Florida Parties modify the FRCC Board voting procedures or incorporate other safeguards to ensure that the CEERTS selection process will be conducted in a fair and impartial manner. Additionally, LS Power and FMPA/Seminole find that the lack of a discrete timeline for each identified task in the evaluation of proposed CEERTS projects puts third-parties “at the mercy of the incumbents in the State of Florida.”³⁰³ FMPA/Seminole also argue that Florida Parties’ regional transmission planning process should not require the FRCC Board to meet and act twice on the same proposal.³⁰⁴

181. LS Power states it is inappropriate to require all of the provisions in Attachments K/N-2, section 1.2.13 before final approval of a CEERTS project because the items are reflective of the developmental milestones rather than project proposal items. In addition, LS Power states that, among the provisions, there is no requirement that the incumbents’ “local” projects meet similar criteria before being included in the plan. LS Power asserts that many of the items listed could be multi-month or multi-year endeavors, and there is no obvious requirement that Florida Parties have these items in place before placing their projects in the regional transmission plan.

182. LS Power objects to the condition that all of the items in Attachments K/N-2, section 1.2.13 must be in place, or reasonably planned for, before “final approval” of a

³⁰⁰ *Id.*

³⁰¹ *Id.* § 1.2.14.

³⁰² FMPA/Seminole Protest at 64.

³⁰³ *Id.* at 53.

³⁰⁴ *Id.* at 60.

project for selection in the regional transmission plan for purposes of cost allocation. LS Power asserts that the term “in place” presumably means that all of the agreements are fully executed and/or approved by regulatory agencies before the project is included in the regional transmission plan, and that the term “reasonably planned for” is vague and will lead to uncertainty in the selection process.³⁰⁵ As an example, LS Power questions how a nonincumbent transmission developer can satisfy the requirement to reasonably plan for acquiring real estate rights or have a reasonable expectation of the ability to acquire such property rights. LS Power contends that such a provision essentially requires a new entrant to possess eminent domain authority before assignment of a project and, according to Order No. 1000-A, eminent domain authority is more appropriate as a construction milestone rather than appropriate criterion for selection of a project developer. FMPA/Seminole requests that the Commission direct Florida Parties to remove section 1.2.13 and replace it with an obligation simply to notify the FRCC Planning Committee of its to-do list with expected milestone dates and to report on the status of those activities.³⁰⁶

183. Regarding the cost-benefit analysis, FMPA/Seminole state that the use of “unspecified, but consistent assumptions” for revenue requirements is inappropriate.³⁰⁷ FMPA/Seminole assert that there is no reason to think that the return on equity, capital structure, and other cost-of-service elements for a CEERTS project will be the same as those applicable to the incumbent project being displaced (i.e., a CEERTS project sponsor may be willing to accept a lower equity return or a public power entity has a lower cost of debt).³⁰⁸ Instead, FMPA/Seminole request that the CEERTS project sponsor and the incumbent should submit key revenue requirement assumptions for use in the independent consultant’s analysis.³⁰⁹

184. LS Power also objects to section 9.4.4.2 that, according to LS Power, would make inclusion of a nonincumbent transmission project in the regional transmission plan contingent on cost recovery treatment. Section 9.4.4.2 provides that if a nonincumbent transmission developer builds a regional transmission project, it shall file with the Commission to recover its transmission revenue requirement from the incumbent transmission providers in accordance with their cost responsibilities. LS Power states

³⁰⁵ LS Power Protest at 36-37.

³⁰⁶ FMPA/Seminole Protest at 56-57.

³⁰⁷ *Id.* at 66.

³⁰⁸ *Id.* at 66-67.

³⁰⁹ *Id.* at 67.

that the proposed cost allocation method is the mechanism through which the incumbent transmission owners may recover the allocated costs in their respective wholesale and retail rates. Thus, the cost recovery provision is inappropriate and should be struck.³¹⁰

185. FMPA/Seminole and LS Power state that a third-party transmission developer, in meeting the avoided cost test, would have to include in its costs not only the costs of its own project(s), but also any costs that have already been incurred for those avoided projects in the “regional” transmission plan at the time the CEERTS project is submitted, as well as all costs incurred for all avoided projects included in local transmission plans submitted after that date (for so long as the proposed CEERTS project is being considered). FMPA/Seminole state that this provision would delay the process and is prejudicial to third-party transmission developers. They further assert that this provision provides opportunities for gaming by the incumbent transmission owners in their local transmission planning processes once they are aware of the regional transmission project being proposed by a third party.³¹¹

iii. Answer

186. In response to FMPA/Seminole’s complaint that the FRCC Board process for project evaluation is not transparent, Florida Companies assert that the Board’s decision-making is transparent as required by Order No. 1000 because it relies on the written FRCC Planning Committee report, to which the transmission developer can respond, and because the transmission developer can attend and participate in the meeting at which the FRCC will make and explain its decision whether a project should continue to the next evaluation step. Florida Companies continue that this discretion is bounded by the recommendation report and supporting analysis prepared by the FRCC Planning Committee, on which the FRCC Board must base its decision. That recommendation will be based on the validation of the information that the transmission developer provided, as well as reliability performance, the impact on other projects, and any recent updates to the most recent regional transmission plan. In addition, Florida Companies state that the analysis must consider proposed non-transmission alternatives. Florida Companies also assert that this process ensures that projects are evaluated in the nondiscriminatory manner requested by LP Power, and Florida Companies reiterate that stakeholders are informed of the reasons for any FRCC Planning Committee recommendations.³¹²

³¹⁰ LS Power Protest at 38.

³¹¹ FMPA/Seminole Protest at 55.

³¹² Florida Companies’ Answer at 56-57.

187. Florida Companies state that there is nothing in the FRCC Board review process that contradicts Order No. 1000 and that FMPA/Seminole have not cited any support for their position that the FRCC Board cannot hold more than one meeting to consider a proposed project, particularly when additional analysis and review is conducted between those meetings.³¹³

188. In response to protests of LS Power and FMPA/Seminole that the proposed process should provide for consideration of CEERTS projects using a discrete timeline for each identified task, Florida Companies state that specific deadlines for the various milestones in the CEERTS process would be inappropriate given the differences between various transmission project proposals and that some transmission projects, in fact, may benefit from shortened steps depending on the project's nature or complexity.³¹⁴

189. Florida Companies assert that the cost-benefit analysis applies to the 1.25 benefit-to-cost ratio permitted by the Commission. They argue that it is appropriate to include the "abandonment costs" of projects displaced by the CEERTS project that "continue while the CEERTS review process is ongoing."³¹⁵ Florida Companies state that there is no guarantee that the CEERTS project will be accepted in the regional transmission plan until after the FRCC Board issues its final approval; therefore, it would be imprudent to cease the development of other transmission projects that may or may not be replaced but are certainly needed.

190. In response to FMPA/Seminole's protest that the use of consistent assumptions for revenue requirements in a benefit-to-cost analysis is inappropriate, Florida Companies conclude that consistent assumptions for return on equity, capital structure, and other cost-of-service elements, when that analysis is based on the transmission developer's and responsible transmission providers' estimated cost of capital, ensures that all transmission projects are treated equally, while still providing a reflection of respective capital costs.³¹⁶

191. Florida Companies believe that their inclusion of the "or reasonably planned for" phrase in Attachments K/N-2, section 1.2.13 clearly identifies that they are not requiring that "all of the agreements are fully executed and/or approved by regulatory agencies prior to the project being included in the regional plan." Florida Companies state that the

³¹³ *Id.* at 53.

³¹⁴ *Id.* at 41-42.

³¹⁵ *Id.* at 59.

³¹⁶ *Id.* at 59-60.

FRCC needs to have evidence that the various items listed in section 1.2.13 have been adequately planned for before the transmission project is selected in the regional transmission plan for purposes of cost allocation and other transmission projects are removed from the plan. Florida Companies also anticipate that the items listed in section 1.2.13 would be important considerations for the Florida Commission as a CEERTS transmission developer works through the process of approval at the Florida Commission.³¹⁷

192. With respect to the provision concerning cost recovery treatment in Attachments K/N-2, section 1.2.13, Florida Companies state that in a non-RTO environment, there must be an agreement executed between the transmission providers, who will be obtaining cost recovery from their retail and wholesale customers, and the nonincumbent transmission developer in order for cost recovery to be effectuated. Florida Companies state that cost allocation would be established through the regional transmission planning process, while the cost recovery treatment provision would provide the implementation and legal agreement for this cost recovery. Thus, the cost recovery treatment provision should not be interpreted as suggesting that the regional cost allocation method is non-binding.³¹⁸

193. Florida Companies disagree with LS Power's characterization of the provision regarding property rights. Florida Companies state that obtaining property rights will be necessary to develop a transmission project in Florida, so it is appropriate, at a minimum, to ensure that a transmission developer has plans in place to accomplish this. Florida Companies note that they have made no assertion that a transmission developer has to "possess eminent domain authority prior to the assignment of a [transmission] project."³¹⁹

194. In response to LS Power, Florida Companies emphasize that their process outlined in their OATTs provide a roadmap of the various steps for regional transmission project submittal, evaluation, and approval. Once the transmission developer has satisfied the provisions included in section 1.2.13, the transmission project will reach "final approval" and will be included in the FRCC regional transmission expansion plan, and the transmission project(s) that the regional transmission project will be replacing will be deleted from the regional transmission plan. If a transmission project has demonstrated that it meets a transmission system need and is cost-effective, but has not satisfied the

³¹⁷ *Id.* at 42-43.

³¹⁸ *Id.* at 45.

³¹⁹ *Id.* at 44.

provisions in section 1.2.13, it will continue to be considered a tentative transmission project in the planning environment.³²⁰

iv. Commission Determination

195. We find that Florida Parties' proposed method of evaluating proposed transmission projects does not comply with the requirements of Order No. 1000. Florida Parties' OATTs provide only limited detail about how the FRCC regional transmission planning process will evaluate a transmission facility for selection in the regional transmission plan for purposes of cost allocation. The Florida Parties' OATTs also do not make clear that the FRCC regional transmission planning process will identify and evaluate transmission solutions other than those proposed by qualified transmission developers, and how the region will consider the "relative efficiency and cost-effectiveness of any proposed transmission] solution."³²¹ The Florida Parties' OATTs must include detail as to how the FRCC regional transmission planning process will determine, through analysis, potentially more efficient or cost-effective transmission solutions to regional transmission needs.³²² This additional detail will necessarily impact the evaluation process for selection in the regional transmission plan for purposes of cost allocation. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to file 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 FRCC regional transmission plan for purposes of cost allocation. Florida 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 transmission projects identified in the FRCC regional transmission planning process. Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

³²⁰ *Id.* at 45.

³²¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307,

³²² *Id.* P 38 ("the 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.").

196. In addition, we 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. 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, such evaluation must consider “relative efficiency and cost-effectiveness of [any proposed solution].”³²³ Therefore, we require Tampa Electric, Florida Power, and Florida Power & Light, in the further compliance filing, to: (1) propose OATT revisions providing how the FRCC 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 FRCC 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. Likewise, Orlando also should submit further revisions to its Attachment K consistent with these Commission’s directives.

197. We find that Florida Parties’ proposal to allow the Florida Commission to select the transmission developer or the transmission project in certain situations does not comply with Order No. 1000. Order No. 1000 requires public utility transmission providers in a region to make the decision as to which developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. Thus, Florida Parties must include a developer selection process whereby the public utility transmission providers in the region ultimately decide which transmission developer is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation, as well as a process whereby the public utility transmission providers in the region select the transmission project to be included in the regional transmission plan. We agree that, to the extent that state regulatory 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 purposes of cost allocation. While we encourage state entities or regional state

³²³ *Id.* P 331 n.307.

committees to consult, collaborate, inform, and even recommend a developer that is eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation or a transmission project, the public utility transmission providers in a transmission planning region must make the selection decision with respect to the transmission developer and transmission project.

198. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to file further compliance filings to eliminate provisions in their OATTs that allow a state to select a transmission facility in the regional transmission plan for purposes of cost allocation or to select the transmission developer for such transmission facility. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

199. Florida Parties propose that “a [CEERTS] project that would otherwise cause unmitigated costs, including any abandonment costs that would otherwise have been recoverable, may go forward if project beneficiaries agree to mitigate the otherwise unmitigated costs of the adversely affected Transmission Provider, and the mitigation costs will be included in the CEERTS project cost.”³²⁴ However, this proposed language is unclear. For example, it is unclear whether the mitigation costs would be related to local transmission projects. We also interpret Florida Parties’ proposal to include in the evaluation stage of a proposed CEERTS project any abandonment costs related to transmission facilities that would be displaced by that CEERTS project and that would otherwise have been recoverable as costs. Should the Florida Parties intend to retain this language in the compliance filing we order herein, we require them to clarify this language. For example, Florida Parties should explain how the proposal that, “project beneficiaries agree to mitigate the otherwise unmitigated costs of the adversely affected Transmission Provider” is related to the Florida Parties’ proposed cost allocation method and how this proposal complies with Order No. 1000. We also note that regarding the recovery of any abandonment costs in particular, a public utility transmission provider must file a petition for declaratory order or request under section 205 of the FPA to obtain Commission approval before recovering any abandoned plant costs.³²⁵

200. We agree with protestors that Florida Parties’ proposed evaluation of CEERTS projects lacks a clear timeline and fails to specifically state when a CEERTS project is

³²⁴ Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.B.1.

³²⁵ See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 267; see also Order No. 1000-A, 139 FERC ¶ 61,132 at P 489. *ISO New England, Inc.* 143 FERC ¶ 61,150 at P 399, n.720 (2013) (noting that Commission policy requires that the utility demonstrate that the costs were prudently-incurred and are not permitted to be passed through without initial Commission review of the particular costs through a section 205 filing).

ultimately selected in the regional transmission plan. Section 1.2.9.D of Florida Parties' OATTs state that the CEERTS project "will be included in the regional plan, subject to completion of the remainder of the process as set forth herein." Section 1.2.12 of the Attachments K/N-2 provides for approval and certification after the transmission developer determination and qualifications review and allows for the transmission developer to obtain the necessary approvals and/or permits required to construct own and operate the CEERTS project, but fails to state that the project will be selected in the regional transmission plan for purposes of cost allocation. Finally, section 1.2.14 states that completing the final provisions (sections 1.2.10-13) would "qualify the project for final approval." Thus, it is unclear when a regional transmission project is selected in a regional transmission plan for purposes of cost allocation. Moreover, it is unclear whether the transmission developer is required to have "reliability, operational, tariff, cost recovery, liability, and contract provisions [sic] in place, or reasonably planned for"³²⁶ before the CEERTS project is selected in the regional transmission plan for purposes of cost allocation. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to clarify when a CEERTS project is selected in the regional transmission plan for purposes of cost allocation. We will determine the appropriateness of the provisions included in section 1.2.13 after Tampa Electric, Florida Power, and Florida Power & Light make their subsequent compliance filings. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

201. In sum, we direct Tampa Electric, Florida Power, and Florida Power & Light to file, within 120 days of the date of issuance of this order, a further compliance filing that includes the following OATT revisions. First, Tampa Electric, Florida Power, and Florida Power & Light must describe in their OATTs a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the FRCC regional transmission plan for purposes of cost allocation. Second, we direct Tampa Electric, Florida Power, and Florida Power & Light to: (1) propose OATT revisions providing how the FRCC 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 FRCC 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. Third, we direct Tampa Electric, Florida Power, and Florida Power & Light to eliminate provisions in their OATTs that allow a state to select a transmission facility in the regional transmission plan for purposes of cost allocation or to select the transmission developer for such transmission facility. Fourth, we direct Tampa Electric, Florida Power, and Florida Power & Light to clarify whether the term

³²⁶ Florida Power & Light Co., Attachment K, § 1.2.13.

“project beneficiaries agree to mitigate the otherwise unmitigated costs of the adversely affected Transmission Provider” is related to the Florida Parties’ proposed cost allocation method and how this proposal complies with Order No. 1000, if Florida Parties propose to retain this language. Fifth, we direct Tampa Electric, Florida Power, and Florida Power & Light to clarify when a CEERTS project is selected in the regional transmission plan for purposes of cost allocation. Likewise, Orlando also should submit further revisions to its Attachment K consistent with the Commission’s directives listed above.

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

202. 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 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.³²⁷ 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.³²⁸

i. **Florida Parties’ Filings**

203. After a CEERTS project is selected in the regional transmission plan for purposes of cost allocation, Florida Parties require the transmission developer to submit to the FRCC Planning Committee a development schedule that sets forth the required steps necessary to develop and construct the project, which include, but are not limited to, obtaining all regulatory approvals necessary to develop and construct the facility, as well as the schedule for satisfying each required step.³²⁹ Florida Parties require status updates when material changes to a CEERTS project or project schedule takes place, or at least

³²⁷ 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.

³²⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

³²⁹ Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.15.

annually; status updates must include any revised cost estimates. If the cost estimate for a transmission project is substantially more than the cost estimate upon which the transmission project was approved, Florida Parties state that the FRCC Planning Committee and the FRCC Board may reevaluate the cost-effectiveness of the transmission project.³³⁰

204. Florida Parties state that if a delay in the completion of a CEERTS reliability-based project potentially would cause a transmission provider or other NERC-registered entity to violate a Reliability Standard, the NERC-registered entity shall inform the FRCC as soon as it is aware of the possibility. The FRCC Planning Committee will reevaluate the regional transmission plan to determine if the delay in the CEERTS project requires the evaluation of alternative solutions to ensure the relevant transmission provider or other NERC-registered entity can continue to meet its reliability and/or other service obligations. The transmission provider retains the right to construct local transmission projects that are not subject to regional cost allocation to meet reliability needs and/or service obligations within its retail distribution service territory or footprint.³³¹

205. Florida Parties state that if a CEERTS reliability-based project is abandoned by the transmission developer, the transmission provider(s) maintains a right of first refusal to complete the project or propose alternatives to ensure that the reliability need is met; if a non-reliability-based CEERTS project is abandoned by the developer, other potential developers may offer to complete the project.

ii. Protests/Comments

206. No protests or comments were filed.

iii. Commission Determination

207. We find that the provisions in Florida Parties' filings addressing the reevaluation of proposed transmission projects partially comply with the requirements of Order No. 1000. Florida Parties' proposal identifies when the FRCC will reevaluate the regional transmission plan to 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. As explained by Florida Parties, if a CEERTS reliability-based project is delayed such that it would potentially cause a transmission provider or other NERC-registered entity to violate a reliability standard, the

³³⁰ *Id.* § 1.2.16.

³³¹ *Id.* § 1.2.17.

FRCC Planning Committee will reevaluate the regional transmission plan to determine if the evaluation of alternative solutions are required.³³² However, it is not clear that, with respect to CEERTS reliability-based projects that are delayed, an incumbent transmission provider has an opportunity 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 would be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.³³³ Furthermore, Florida Parties do not explain whether they will retain or remove a project from the plan based on a delay and what they will consider in making that decision.

208. Order No. 1000 does not require public utility transmission providers to reevaluate transmission projects based on cost requirements but allows a public utility transmission provider to include cost containment provisions in its compliance filing.³³⁴ Here, Florida Parties propose that if the revised cost estimate for a CEERTS project is substantially more than the cost estimate upon which the project was approved, the FRCC Planning Committee or FRCC Board may reexamine the cost-effectiveness of the project. We accept Florida Parties' proposal, but note that the proposal must be implemented such that it applies equally to all CEERTS projects, whether proposed by an incumbent transmission provider or nonincumbent transmission developer.

209. In addition, Florida Parties propose that “[i]f a reliability-based CEERTS project is abandoned by the developer, the Transmission Provider(s) has a right of first refusal to complete the project or propose alternatives to ensure that the reliability need is met.”³³⁵ If a non-reliability based CEERTS project is abandoned, then other potential developers may offer to complete the project, and Florida Parties will use the developer evaluation and selection used for a CEERTS project when first proposed. In Order No. 1000, the Commission clarified that an incumbent transmission provider does not have an obligation to construct a nonincumbent transmission developer' abandoned project.³³⁶ Additionally, the Commission also recognized that an incumbent transmission provider may be called upon to complete a transmission project that it did not sponsor³³⁷ In

³³² *Id.*

³³³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

³³⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 625.

³³⁵ Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.17.

³³⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 344.

³³⁷ *Id.* P 267.

addition, the Commission explained that where a transmission facility selected in the regional transmission plan for the purposes of cost allocation is delayed, the incumbent transmission provider may propose an alternative solution. If that alternative solution is a transmission facility, then public utility transmission providers in the regional transmission planning process should evaluate the proposed solution for possible selection in the regional transmission planning process for purposes of cost allocation.³³⁸

210. We find that it is consistent with Order No. 1000 for Florida Parties to permit the incumbent transmission provider the opportunity to complete an abandoned reliability-based CEERTS project. We note that this opportunity applies only to abandoned reliability-based CEERTS projects. However, if the incumbent transmission provider decides not to complete the abandoned reliability-based CEERTS project and decides instead to build an alternative CEERTS project, then Florida Parties must allow any other potential developer to propose an alternative CEERTS project. Therefore, we require Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to clarify that the right of first refusal only allows the incumbent transmission provider to complete an abandoned reliability-based CEERTS project, and that if the incumbent transmission provider decides not to complete the abandoned reliability-based CEERTS project, then Florida Parties will allow any other potential developer to propose an alternative CEERTS project. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

211. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to file, within 120 days of the date of issuance of this order, a further compliance filing that: (1) provides an opportunity for an incumbent transmission provider to propose a solution in the event of a delay; (2) allows transmission solutions proposed by the transmission provider to be evaluated for possible selection in the regional transmission plan for purposes of cost allocation; (3) explains whether they will retain or remove a project from the plan based on a delay and what they will consider in making that decision; and (4) includes OATT revisions that clarify that the right of first refusal only allows the incumbent transmission provider to complete an abandoned reliability-based CEERTS project, and that if the incumbent transmission provider decides not to complete the abandoned reliability-based CEERTS project, then Florida Parties will allow any other potential developer to propose an alternative CEERTS project. Likewise, Orlando also should submit further revisions to its Attachment K consistent with the Commission's directives (1) through (4), listed above.

³³⁸ *Id.* P 329.

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

212. 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.³³⁹ 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.³⁴⁰ 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.³⁴¹

213. 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.³⁴² 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. 1000.³⁴³ 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.³⁴⁴ 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 developer the right to use the regional cost allocation method

³³⁹ *Id.* P 332.

³⁴⁰ *Id.*

³⁴¹ *Id.* P 339.

³⁴² *Id.* P 336.

³⁴³ *Id.* P 321.

³⁴⁴ *Id.* P 336.

for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.³⁴⁵

i. Florida Parties' Filings

214. As discussed above, Florida Parties propose a sponsorship model for the submission of regional transmission facilities.³⁴⁶ When proposing a regional transmission facility, the project sponsor may identify the proposed transmission developer.³⁴⁷ Florida Parties state that a project sponsor need not be the transmission developer for a particular regional transmission project.³⁴⁸ If a transmission developer has not been identified for a proposed transmission project, then potential developers have an opportunity to express interest in being considered as the developer of a regional transmission facility.³⁴⁹ A regional transmission facility selected in the regional transmission plan may use the cost allocation method set forth in section 9.4 of Attachments K/N-2.

ii. Protests/Comments

215. No comments or protests were filed.

iii. Commission Determination

216. We find that the provisions in Florida Parties' filings addressing the eligibility for cost allocation for nonincumbent transmission projects complies with the requirements of Order No. 1000. Florida Parties have proposed a sponsorship model, which would permit a qualified transmission developer, whether an incumbent or a nonincumbent, to submit a transmission project, and if that project is selected in the FRCC regional transmission plan for purposes of cost allocation, then the transmission developer is eligible to use the regional cost allocation method.

217. In addition, Florida Parties have proposed that, in the event there are regional transmission projects without a proposed transmission developer, potential developers will have an opportunity to express an interest in becoming the developer of the CEERTS

³⁴⁵ *Id.*

³⁴⁶ Florida Power & Light Co., Transmittal at 12.

³⁴⁷ Florida Power & Light Co., Attachment K, § 1.2.4.A.6.

³⁴⁸ *Id.* § 1.2.2.

³⁴⁹ *Id.* § 1.2.9.A.

project. We find that the provision addressing a sponsorship model satisfies Order No. 1000's requirement that the regional transmission planning process must 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 for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.³⁵⁰ We note that, consistent with our directives regarding Florida Parties' affirmative obligation to plan, discussed in Part IV.B.1.c.i.(d) above, Florida Parties will have to 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, and this may result in additional unsponsored transmission projects. We anticipate that Florida Parties would allow potential developers to express an interest in developing any unsponsored transmission projects.

3. Cost Allocation

218. 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.³⁵¹ 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. 1000.³⁵² The Commission took a principles-based approach because it recognized that regional differences may warrant distinctions in cost allocation methods among transmission planning regions.³⁵³ In addition, Order No. 1000 permits participant funding, but not as a regional or interregional cost allocation method.³⁵⁴

219. 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

³⁵⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

³⁵¹ *Id.* P 558.

³⁵² *Id.* P 603.

³⁵³ *Id.* P 604.

³⁵⁴ *Id.* P 723.

planning region.³⁵⁵ 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.³⁵⁶

220. 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.³⁵⁷ 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.³⁵⁸ Regional Cost Allocation Principle 1 precludes an allocation where the benefits received are trivial in relation to the costs to be borne.³⁵⁹

221. Order No. 1000 does not prescribe a particular definition of “benefits” or “beneficiaries.”³⁶⁰ The Commission stated in Order No. 1000-A that while Order No. 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.³⁶¹ 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.³⁶² 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.³⁶³

³⁵⁵ *Id.* P 558.

³⁵⁶ *Id.* P 690.

³⁵⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 678.

³⁵⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622.

³⁵⁹ *Id.* P 639.

³⁶⁰ *Id.* P 624.

³⁶¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 679.

³⁶² *Id.* P 678.

³⁶³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 625.

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.³⁶⁴ 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.³⁶⁵

222. 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.³⁶⁶ 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. 2003.³⁶⁷

223. 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.³⁶⁸ All cost allocation methods must provide for allocation of the entire prudently incurred cost of a transmission project to prevent stranded costs.³⁶⁹ 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.³⁷⁰

224. 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

³⁶⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 746.

³⁶⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 627, 641.

³⁶⁶ *Id.* P 11, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 585.

³⁶⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

³⁶⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 637.

³⁶⁹ *Id.* P 640.

³⁷⁰ *Id.* P 641.

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.³⁷¹ 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.³⁷²

225. 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.³⁷³

226. 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.³⁷⁴

227. Regional Cost Allocation Principle 5 specifies that the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a

³⁷¹ *Id.* P 690.

³⁷² Order No. 1000-B, 141 FERC ¶ 61,044 at P 72.

³⁷³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

³⁷⁴ *Id.* P 657.

transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.³⁷⁵

228. 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.³⁷⁶ 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.³⁷⁷ 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.³⁷⁸ 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.³⁷⁹ However, the public utility transmission providers in a region may not designate a type of transmission facility that has no regional cost allocation method applied to it.³⁸⁰

a. Cost Allocation Principles

i. Florida Parties' Filings

229. Florida Parties propose to adopt a regional cost allocation method that is based upon the transmission costs avoided due to the regional transmission project. Florida Parties state that the Florida Commission ten-year site plans, equivalent to the integrated resource planning process, employed in the FRCC transmission planning region include reliability, economic, and public policy considerations that result in a regional transmission plan to meet the needs of the region; therefore, any proposed regional transmission facility would be displacing or avoiding projects in the regional transmission plan.³⁸¹ The benefits under this method are determined by the avoided

³⁷⁵ *Id.* P 668.

³⁷⁶ *Id.* P 685.

³⁷⁷ *Id.* P 686; *see also id.* P 560.

³⁷⁸ *Id.* P 560.

³⁷⁹ *Id.* P 689.

³⁸⁰ *Id.* P 690.

³⁸¹ Florida Power & Light Co., Transmittal Letter at 16.

transmission cost of each transmission provider provided by the transmission project selected in a regional transmission plan for purposes of cost allocation. The costs are allocated based upon the share of each transmission provider's avoided transmission cost multiplied by the overall cost of the regional transmission project.

230. Florida Parties note that a formula-type *ex ante* methodology for economic projects is not possible because the FRCC transmission planning region does not have a centralized energy market based on security constrained economic dispatch. Furthermore, Florida Parties state that using production cost simulations to quantify benefits carries the invalid premise that the region is centrally dispatched on a production cost basis, and basing the evaluation on this premise would result in the construction of transmission projects that would not provide the simulated benefits.³⁸²

231. Florida Parties state that the proposed avoided cost allocation method satisfies Regional Cost Allocation Principle 1 because the costs of the regional transmission projects are allocated to the beneficiaries. Specifically, the beneficiaries are those transmission providers that do not have to incur capital costs for the avoided projects. Since the transmission providers who are avoiding costs are agreeing through their OATT filings to be allocated costs, the Florida Parties assert that there is no involuntary allocation to any beneficiary and the proposed method complies with Regional Cost Allocation Principle 2.

232. Under Florida Parties' proposal, a proposed regional transmission project must have a benefit-to-cost ratio of at least 1.0 to be included in the regional transmission plan. More specifically, if the benefit-to-cost ratio is initially determined to be 1.25 or greater, the proposed project will move forward in the process. If the benefit-to-cost ratio is initially determined to be between 1.0 and 1.25, before moving forward, the project's benefits and costs will need to be verified by an independent consultant who will conduct a comprehensive long-term net present value revenue requirements analysis. Florida Parties state that the benefit-to-cost ratio of 1.0 is less than the 1.25 upper limit of the threshold permitted under Order No. 1000, thus satisfying Regional Cost Allocation Principle 3.

233. Florida Parties state that the avoided cost allocation method complies with Regional Cost Allocation Principle 4 because the costs will only be allocated to transmission providers within the FRCC transmission planning region. Florida Parties also assert that the cost allocation method is transparent, based on a simple methodology, and the evaluation process is detailed in their OATTs, thus satisfying Regional Cost Allocation Principle 5. Finally, Florida Parties assert that the avoided cost allocation method satisfies Regional Cost Allocation Principle 6 because the method has been

³⁸² *Id.*

explained in detail in their OATTs and transmittal letters. Florida Parties propose to apply this cost allocation method to all types of transmission projects selected in the regional transmission plan for purposes of cost allocation.

ii. Protests/Comments

234. FMPA/Seminole and LS Power object to the proposed avoided cost allocation method because it depends on a project with lower capital costs displacing projects that are already in the plan. FMPA/Seminole assert that the avoided transmission cost method does not satisfy Regional Cost Allocation Principle 1 because it does not adequately account for economic and public policy benefits and only provides opportunities to allocate the costs for reliability projects.³⁸³ LS Power argues that, for example, a needed regional transmission project might never be considered if it costs more than the combined costs of the local transmission projects that incumbent transmission providers chose to put in their local transmission plans, even though the reliability or economic benefits specific to the regional transmission project are substantially greater than its cost.³⁸⁴

235. Contrary to Florida Parties' explanation, FMPA/Seminole and LS Power assert that the ten-year site plans do not provide for sufficient consideration of economic and public policy projects. FMPA/Seminole state that the individual utility ten-year site plan process is designed to ensure resource adequacy, not to plan transmission that is more cost-effective and efficient in meeting regional economic and public policy-driven needs.³⁸⁵ FMPA/Seminole assert that most economic and public policy projects will supplement, not displace, existing planned transmission facilities, so these proposed projects will have difficulty ever passing the proposed avoided transmission cost test. Moreover, FMPA/Seminole state that, even if economic and public policy benefits are considered in the ten-year site plans, Florida Parties' proposal does not satisfy Regional Cost Allocation Principle 5 because the data used to determine benefits and identify beneficiaries is not open and transparent.³⁸⁶

236. FMPA/Seminole assert that Florida Parties are incorrect in their assertion that production cost simulations assume centralized dispatch and cannot be used in non-centrally dispatched markets like Florida. FMPA/Seminole state that project developers

³⁸³ FMPA/Seminole Protest at 37.

³⁸⁴ LS Power Protest at 30.

³⁸⁵ FMPA/Seminole Protest at 31.

³⁸⁶ *Id.* at 37-38.

and their investors routinely rely on production cost simulations to make investment and financing decisions in non-RTO markets.³⁸⁷ Moreover, FMPA/Seminole state that the Florida Parties relied on economic costs and benefits provided by production cost simulations of the decentralized Florida market to evaluate whether the Florida region should become a RTO.

237. FMPA/Seminole raise additional concerns with Florida Parties' inclusion of public policy projects in the regional transmission plan, noting Florida Parties' claim that there are currently no public policy requirements that are driving regional transmission needs. FMPA/Seminole disagree with this statement, asserting that Florida Parties ignored comments submitted by FMPA/Seminole that listed public policy requirements currently impacting the FRCC transmission planning region, and more fundamentally, disregard section 217(b)(4) of the FPA, which directs the Commission to facilitate planning and expansion of the grid to meet the reasonable needs of load serving entities and enable them to secure long-term transmission rights.³⁸⁸ Citing Order No. 1000-A, FMPA/Seminole state that Order No. 1000 expressly recognizes that: (1) federal laws and regulations will have a direct impact on transmission needs; (2) transmission providers are obligated to plan for the needs of their transmission customers; and (3) the Commission expects the needs of load-serving entities to be met, particularly in light of the changing regulatory environment and fuel mix that forms the basis for the required reforms.³⁸⁹

iii. Answers

238. In response to protests, Florida Companies reiterate that the integrated resource planning processes that are employed in the FRCC transmission planning region include reliability, economic and public policy considerations, resulting in a regional transmission plan that meets the region's transmission needs.³⁹⁰

239. In addition, Florida Companies state that since the FRCC transmission planning region is a non-RTO region, the use of public data for planning and a generic model to analyze the economic impact of a proposed project would be a fundamental departure from the integrated resource planning processes used in the FRCC transmission planning region. Therefore, Florida Companies state that contrary to FMPA/Seminole's assertions, the avoided cost methodology is the appropriate *ex ante* economic test for the

³⁸⁷ *Id.* at 35.

³⁸⁸ *Id.* at 46.

³⁸⁹ *Id.*

³⁹⁰ Florida Companies' Answer at 22.

region. Therefore, according to Florida Companies, any proposed CEERTS project would be displacing or avoiding projects, including economic and public policy projects, that are in the regional transmission plan.³⁹¹ Florida Companies further state that they are not aware of any public policy requirements that are incremental to individual utility integrated resource planning considerations.³⁹²

240. Florida Companies restate the difficulties in using production cost simulations to determine economic benefits and state that protestors' criticisms of the avoided cost method ignore the fundamental reality of transmission planning in non-ISO/RTO regions. Florida Companies explain that, as reflected in state laws, transmission is planned and constructed to deliver energy from firm (network) resources to firm load and to meet firm point-to-point transmission service requests. In addition, transmission is generally not constructed to support non-firm economy energy transactions or because someone guesses that it might reduce congestion or losses on the system.³⁹³

241. Florida Companies also refute the claims of FMPA/Seminole that Order No. 1000 requires an *ex ante* "formula-type" methodology for economic projects. Florida Companies reiterate that the FRCC transmission planning region does not have a centralized energy market based on security constrained economic dispatch, and Order No. 1000 does not require production cost modeling.³⁹⁴

242. In addition, Florida Companies assert that a specific *ex ante* methodology for regional public policy projects would be impossible to implement for policies that do not exist at the regional level. Florida Companies assert that section 217(b)(4) of the FPA was directed primarily, if not exclusively, at protecting long-term financial rights in RTO markets and explain that Commission Order No. 681 rejected application of this section outside of RTOs.³⁹⁵ Florida Companies contend that where there is a regional public policy requirement, regional transmission planning will necessarily have to address it,

³⁹¹ *Id.*

³⁹² *Id.* at 33.

³⁹³ *Id.* at 23.

³⁹⁴ *Id.* at 27-28.

³⁹⁵ *Id.* at 34 (citing Order No. 681, *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, at P 31 (2006), *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g*, Order No. 681-B, 126 FERC ¶ 61,254 (2009)).

and regional transmission projects seeking cost allocation are explicitly eligible for consideration in that regard.³⁹⁶

243. Florida Companies reject the claims of FMPA/Seminole that the avoided transmission cost method violates two Order No. 1000 regional cost allocation principles. With regard to Regional Cost Allocation Principle 1, Florida Companies restate that the costs of regional transmission projects are allocated to beneficiaries based on their respective share of avoided transmission costs and that economic benefits are included. With regard to Regional Cost Allocation Principle 5, Florida Companies state that the process for determining benefits and identifying beneficiaries is open and transparent. The methodology is plainly stated and readily and transparently applicable for all regional transmission projects.³⁹⁷

244. Responding to Florida Companies' answer, FMPA/Seminole state that based on Florida Parties' description of the proposed avoided cost method, those projects that could address economic and public policy needs not yet reflected in approved firm transmission service requests are excluded from consideration for regional cost allocation. Thus, FMPA/Seminole assert that, although Florida Parties' proposed cost allocation method may capture some economic benefits, primarily the savings associated with displacing projects in the plan with approved firm transmission service requests, this does not transform the method into one that meets the requirements of Order No. 1000. Similarly, FMPA/Seminole state that the possibility that a subset of needs driven by public policy requirements might happen to be reflected in the consolidated regional transmission plan, such as those public policy needs already reflected in approved firm transmission reservations, does not convert the proposed cost allocation method into one that accommodates public policy projects as required by Order No. 1000.³⁹⁸

245. FMPA/Seminole note that despite the difficulties of developing a "formula-type" *ex ante* cost allocation method in a non-RTO region, Florida Parties have offered no *ex ante* cost allocation method – formulaic or otherwise – to accommodate economic projects other than those that displace projects in the roll-up plan. In addition, FMPA/Seminole assert that Florida Parties cannot support their non-compliance with Order No. 1000's requirement of an *ex ante* cost allocation that accommodates economic projects by attacking any use of production cost simulations in non-RTO regions.

³⁹⁶ *Id.* at 31.

³⁹⁷ *Id.* at 30.

³⁹⁸ FMPA/Seminole Reply to Florida Companies' Answer at 30.

FMPA/Seminole reiterate that production cost simulations have been applied previously in Florida, such as in assessing the GridFlorida project.³⁹⁹

246. FMPA/Seminole further contend that Florida Parties have yet to fulfill the Order No. 1000 requirement to provide a regional cost allocation method that would cover public policy projects not displacing projects reflected in Florida Parties' regional transmission planning process. FMPA/Seminole assert that Florida Parties have attempted to rewrite section 217(b)(4) of the FPA since nothing in section 217(b)(4) makes it inapplicable to non-RTO markets. Further, FMPA/Seminole disagree with Florida Parties that the obligations of section 217(b)(4) do not exist absent rulemaking.⁴⁰⁰

iv. Commission Determination

247. We find that Florida Parties' filings do not comply with the regional cost allocation principles of Order No. 1000. Florida Parties propose a single cost allocation method for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation, regardless of whether a CEERTS project will serve transmission needs driven by reliability concerns, economic considerations, or public policy requirements, or some combination. 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 Florida Parties' proposed avoided cost method does not satisfy Cost Allocation Principle 1 and, thus, we reject Florida Parties' cost allocation proposal as a whole.⁴⁰¹

Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to file 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. Likewise, Orlando also should submit further revisions to its Attachment K consistent with this directive.

248. We agree with FMPA/Seminole and LS Power that using a single avoided cost method to account for benefits associated with addressing reliability, economic, and

³⁹⁹ *Id.* at 33.

⁴⁰⁰ *Id.* at 35.

⁴⁰¹ We note that the use of an avoided cost method may satisfy the regional cost allocation principles when used to measure reliability benefits. *See Public Service Co. of Colorado*, 142 FERC ¶ 61,206, at PP 311-312 (2013).

public policy-related transmission needs does not satisfy Order No. 1000's regional cost allocation principles. Specifically, we find that Florida 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.

249. 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 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 Florida 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 \$100 million to be selected in the regional transmission plan for purposes of cost allocation (to meet Florida Parties' proposed 1.0 benefit-to-cost ratio); there is no consideration of the value of further benefits that could be realized by the economic transmission project.⁴⁰² 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 Florida Parties' avoided cost method because it is more expensive than the two local transmission projects, and the additional \$60 million in

⁴⁰² Florida Power & Light Co., FPL OATT, Attachment K, § 1.2.9.B.1.

economic benefits would not be recognized. In short, under Florida Parties' proposal, the region could identify a regional transmission project that costs a total of \$120 million and provides \$105 million 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, and provide more benefits, than the economic transmission projects in the local transmission plans.

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

251. 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 Florida 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.

252. In similar fashion, Florida 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.⁴⁰³

⁴⁰³ Order No. 1000-A, 139 FERC ¶ 61,132 at P 678.

253. 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 assess 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 Florida 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.

254. 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 a manner that is at least roughly commensurate with benefits.⁴⁰⁴ 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,⁴⁰⁵ 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.⁴⁰⁶

⁴⁰⁴ See *e.g.*, *Public Service Co. of Colorado*, 142 FERC ¶ 61,206, at P 314 (2013) (finding that the use of production cost savings and reductions in reserve sharing requirements reasonably identifies beneficiaries and accounts for economic benefits) and P 317, footnote omitted (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).

⁴⁰⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622.

⁴⁰⁶ *Id.* P 689.

255. In response to specific concerns raised by the Florida Parties, we note that our directive here is intended to ensure that all potential regional transmission projects are considered, and not to create a “fundamental departure from the [integrated resource planning] processes used in the FRCC region.”⁴⁰⁷ For example, Florida Parties assert that the integrated resource planning processes employed in the FRCC region includes reliability, economics, and public policy considerations, and thus “any proposed CEERTS project would be displacing or avoiding projects that are in the regional transmission plan.”⁴⁰⁸ However, as demonstrated by our example in P 251, there may be situations in which the Florida Parties’ local transmission planning processes do not consider the regional benefits of a transmission project. Additionally, we recognize that Florida Parties have expressed concerns with applying production cost modeling in the FRCC region. While we note that other non-RTO regions have developed forms of production cost modeling for purposes of identifying beneficiaries, we reference production cost savings as only one example of benefits that may be identified by the regional cost allocation method.⁴⁰⁹ Florida Parties have the flexibility to identify benefits using a method other than production cost modeling, if they believe such methods are more appropriate for their region.

256. Accordingly we direct Tampa Electric, Florida Power, and Florida Power & Light 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. Given that we find that Florida 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 Florida Parties’ proposed regional cost allocation method complies with Regional Cost Allocation Principles 2 through 6. We will evaluate whether Florida Parties’ revised proposal complies with all six of Order No. 1000’s Regional Cost Allocation Principles in the order addressing Florida Parties’ revised proposal. Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

⁴⁰⁷ Florida Power & Light Co., Transmittal Letter at 16.

⁴⁰⁸ *Id.*; *see also* Florida Companies’ Answer at 22.

⁴⁰⁹ *See, e.g., Public Service Co. of Colorado*, 142 FERC ¶ 61,205 (2013).

b. Third Party Impact Cost Allocation

i. Florida Parties' Filings

257. Florida Parties propose to retain certain existing third party impact cost allocation provisions (OATT Attachments K/N-2, sections 9.1-9.3).⁴¹⁰ Florida Parties state that during the Order No. 890 compliance process, the third party cost allocation method was developed to address situations where transmission expansion on one transmission provider's system resulted in a material impact on a third party transmission owner.⁴¹¹ Under Florida Parties' existing OATT provisions in section 9.2, the third party cost allocation method applies to remedial upgrades to, or expansions of, a "Transmission Owner's"⁴¹² system resulting from upgrades, expansions, or provisions of services on the systems of other "Transmission Owners."⁴¹³

ii. Protests/Comments

258. LS Power contends that projects that are included under the third party impact cost allocation should be treated as regional transmission projects because these projects cover more than one footprint and the project costs are allocated to more than one transmission provider.⁴¹⁴ However, LS Power states that these projects are treated as local projects under the OATT and retain a right of first refusal. LS Power asserts that sections 9.2 and

⁴¹⁰ If a transmission expansion is identified as needed under the FRCC Regional Transmission Planning Process and such transmission expansion results in a material adverse system impact upon a third party transmission owner, the third party transmission owner may choose to utilize the FRCC Principles for Sharing of Certain Transmission Expansion Costs. The following threshold criteria must be satisfied in order for an affected transmission owner to receive financial assistance: (1) a change in power flow of at least 5 percent or 25 MW, whichever is greater; (2) the transmission expansion must be 230 kV or higher voltage; and (3) the costs associated with the transmission expansion must exceed \$3.5 million. Florida Power & Light Co., FPL OATT, Attachment K, §§ 9.1-9.3.

⁴¹¹ Florida Power & Light Co., Transmittal Letter at 19.

⁴¹² Under section 9.2 of Florida Power & Light Co.'s OATT, "Transmission Owner" for purposes of this section means an electric utility owning transmission facilities in the FRCC Region.

⁴¹³ Florida Power & Light Co., FPL OATT, Attachment K, § 9.2.

⁴¹⁴ LS Power Protest at 13-14.

9.3 of Florida Parties' OATTs should be revised to eliminate the right of first refusal or removed entirely.

259. FMPA/Seminole state that Florida Parties should be required to clarify to what extent the third party impact costs might be affected by a regional transmission project selected in a regional transmission plan for purposes of cost allocation and how that might affect cost responsibility for the regional transmission project.⁴¹⁵

iii. Answers

260. Florida Companies disagree with LS Power that projects seeking third party impact cost allocation should be classified as regional transmission projects. Florida Parties state that the type of projects that would use the third party impact cost allocation are different from the Order No. 1000 regional transmission projects that would receive regional cost allocation. According to Florida Companies, the third party impact projects would be better characterized as local projects as defined in Order No. 1000, but due to the environment within Peninsular Florida, the third party impact cost allocation method continues to be a valid, special cost allocation for the FRCC transmission planning region.⁴¹⁶

261. In response to FMPA/Seminole, Florida Companies state that projects that would qualify for third party impact cost allocation will most likely not be qualified as regional transmission projects selected in a regional transmission plan for purposes of cost allocation. Florida Companies state that third party impact projects are those where a transmission provider is negatively impacted by transmission projects for other parties, while regional transmission projects provide benefits to more than one transmission provider.⁴¹⁷ In addition, Florida Companies state that projects that might otherwise qualify for the third party impact cost allocation could potentially be projects avoided by a regional transmission project, and such projects would be treated as any other avoided transmission project in the regional transmission planning process. Therefore, third party impact transmission projects require no special treatment related to regional transmission projects.

262. In their subsequent answer, FMPA/Seminole state that Florida Companies have not adequately addressed their concerns. FMPA/Seminole state that regional transmission projects should be defined to exclude projects that create third party

⁴¹⁵ FMPA/Seminole Protest at 71.

⁴¹⁶ Florida Companies' Answer at 69.

⁴¹⁷ *Id.* at 71.

impacts, or Florida Parties should be required to address how such a situation would be handled in the regional transmission evaluation and cost allocation process. Further, FMPA/Seminole state that Florida Companies have not clarified who are the beneficiaries and therefore who pays if a regional transmission project avoids a project in the base transmission plan that was to be funded under the third party impact cost allocation process.⁴¹⁸

iv. Commission Determination

263. We conclude that it is appropriate for Florida Parties to maintain their previously approved third party impact cost allocation for remedial upgrades to, or expansions of, a “Transmission Owner’s” systems resulting from upgrades, expansions, or provisions of service on the systems of other “Transmission Owners.” We note that the Commission need not find that the third party impact cost allocation method comply with Order No. 1000 because the third party impact cost allocation method was approved as part of Florida Parties’ Order No. 890 compliance filings, and it reflects an arrangement that Florida Parties voluntarily reached to allocate costs for remedial upgrades to, or expansions of, a “Transmission Owner’s” systems resulting from upgrades, expansions, or provisions of services on the systems of other “Transmission Owners.” Additionally, we recognize Florida Companies’ statement that “[p]rojects that might otherwise qualify for the [t]hird [p]arty [i]mpact cost allocation could potentially be projects avoided by a CEERTS project, and such projects would be treated as any other avoided transmission project in the CEERTS project process.”⁴¹⁹

264. We disagree with LS Power that since the remedial upgrades to, or expansions of, a “Transmission Owner’s” system resulting from upgrades, expansions, or provisions of services on the systems of other “Transmission Owners” may cover more than one transmission provider’s footprint and result in cost allocation to more than one transmission provider, they should be considered regional transmission projects by default. Order No. 1000 distinguishes between a “transmission facility in a regional transmission plan” and a “transmission facility selected in a regional transmission plan for purposes of cost allocation.”⁴²⁰ Remedial upgrades to, or expansions of, a “Transmission Owner’s” system resulting from upgrades, expansions, or provisions of services on the systems of other “Transmission Owners” that are eligible for third party impact cost allocation are “meant to address situations where a transmission expansion on one transmission provider’s system resulted in a material impact on a third party

⁴¹⁸ FMPA/Seminole Reply to Florida Companies’ Answer at 47-48.

⁴¹⁹ Florida Companies’ Answer at 71.

⁴²⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63.

transmission owner.”⁴²¹ These remedial upgrades to, or expansions of, a “Transmission Owner’s” system resulting from upgrades, expansions, or provisions of services on the systems of other “Transmission Owners” have not been proposed for selection in the regional transmission plan for purposes of cost allocation, and therefore have not been selected in the regional transmission plan for purposes of cost allocation.

c. Cost Recovery

i. Florida Parties’ Filings

265. Florida Parties’ cost allocation proposal includes considerations for project funding and cost recovery. Florida Parties provide two options for incumbent transmission providers to recover the costs of a regional transmission project selected in a regional transmission plan for purposes of cost allocation.⁴²² Under the first option, the incumbent transmission providers may fund the transmission project in proportion to their cost responsibility for the project and recover those transmission costs within their respective rate bases. For the portion of the funding provided for the transmission to be built by someone other than the transmission provider identified as the beneficiary, the payments by the beneficiary would be treated as a deferred debit, and the balance would be amortized over time commensurate with the level of investment. The company receiving the money would treat these monies as a contribution in aid of construction and thus have no associated net book investment in its transmission rate base. The contribution in aid of construction for these purposes will be grossed up for income taxes if applicable. According to Florida Parties, this option would not require a stand-alone Commission rate filing.⁴²³

266. Under the second option, incumbent transmission providers may fund the portion of the transmission project that their company would be building and/or developing. Incumbent transmission providers would include the portion of the transmission project costs that they are funding to satisfy their cost responsibilities within their respective rate bases. For those portions of the project costs that were over and above their cost responsibility, the incumbent transmission providers would file with the Commission to recover their Transmission Revenue Requirement associated with those project costs, as appropriate.⁴²⁴

⁴²¹ Florida Power & Light Co., Transmittal Letter at 19.

⁴²² Florida Power & Light Co., Attachment K, § 9.4.4.1.

⁴²³ *Id.* at § 9.4.4.1 (1).

⁴²⁴ *Id.* at § 9.4.4.1 (2).

267. Moreover, Florida Parties provide that incumbent transmission providers with formula-based OATT rates shall be allowed to revise their formula rates to include the deferred debit balance as a directly assignable transmission function rate base, and an amortization expense should be included as a transmission function specific to operations and maintenance.⁴²⁵

268. Florida Parties' proposed section 9.4.4.2 provides a means for nonincumbent transmission developers to recover the costs of a regional transmission project selected in a regional transmission plan for purposes of cost allocation. If a nonincumbent transmission provider builds the regional transmission project, it shall file with the Commission to recover its Transmission Revenue Requirement from the incumbent transmission providers in accordance with their cost responsibilities.⁴²⁶

ii. Protests/Comments

269. FMPA/Seminole are concerned with the proposal to allow incumbent transmission providers to choose between two options for funding and subsequently recovering the costs of a regional project selected in the regional transmission plan for the purposes of cost allocation. Further, regarding the first option, FMPA/Seminole note that it requires that the payments by the non-constructing transmission providers to the constructing transmission provider be treated as contribution in aid of construction that will be grossed up for income taxes. According to FMPA/Seminole, had the non-constructing transmission providers owned their cost-proportionate shares of the regional transmission project, only the equity capital-financed-cost portions of their projects would have been taxable, thus resulting in a lower tax effect than the income tax gross-up of total payments to the constructing transmission provider.⁴²⁷ Therefore, FMPA/Seminole claim that the first option would result in needlessly elevating the cost impact on, and ultimately the rates of, the non-constructing transmission provider.⁴²⁸

270. FMPA/Seminole also contend that the first option does not provide for non-constructing transmission providers participating in regional transmission projects to pay their shares of the ongoing, non-capital costs associated with the regional transmission projects, such as transmission operation and maintenance expenses, property taxes, insurance and indirect overheads. Further, FMPA/Seminole state that beneficiaries

⁴²⁵ *Id.* at § 9.4.4.3.

⁴²⁶ *Id.* at § 9.4.4.2.

⁴²⁷ FMPA/Seminole Protest at 72.

⁴²⁸ *Id.*

should bear their respective shares of continuing capital-related costs, including costs related to renewal, replacement, upgrade, and removal.⁴²⁹

271. FMPA/Seminole express confusion with the provision stating that, “[f]or the portion of the funding that was being provided for the transmission to be built by someone other than the incumbent transmission provider, the payments by the incumbent transmission provider would be treated as a deferred debit, and the balance would be amortized over a period of time commensurate with the level of investment, but in no case longer than the useful life of the facility.” FMPA/Seminole state that it appears this provision was intended to require an entity that makes a contribution in aid of construction payment to treat payments by the incumbent transmission provider as a deferred debit to be amortized on its books and recovered in rates. If so, FMPA/Seminole request that this provision be clarified.⁴³⁰

272. FMPA/Seminole assert that the second option for cost recovery lacks clarity from which entities the incumbent transmission provider would collect project costs in excess of its cost responsibility.⁴³¹ FMPA/Seminole recommend that the OATT language should make clear that the constructing transmission provider will recover from the other beneficiaries with avoided transmission projects their allocated shares of the costs for a given regional transmission project selected in the regional transmission plan for the purposes of cost allocation through the Transmission Revenue Requirement filing.⁴³² FMPA/Seminole further assert that it is unclear exactly what is to be included in the Transmission Revenue Requirement costs.⁴³³ FMPA/Seminole request that Florida Parties clarify that the constructing transmission providers will include in the Transmission Revenue Requirement those costs that are applicable to the specific

⁴²⁹ *Id.* at 73-74.

⁴³⁰ *Id.* at 74.

⁴³¹ *Id.* at 75, citing proposed Attachment K, § 9.4.4.1(2) (“For those portions of the project costs that were over and above their cost responsibility, the incumbent transmission providers would file with FERC to recover their Transmission Revenue Requirement...”).”

⁴³² *Id.*

⁴³³ *Id.*, citing proposed Attachment K, § 9.4.4.1(2) (“In addition to including the Transmission Revenue Requirement for those portions of the project costs that were over and above their cost responsibility, the incumbent Transmission Providers would also include any [Transmission Revenue Requirement] costs allocated to them in their respectively wholesale and retail cost of service...”).

regional transmission project and that are typically recoverable in transmission cost of service, or if this is not Florida Parties' intent, provide the appropriate clarification and support.⁴³⁴

273. FMPA/Seminole also state that certain aspects regarding the transmission provider's formula rates and recovery of revenue requirements should be revised. FMPA/Seminole assert that section 9.4.4.3 of the OATT should be changed so that interested parties will have a right to challenge any proposed revisions to formula-based rates to include payments from non-constructing transmission providers' allocated costs.⁴³⁵ In addition, where a constructing transmission provider is carrying the entire cost of a regional cost allocation project on its books and recovering allocated costs from non-constructing transmission providers, the constructing transmission provider should be required to modify its formula rate either to treat the non-constructing transmission providers' shares of the capital cost and operating expenses associated with each regional transmission project as excluded facilities or to treat the associated payments as revenue credits to prevent such directly assigned costs allocated to third parties from being recovered in the constructing transmission provider's transmission formula rates.⁴³⁶ FMPA/Seminole claim this issue has not been addressed in Florida Parties' proposal.⁴³⁷

iii. Answers

274. Florida Companies assert that it is appropriate to provide the incumbent transmission providers with cost recovery options because the option selected by a transmission provider may hinge on the magnitude of the transmission project, access to capital at a particular time, or any number of other important aspects of the project or concerns of the transmission provider.⁴³⁸ Moreover, the selected option would be vetted within the FRCC stakeholder process, and the Florida Commission might express a preference on the appropriate option to be used from a retail rate perspective.

275. Florida Companies contend that, under option one, grossing up for income taxes, *if applicable*, is not unjustified, and does not skew cost responsibility. According to Florida Companies, option one provides that, if the party receiving funds is required to pay current income taxes on the transaction, the party remitting the funds should pay those

⁴³⁴ *Id.*

⁴³⁵ *Id.* at 77.

⁴³⁶ *Id.*

⁴³⁷ *Id.*

⁴³⁸ Florida Companies' Answer at 71.

taxes so that the receiving party is fully compensated. Therefore, Florida Companies assert that this is a mechanism to correct what could be an unjust burden on the cash flows of the party receiving the funds if the transaction is deemed to be currently taxable. Moreover, Florida Companies note that the party remitting the funds will likely have a current taxable deduction for the transaction and thus will be made whole on an after tax basis.

276. In addition, Florida Companies clarify that in an effort to make the cost allocation process clear and simple, and avoid ongoing disagreements and complications, Florida Companies' proposed cost allocation process provides for only the initial installed capital costs of regional projects to be allocated in proportion to the benefits of the avoided projects' initial installed capital costs. Florida Companies contend this ensures that cost and benefits are treated consistently.

277. Moreover, Florida Companies clarify that the intent of the deferred debit provision is not meant to "require" the non-constructing transmission provider to establish a deferred debit to be amortized but to "allow" for this to occur.⁴³⁹

278. Regarding the second cost recovery option, Florida Companies state that this option simply provides an alternative for funding the initial capital costs of the project. Florida Companies state that using the approach of filing with the Commission to recover the Transmission Revenue Requirement from the beneficiaries will not change the cost responsibility since the Transmission Revenue Requirement will be recovered from those assigned costs during the regional transmission planning process.⁴⁴⁰

279. Regarding the revisions to section 9.4.4.3 that would allow transmission providers to adjust their formula-based OATT rates, Florida Companies contend these rates typically have update processes and protocols in place to allow transmission customers to review and question the annual cost inputs included in the formula rates, and thus customers' rights to challenge new costs have not been circumvented. Florida Companies state that this section is simply addressing the revision to the defined formula to allow for inclusion of any deferred debit and amortization of the deferred debit that might arise in the future, and it is not the intention to allow costs directly assigned to specific parties to be included in formula rates to other transmission customers.⁴⁴¹

⁴³⁹ *Id.* at 73.

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.* at 74.

280. Responding to Florida Companies' answer, FMPA/Seminole continue to object to the incumbent transmission provider having the ability to select the cost recovery mechanism. FMPA/Seminole assert there is no reasonable justification for the constructing transmission provider to have the sole right to dictate another utility's costs for participation in a regional transmission project selected in a regional transmission plan for purposes of cost allocation, particularly given that its neighboring utilities are potential competitors at the retail level. In addition, FMPA/Seminole state that a constructing transmission provider should not be allowed to decide, for its own financing convenience, whether to collect a contribution in aid of construction or to impose a facilities use charge. FMPA/Seminole contend that such an option is arbitrary and, therefore, unjust and unreasonable.⁴⁴²

281. Regarding the tax gross-up of contributions, FMPA/Seminole state that the cost allocation of regional transmission projects should be flexible enough to capture the tax-exempt status of many of the non-constructing beneficiaries of a regional transmission project. As currently proposed in the OATT, tax-exempt entities would be unduly penalized by being forced arbitrarily to support their share of regional transmission project costs constructed by a taxable transmission provider through the imposition of a tax grossed-up contribution in aid of construction.⁴⁴³ FMPA/Seminole state that such a result is both unjust and unreasonable and potentially anticompetitive where the tax grossed-up contribution in aid of construction increases the costs of a competitor.⁴⁴⁴

282. FMPA/Seminole assert that post-construction costs of regional transmission projects should be considered when determining the allocation of costs for each beneficiary. FMPA/Seminole state that post-construction costs may be limited in the initial years of operation, but likely will increase as facilities age and system topologies change.⁴⁴⁵ FMPA/Seminole state that all beneficiaries should be responsible for their respective shares of ongoing costs as well as the initial capital costs.

283. FMPA/Seminole state that Florida Companies' clarification in their answer regarding the second option for cost recovery for incumbent transmission providers⁴⁴⁶ should be included in the revised OATT language. Finally, FMPA/Seminole state that

⁴⁴² FMPA/Seminole Reply to Florida Companies' Answer at 48-49.

⁴⁴³ FMPA/Seminole Reply to Florida Companies' Answer at 49.

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.* at 50.

⁴⁴⁶ Florida Companies' Answer at 73.

any change to a formula rate must be filed under section 205 of the FPA, and affected customers have a right to challenge the filing. FMPA/Seminole assert that Florida Parties have not fully acknowledged what must be done to amend an approved formula rate.⁴⁴⁷

iv. Commission Determination

284. While the Commission declined to address cost recovery in Order No. 1000, the Commission did note that, to the extent that cost recovery provisions are considered in connection with a cost allocation method or methods for a regional transmission facility, public utility transmission providers may include cost recovery provisions in their compliance filings.⁴⁴⁸ The cost recovery provisions provided by Florida Parties and Orlando provide a means for both incumbent and nonincumbent transmission developers to recover the costs of funding regional transmission facilities selected in the regional transmission plan for purposes of cost allocation. We find that these cost recovery provisions are generally just and reasonable and not unduly discriminatory. However, we find that certain aspects of Florida Parties' proposed cost recovery provisions require greater clarity. As an initial matter, to demonstrate how incumbents and nonincumbent transmission providers can recover costs in accordance with the proposed provisions, we direct Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to include examples of how these cost recovery provisions would work, similar to the examples provided for the proposed avoided cost method.⁴⁴⁹ Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

285. Florida Parties present two options for an incumbent transmission provider to recover costs associated with a regional transmission facility. While we find that this flexibility is just and reasonable, for both of the options, proposed section 9.4.4.1 of Attachments K/N-2 does not sufficiently describe what constitutes valid "transmission costs" to be included within a transmission provider's rate base. We note that, in their answer, Florida Companies indicate that "transmission costs" include the initial installed capital costs of regional transmission projects.⁴⁵⁰ We direct Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to include this clarification. Further, Florida Companies' answer raises concerns as to how the ongoing capital and non-capital costs associated with a regional transmission facility will be allocated among beneficiaries. Florida Companies state that, for simplicity, their cost allocation process

⁴⁴⁷ FMPA/Seminole Reply to Florida Companies' Answer at 50.

⁴⁴⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 616.

⁴⁴⁹ Florida Power & Light Co., Appendix 4 to Attachment K.

⁴⁵⁰ Florida Companies' Answer at 72.

provides for the allocation of only the initial installed capital costs of a regional transmission project.⁴⁵¹ We direct Tampa Electric, Florida Power, and Florida Power & Light to submit further compliance filings that provides for the allocation of ongoing capital and non-capital costs associated with a regional transmission facility to beneficiaries in accordance with an Order No. 1000-compliant cost allocation method. Likewise, Orlando should submit further revisions to its Attachment K consistent with these directives.

286. Florida Parties' proposed first option for cost recovery by incumbent transmission providers allows non-constructing transmission providers to provide payment to the constructing entity, and for the entity receiving such payments to treat them as a contribution in aid of construction, grossed up for income taxes, if applicable. We disagree with FMPA/Seminole's comments that the first option of cost recovery provided by Florida Parties results in an unfair tax burden on non-constructing transmission providers. If a constructing transmission provider is required to pay income taxes on a transaction, it is reasonable that the party reimbursing the constructing transmission provider pay those taxes, in order to ensure that the constructing transmission provider is fully reimbursed. However, we agree with FMPA/Seminole that whether or not a construction transmission provider is subject to income taxes is an important consideration in deciding whether a transmission project is more efficient or cost-effective. We find that it is just and reasonable to consider the tax burden when evaluating the total project costs of a proposed CEERTS project.

287. We agree that Florida Parties' OATTs are unclear how the deferred debit representing a contribution in aid of construction will be applied to regional transmission projects selected in the regional transmission plan for purposes of cost allocation. The Florida Parties do not explain how the contribution in aid of construction will be included in the transmission rate base or which FERC Accounts the non-constructing transmission provider's contribution in aid of construction will be booked to. We note that the Commission has historically required contributions in aid of construction to be recorded in Account 303, Miscellaneous Intangible Plant, and amortized by debiting Account 404, Amortization of Limited-Term Electric Plant, and crediting Account 111, Accumulated Provision for Amortization of Electric Utility Plant.⁴⁵² Thus, we direct the Tampa Electric, Florida Power, and Florida Power & Light to clarify how the contributions in aid of construction will be allocated to the transmission rate base and specify the FERC Accounts to record and amortize the contributions in their further compliance filings. Likewise, Orlando should submit further clarifications to its Attachment K consistent with this directive.

⁴⁵¹ *Id.* at 72.

⁴⁵² See e.g., *Citizens Sunrise Transmission LLC*, 138 FERC ¶ 61,129 (2012).

288. According to Florida Parties, the first option for cost recovery, which involves treating certain funds as contribution in aid of construction, would not require a stand-alone Commission rate filing. Section 205 of the FPA authorizes the Commission to require public utilities to file all rates and charges that are “for or in connection with,” and all agreements that “affect or relate to,” jurisdictional transmission service or sales of electric energy.⁴⁵³ The Commission has previously stated that the types of agreements that a public utility must file include jurisdictional contribution in aid of construction agreements.⁴⁵⁴ Therefore, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit a further compliance filing to clarify that contribution in aid of construction agreements will be filed with the Commission. We require that such future charges to ratepayers be justified, including cost support and workpapers upon which parties to these agreements base their rates components, the detail necessary to explain how the numbers were derived, and what FERC Accounts will be used. We also direct Tampa Electric, Florida Power, and Florida Power & Light to clarify that the contribution in aid of construction will be filed with the Commission before the monies are paid for the construction of the regional transmission project.⁴⁵⁵ Likewise, Orlando also should submit further clarifications to its Attachment K consistent with these directives.

289. Similarly, we agree with FMPA/Seminole’s assertion that it is unclear exactly what is to be included in the Transmission Revenue Requirement costs under sections 9.4.4.1(2) and 9.4.4.2, how costs are allocated among wholesale customers and retail customers, or how such direct-assignment cost recovery is credited to existing transmission plant-in-service where formula rates are used. Therefore, to ensure greater clarity, we direct Tampa Electric, Florida Power, and Florida Power & Light to revise their OATTs to explain what account(s) they will use to track charges under sections 9.4.4.1(2) and 9.4.4.2, and the allocation methods that will be used to allocate between wholesale and retail customers. Likewise, Orlando should provide further explanation in a compliance filing consistent with this directive.

290. With regard to proposed section 9.4.4.3 of Attachments K/N-2, which allows incumbent transmission providers to revise their formula rates to include the deferred debit balance (i.e., contributions in aid of construction) as directly assignable to the rate base, we agree with FMPA/Seminole that Florida Parties must submit a separate FPA section 205 filing to reflect the inclusion of contributions in aid of construction in their

⁴⁵³ 16 U.S.C. §§ 824d(a), 824d(c) (2006).

⁴⁵⁴ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993).

⁴⁵⁵ *See, e.g., American Electric Power Service Corp.*, 96 FERC ¶ 61,136, at 61,570 (2001).

formula rates and explain how direct-assignment cost recovery through other rate schedules will be credited to total transmission costs in formula rates, and the allocation methods that will be used. The Commission has previously found that both a formula rate and its inputs must be transparent; it is essential to their being just and reasonable.⁴⁵⁶ Interested parties must have the information necessary to understand and evaluate the implementation of the formula rate for either the correctness of inputs and calculations, or the reasonableness and prudence of the costs to be recovered in the formula rate. Accordingly, to allow interested parties, such as FMPA/Seminole to understand the effects that a regional transmission facility selected in the regional transmission plan for purposes of cost allocation will have on Florida Parties' formula rates, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit a further compliance filing to revise their OATTs to state that they will submit a section 205 filing to reflect the inclusion of the contributions in aid of construction in their formula rates. Such a filing should be made every time this provision is used in relation to a new regional transmission project. Likewise, Orlando should submit further revisions to its Attachment K consistent with this directive.

291. Accordingly, we direct Tampa Electric, Florida Power, and Florida Power & Light to submit a compliance filing within 120 days of the date of issuance of this order to: (1) revise their OATTs to include cost recovery provision examples similar to the examples provided for the proposed avoided cost method; (2) further clarify what constitutes "valid transmission costs" under section 9.4.4.1 of Attachments K/N-2; (3) clearly describe how capital and non-capital costs will be allocated to beneficiaries; (4) clarify how the contributions in aid of construction will be included in rate bases, as well as which FERC accounts the contributions will be booked to; (5) clarify that contribution in aid of construction agreements will be filed with the Commission prior to any payments being made to the constructing transmission developer and provide justification as to how future charges to ratepayers will be derived and what FERC Accounts will be used; (6) explain what accounts will be used to track Transmission Revenue Requirement costs under sections 9.4.4.1(2) and 9.4.4.2 and the allocation methods to be used to allocate between retail and wholesale customers; and (7) revise their OATTs to state that they will submit a separate FPA section 205 filing to reflect the inclusion of the contributions in aid of construction in their formula rates. Likewise, Orlando should submit a further compliance filing consistent with the Commission's directives (1) through (7) listed above.

⁴⁵⁶ *Cf., e.g., NSTAR Elec. Co.*, 123 FERC ¶ 61,270, at P 12 (2009); *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,194, at P 47 (2005); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053, at P 120 (2005); *Ill. Power Co.*, 52 FERC ¶ 61,162 (1990).

d. Cost Allocation of Transmission Rights

i. Florida Parties' Filings

292. Florida Parties propose, as part of their regional cost allocation method, that those transmission providers allocated costs of regional transmission projects selected in a regional transmission plan for purposes of cost allocation shall have priority with regard to any transmission rights associated with such projects, in proportion to their respective share of such costs.⁴⁵⁷

ii. Protests/Comments

293. FMPA/Seminole assert that the provision granting transmission rights to the transmission providers that are allocated costs is fundamentally inconsistent with Regional Cost Allocation Principles 1 and 2, as well as with the allocation of capacity under the *pro forma* OATT.⁴⁵⁸ FMPA/Seminole claim that priority rights are typically used to describe allocation of capacity in the context of merchant or participant-funded transmission and have no place in the context of regionally planned and allocated transmission that is the subject of Florida Parties' compliance filings.⁴⁵⁹ Further, FMPA/Seminole object to Florida Parties assigning themselves priority rights to capacity made available from regional transmission projects. FMPA/Seminole state that it is inappropriate for transmission customers to share in the costs of transmission projects selected in the regional transmission plan for purposes of cost allocation, but to be foreclosed from access and therefore the associated benefits. FMPA/Seminole assert that Florida Parties should develop a proposal that ensures non-discriminatory access to the capacity created by regional cost allocation projects.⁴⁶⁰

iii. Answers

294. Disagreeing with FMPA/Seminole, Florida Companies state that the granting of transmission rights is not participant funding. Rather, the provision provides that any transmission rights arising from regional transmission projects selected in a regional transmission plan for purposes of cost allocation will be provided on a priority basis to those who pay for the project. Moreover, Florida Companies state that the intent of this provision is not to exclude wholesale customers from receiving transmission rights

⁴⁵⁷ Florida Power & Light Co., Attachment K, § 9.4.5.

⁴⁵⁸ FMPA/Seminole Protest at 69.

⁴⁵⁹ *Id.* at 70.

⁴⁶⁰ *Id.* at 71.

commensurate with their contribution to project costs. Florida Companies would not object to clarification of the provision for that purpose.⁴⁶¹

295. Responding to Florida Companies, FMPA/Seminole assert that granting priority rights to the transmission providers that share the costs of a regional transmission facility would be a dramatic departure from the OATT methodology for allocating capacity and Commission policy.⁴⁶² Citing the Commission's policy statement on priority rights, FMPA/Seminole state that the Commission provided a clear distinction between the allocation of capacity rights on new merchant or nonincumbent participant-funded projects, the costs of which are not recovered from captive transmission customers, and projects of incumbent transmission providers that have a clearly defined set of existing obligations under their OATTs concerning new transmission development, including participation in regional transmission planning processes.⁴⁶³ FMPA/Seminole state that Florida Companies should be required to eliminate their preferential access to capacity created by regional transmission projects and develop a proposal consistent with OATT requirements.⁴⁶⁴

iv. Commission Determination

296. We find that Florida Parties' proposal to provide beneficiaries with transmission rights on a transmission project selected in the regional transmission plan for purposes of cost allocation in proportion to their respective share of allocated costs partially complies with Order No. 1000. In Order No. 1000-A, the Commission stated that, in the first instance, the appropriate forum to consider the issue of access to new transmission facilities for which an entity has been allocated costs pursuant to a regional cost allocation method is in the regional transmission planning process for each transmission planning region.⁴⁶⁵ Florida Parties have considered access to new transmission facilities for which an entity has been allocated costs pursuant to a regional cost allocation method and have proposed to address it in their compliance filings. We disagree with

⁴⁶¹ Florida Companies' Answer at 75.

⁴⁶² FMPA/Seminole Reply to Florida Companies' Answer at 44-45.

⁴⁶³ FMPA/Seminole Reply to Florida Companies' Answer at 45-46 (citing January 17, 2013 Final Policy Statement in *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects, Priority Rights to New Participant Funded Transmission*, 142 FERC ¶ 61,038 (2013)).

⁴⁶⁴ FMPA/Seminole Reply to Florida Companies' Answer at 43-46.

⁴⁶⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 624.

FMPA/Seminole and find that Florida Parties' compliance proposal is just and reasonable and not unduly discriminatory in that it assigns transmission transfer capability on a transmission facility selected in the regional transmission plan for purposes of cost allocation based on the cost allocation, which Florida Companies explain in their answer includes wholesale customers. We note that once allocated among beneficiaries, the use of such transmission transfer capability is governed by the Commission's long-standing open access policies as adopted in Order Nos. 888 and 890. However, to ensure that the proposed OATT revisions accurately reflect the parties that are entitled to transmission rights, we direct Tampa Electric, Florida Power, and Florida Power & Light to file, within 120 days of the date of issuance of this order, further compliance filings that revise their OATTs to clarify that wholesale customers are included in those receiving transmission rights. Likewise, Orlando should provide further clarification in a compliance filing consistent with this directive.

C. Non-Substantive Revisions to Attachments K/N-2

297. Florida Parties also submit proposed revisions to Attachments K/N-2 that are not directly related to the Order No. 1000 requirements, but which fall into three general categories: (1) corrections of typographical errors; (2) revisions that are proposed to reflect changes that the FRCC has made its dispute resolution procedures; and (3) revisions to remove outdated website links in Attachments K/N-2.⁴⁶⁶

298. With regard to the various other ministerial revisions and amendments to Attachments K/N-2 that Florida Parties propose, which have not been protested or discussed here, we find them to be just and reasonable and, therefore, accept them.

The Commission orders:

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

⁴⁶⁶ Florida Power & Light Co., Transmittal Letter at 20.

(B) Florida 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 concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tampa Electric Company	Docket Nos.	ER13-80-000
Duke Energy Carolinas, LLC		ER13-86-000
Florida Power & Light Company		ER13-104-000
Orlando Utilities Commission		NJ13-2-000

(Issued June 20, 2013)

CLARK, Commissioner, *concurring*:

I concur with today's order in that I cannot find fault with the individual decisions made in response to the Florida Parties' filing. Where there are calls to be made by the Commission, it would be difficult to find specific errors in light of the direction given in Order No. 1000.¹

However, this filing raises in my mind certain broader concerns regarding the general direction Order No. 1000 takes us in relation to non-market, non-RTO/ISO regions. As I have previously written, there is much I can find worth supporting in Order No. 1000 and some of the subsequent compliance filings.² Facilitating cost-effective transmission solutions, encouraging regional planning to meet customer needs and ensuring fair cost allocation are worthy endeavors. Greater standardization of those efforts would seem to hold a good deal of potential, especially in those regions of the country that have already voluntarily organized themselves into functioning RTOs and ISOs. But Order No. 1000 may not fit quite as well in certain regions of the country. Florida is a prime example.

Order No. 1000 seeks to ensure that transmission projects are planned in a cost-effective manner and in such a way that public policy goals are met. In highly integrated regions,

¹ *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 (2012), *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

² *See Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC 61,215 (2013) (Clark, Comm'r, dissenting) ("There is a good deal in these Order No. 1000 compliance filing orders that I could support."); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013) (Clark, Comm'r dissenting) (same).

where there is central dispatching, locational marginal pricing, and numerous state public policies that support geographically remote sources of generation, Order No. 1000 seems a reasonable effort to ensure just outcomes.

But in a region like Florida, I cannot help but ask if the bureaucracy imposed by Order No. 1000 may outweigh the benefits to be gained.

The FERC jurisdictional utilities that serve Florida are vertically-integrated, monopoly utilities whose planning and operations are comprehensively regulated by the State of Florida. Integrated resource planning and facility siting, as approved by the state, ensures that generation and transmission decisions are viewed and approved holistically. The Florida utilities' integration with the rest of the greater southeast region is limited physically due to Florida's unique geography. There is no central dispatching entity and no LMPs to reflect local congestion. Florida utilities have exercised their right to retain control of their transmission by not choosing to join an RTO/ISO. The Florida Parties state that there are no identified public policy requirements driving regional transmission needs. Thus, in large part, the rationale for Order No. 1000 is lacking in Florida.³

Therefore, I am not entirely sure what is accomplished by Order No. 1000 in such a region. On one hand, since a good deal of integrated resource planning is already happening, there is a chance the real net effect of these changes will fall somewhere between minimally and modestly beneficial. But I fear by shoehorning Order No. 1000 into a region with existing and extensive state-led planning, we could risk the creation of an expensive, potentially litigious, and time-consuming additional layer of unnecessary bureaucracy. If this happens, the counter-productive result will not be more cost-effective and timely built transmission, but less.

For these reasons, I respectfully concur.

Tony Clark
Commissioner

³ I have considered the comments and concerns raised by Florida Municipal Power Agency and Seminole Electric Cooperative. While I do not take these lightly, I wonder if there may be a way to effectively address these concerns that falls short of imposing the full Order No. 1000 planning regime on a region in which the overall benefits appear somewhat limited.