

145 FERC ¶ 61,252  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Carolinas LLC and Carolina Power and Light Company	Docket Nos.	ER13-83-001 ER13-83-002
Alcoa Power Generating, Inc.		ER13-88-001 ER13-88-002

ORDER ON REHEARING, CLARIFICATION, AND COMPLIANCE

(Issued December 19, 2013)

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1. On February 21, 2013, the Commission issued an order<sup>1</sup> rejecting Duke Energy Carolinas LLC and Carolina Power and Light Company’s, d/b/a Progress Energy Carolinas, (Duke-Progress) and Alcoa Power Generating, Inc.’s (Yadkin) proposed revisions to their respective Open Access Transmission Tariffs (OATT) that they submitted to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.<sup>2</sup>

2. On March 25, 2013, Duke-Progress and LSP Transmission Holdings, LLC (LS Power) filed requests for rehearing of the First Compliance Order. On May 22, 2013, Duke-Progress submitted, pursuant to section 206 of the Federal Power Act (FPA),<sup>3</sup> revisions to Attachment N-1 of their OATT to comply with the First Compliance Order.

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<sup>1</sup> *Duke Energy Carolinas LLC*, 142 FERC ¶ 61,130 (2013) (First Compliance Order).

<sup>2</sup> *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).

<sup>3</sup> 16 U.S.C. § 824e (2012).

(Second Compliance Filing).<sup>4</sup> On May 22, 2013, pursuant to section 206 of the FPA, Yadkin submitted a compliance filing in response to the First Compliance Order.

3. For the reasons discussed below, we deny rehearing, accept Duke-Progress' proposed OATT revisions effective June 1, 2014, subject to conditions, and direct Duke-Progress to submit additional revisions to its OATT in a further compliance filing due within 60 days of the date of this order. We also find that Yadkin's second compliance filing does not comply with Order No. 1000, and we direct Yadkin to submit a revised compliance filing within 60 days of the date of issuance of this order.<sup>5</sup>

## **I. Background**

4. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890<sup>6</sup> to require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

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<sup>4</sup> Duke-Progress states that some of the revisions filed in its Second Compliance Filing may be beyond the scope of the original compliance orders and, therefore outside of FPA section 206. Accordingly, to the extent the Commission determines necessary, Duke-Progress also filed its revisions under FPA section 205 (16 U.S.C. § 824d (2012)). Duke-Progress Transmittal at 6.

<sup>5</sup> As discussed below, Yadkin may request waiver of our compliance directives in this order and Order No. 1000, to the extent that it believes it may qualify for waiver.

<sup>6</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

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

6. On October 11, 2012, Duke-Progress and Yadkin submitted revisions to their respective OATTs to comply with the directives in Order No. 1000. In its first compliance filing, Duke-Progress argued that, despite their recent merger, Duke Energy Carolinas LLC (Duke) and Carolina Power and Light Company, d/b/a Progress Energy Carolinas (Progress) were still separate transmission providers and, with the addition of Yadkin, the North Carolina Transmission Planning Collaborative (NCTPC) was a compliant Order No. 1000 transmission planning region. Duke-Progress argued that the Commission should consider them separate transmission providers because, separately, they each meet the definition of transmission provider under the Commission's regulations. They also argued that, under the definition in their joint OATT, which was accepted by the Commission, Duke and Progress were defined as separate transmission providers. Finally, Duke-Progress argued that, even if the Commission disagreed, the NCTPC was still a compliant Order No. 1000 transmission planning region because Yadkin had agreed to join the region. They argued that, with the addition of Yadkin, the transmission planning region would contain more than one transmission provider. In the First Compliance Order, the Commission rejected Duke-Progress' filing, finding that, post-merger, Duke and Progress were no longer separate transmission providers for Order No. 1000 transmission planning purposes<sup>7</sup> and, because Yadkin owns and operates so few transmission facilities, including it in the NCTPC region did not cure this deficiency.<sup>8</sup> The Commission directed Duke-Progress to make a further compliance filing that, at a minimum, includes another transmission provider(s) of sufficient scope to allow the public utility transmission provider in a transmission planning region to meet the Order No. 1000 requirements or that indicates Duke-Progress and Yadkin have joined an Order No. 1000-compliant transmission planning region.<sup>9</sup>

7. On February 7, 2013, Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E/KU) submitted revisions to their transmission planning processes under their OATTs to comply with the local and regional transmission planning and cost

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<sup>7</sup> First Compliance Order, 142 FERC ¶ 61,130 at P 35.

<sup>8</sup> *Id.* P 38.

<sup>9</sup> *Id.* P 42.

allocation requirements of Order No. 1000.<sup>10</sup> On February 8, 2013, Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies) and Ohio Valley Electric Corporation (OVEC) submitted revisions to their transmission planning processes under their OATTs to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000. In these filings, LG&E/KU, Southern Companies and OVEC (collectively, SERTP Sponsors) proposed to rely on the Southeastern Regional Transmission Planning (SERTP) process to comply with Order No. 1000. The Commission accepted their proposal, subject to further compliance filings.<sup>11</sup>

8. In response to the Commission's directives in the First Compliance Order, Duke-Progress states in the Second Compliance Filing that it proposes to enroll in the SERTP process to comply with the regional transmission planning requirements of Order No. 1000 and the Commission's directives in the First Compliance Order. Duke-Progress states that, as described further below, it made only a few substantive changes to the tariff language describing the SERTP process in the language it proposes to include in its OATT.<sup>12</sup>

## **II. Requests for Rehearing or Clarification – Docket No ER13-83-001**

9. On March 15, 2013, LS Power filed a request for clarification of the First Compliance Order. LS Power requests that the Commission clarify that, even though the Commission found that Duke-Progress constitutes a single transmission provider, a transmission project planned jointly between Duke and Progress is not a local transmission facility as defined in Order No.1000 because they have two distinct retail distribution service territories.<sup>13</sup>

10. On March 25, 2013, Duke-Progress filed a request for rehearing arguing that the Commission erred in finding that: (1) post-merger, Duke-Progress constitutes a single transmission provider; and (2) nonincumbent transmission developers will be hesitant to expend resources in the NCTPC transmission planning region. In the alternative, Duke-

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<sup>10</sup> Herein, LG&E/KU First Compliance Filing.

<sup>11</sup> *Louisville Gas and Elec. Co.*, 144 FERC ¶ 61,054 (SERTP First Compliance Order).

<sup>12</sup> Duke-Progress Transmittal at 12-13.

<sup>13</sup> Although LS Power styles its pleading as a request for clarification, we construe it as a request for rehearing of the First Compliance Order.

Progress seeks clarification that any transmission project located solely within the Duke-Progress footprint would constitute a local transmission project under Order No. 1000.

11. On April 1, 2013, North Carolina Electric Membership Corporation (North Carolina EMC) filed an answer to LS Power's request for clarification.

### **III. Compliance Filings**

#### **A. Duke-Progress – Docket No. ER13-83-002**

12. On May 22, 2013, Duke-Progress submitted revisions to Attachment N-1 of its OATT to comply with the directives in the First Compliance Order. Duke-Progress states that it has revised its OATT to distinguish between the NCTPC process, which it will now use for local transmission planning, and the SERTP process, which it will use for regional transmission planning. Duke-Progress states that the proposal to join the SERTP region for purposes of Order No. 1000 regional transmission planning was discussed at the NCTPC Transmission Advisory Group stakeholder meeting on April 16, 2013 and no entity objected. Duke-Progress also states that in April the SERTP Sponsors gave final approval for Duke-Progress to make this compliance filing reflecting its enrollment in SERTP.<sup>14</sup>

13. Duke-Progress states that it is proposing to add new sections 12-30 to Attachment N-1 of its OATT to comply with the regional transmission planning and cost allocation requirements of Order No. 1000. These sections describe the SERTP process. Duke-Progress states that it is, in large part, adopting into sections 12-30 of Attachment N-1 of its OATT the SERTP process as outlined in sections 11-31 of LG&E/KU's Attachment K,<sup>15</sup> as submitted in the LG&E/KU First Compliance Filing.<sup>16</sup> Duke-Progress states that, in light of its adoption, essentially verbatim, of LG&E/KU's Attachment K provisions, which Duke-Progress states in turn largely match Southern Companies' and OVEC's Attachment Ks, Duke-Progress is not submitting a detailed discussion of how the SERTP process complies with the regional transmission planning and cost allocation requirements of Order No. 1000. Duke-Progress states that a description of the provisions in its filing would be repetitive of the nearly-identical filing letters that the SERTP Sponsors already submitted. Duke-Progress states that it therefore adopts by

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<sup>14</sup> Duke-Progress Second Compliance Filing at 2-3.

<sup>15</sup> LG&E/KU, Joint Pro Forma Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (4.0.0) §§ 11-31.

<sup>16</sup> LG&E/KU First Compliance Filing at 3.

reference the explanations in LG&E/KU's, Southern Companies', and OVEC's transmittal letters submitted in Docket Nos. ER13-897-000, ER13-908-000, and ER13-913-000, respectively.<sup>17</sup>

14. Duke-Progress also proposes revisions necessary to separate its local NCTPC transmission planning process outlined in sections 1-11 of Attachment N-1 of its OATT from the SERTP regional transmission planning process outlined in new sections 12-30 of Attachment N-1. Duke-Progress states, however, that in separating the two, it could not simply re-label the Order No. 890-compliant NCTPC transmission planning process as "local" with no changes. Duke-Progress states that such an approach would have resulted in inefficiencies and created undue burdens in light of the fact that the NCTPC transmission planning process included regional transmission planning elements. According to Duke-Progress, a "re-labeling" approach also would not allow it to respond to stakeholder concerns over the specific language filed more than five years ago. Additionally, Duke-Progress notes that Order No. 1000 requires certain changes to the local transmission planning process, such as addressing transmission needs driven by public policy requirements. Finally, Duke-Progress states that the proposed changes to the existing NCTPC transmission planning process will permit better integration with the SERTP regional transmission planning process.<sup>18</sup> Duke-Progress contends that while its filing falls under the compliance filing rubric of section 206 of the FPA, it requests waiver of the Commission's eTariff and other filing requirements to the extent that the Commission views Duke-Progress' changes to its local NCTPC planning process as beyond the scope of the compliance directives, thus falling under section 205 of the FPA. Duke-Progress notes that because the requested effective date in eTariff is 12/31/9998, the Commission is not compelled to rule within 60 days on any elements that the Commission considers to be changes falling under FPA section 205.<sup>19</sup>

15. Duke-Progress states that the SERTP Sponsors requested that their Order No. 1000 compliance filings become effective at the start of the next practical transmission planning cycle/year following Commission acceptance of their compliance filings, assuming that the Commission largely adopts the filings and issues an order sufficiently before the beginning of the next year to allow for commencement of implementation. Duke-Progress also notes that the SERTP Sponsors stated that they expect that the effective date will be January 1, 2014, but that, should the Commission require extensive changes, that date might not be feasible. Duke-Progress requests the same effective date

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<sup>17</sup> Duke-Progress Transmittal at 13.

<sup>18</sup> Duke-Progress Transmittal at 6.

<sup>19</sup> *Id.*

for Attachment N-1 of its OATT as the one the Commission ultimately provides to the SERTP Sponsors' compliance filings.<sup>20</sup>

16. Notice of Duke-Progress' Second Compliance Filing was published in the *Federal Register*, 78 Fed. Reg. 32,383 (2013), with interventions and protests due on or before June 21, 2013. MEAG Power, LG&E/KU, Southern Companies, OVEC, Associated Electric Cooperative, PowerSouth Energy Cooperative, Georgia Transmission Corporation, and Tennessee Valley Authority filed motions to intervene. No protests were filed.

**B. Yadkin – Docket No. ER13-88-002**

17. On May 22, 2013, Yadkin submitted a compliance filing stating that it has a desire to be included on some level in any transmission planning arrangements that may be finalized with SERTP by Duke-Progress.

18. Notice of Yadkin's compliance filing was published in the *Federal Register*, 72 Fed. Reg. 34,366 (2013), with interventions and protests due on or before June 21, 2013. No interventions or protests were filed.

**IV. Discussion**

**A. Procedural Matters**

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

20. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2013), prohibits an answer to a request for rehearing. Accordingly, the Commission rejects the answer filed by the North Carolina EMC.

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<sup>20</sup> *Id.* at 13. On October 17, 2013, the Commission issued an order granting the SERTP Sponsors' request to adopt a June 1, 2014 effective date for their compliance filings. *Duke Energy Carolinas, LLC*, 145 FERC ¶ 61,059 (2013).



**B. Substantive Matters****1. Duke-Progress**

21. We deny Duke-Progress' and LS Power's requests for rehearing of the First Compliance Order. As discussed below, we affirm the finding that Duke-Progress and Yadkin failed to form a transmission planning region that satisfies the requirements of Order No. 1000. However, we grant Duke-Progress' request for clarification regarding the definition of a local transmission facility.

22. We find that Duke-Progress' compliance filing partially complies with the directives in the First Compliance Order. Accordingly, we accept Duke-Progress' compliance filing to be effective June 1, 2014, subject to a further compliance filing, as discussed below. We direct Duke-Progress to submit the compliance filing within 60 days of the date of issuance of this order.

**a. Regional Transmission Planning Requirements****i. First Compliance Order**

23. In the First Compliance Order, the Commission found that the scope of the transmission planning region Duke-Progress proposed, which included only itself and Yadkin, did not comply with the requirements of Order No. 1000.<sup>21</sup> Therefore, the Commission directed Duke-Progress to submit a further compliance filing that, at a minimum, includes another transmission provider of sufficient scope to allow the public utility transmission provider in a transmission planning region to meet the Order No. 1000 requirements or that indicates Duke-Progress has joined an Order No. 1000-compliant transmission planning region.<sup>22</sup>

**ii. Summary of Compliance Filing**

24. Duke-Progress proposes to enroll in the SERTP region to meet the requirement in the First Compliance Order to join an Order No. 1000-compliant transmission planning region. Duke-Progress states that it is not submitting a detailed discussion of how the SERTP process complies with the regional planning requirements of Order No. 1000, as it would merely be repetitive of the nearly-identical filing letters already submitted by the

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<sup>21</sup> First Compliance Order, 142 FERC ¶ 61,130 at P 26.

<sup>22</sup> *Id.* P 42.

SERTP Sponsors. Therefore, Duke-Progress adopts such submissions, in Docket Nos. ER13-908, ER13-897, ER13-913, by reference.<sup>23</sup>

### iii. Commission Determination

25. We find that Duke-Progress' proposal to enroll in the SERTP region satisfies the requirement for it to join a transmission planning region of sufficient scope to meet the requirements of Order No. 1000.

26. We note, however, that the Commission found in the SERTP First Compliance Order that the SERTP process only partially complied with the requirements of Order No. 1000 and the Commission directed the SERTP Sponsors to submit further compliance filings to address several deficiencies. Given that Duke-Progress is relying on the submittals the Commission addressed in the SERTP First Compliance Order to explain how the SERTP process complies with the requirements of Order No. 1000, we likewise rely on and incorporate by reference the findings in the SERTP First Compliance Order rather than repeating them again here. Specifically, the findings in the SERTP First Compliance Order that we incorporate into this order and with which Duke-Progress must comply are in the following sections of the SERTP First Compliance Order: Transmission Planning Region;<sup>24</sup> Order No. 890 and other Regional Transmission Planning Process General Requirements;<sup>25</sup> Affirmative Obligation to Plan;<sup>26</sup> Minimum Threshold Requirements;<sup>27</sup> Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process;<sup>28</sup> Federal Rights of First Refusal;<sup>29</sup> Qualification Criteria;<sup>30</sup> Information Requirements;<sup>31</sup> Evaluation Process

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<sup>23</sup> Duke-Progress Transmittal at 13.

<sup>24</sup> SERTP First Compliance Order, 144 FERC ¶ 61,054 at PP 27-33.

<sup>25</sup> *Id.* PP 41-46.

<sup>26</sup> *Id.* PP 58-64.

<sup>27</sup> *Id.* PP 75-83.

<sup>28</sup> *Id.* PP 111-119

<sup>29</sup> *Id.* PP 136-139.

<sup>30</sup> *Id.* PP 151-158.

<sup>31</sup> *Id.* PP 167-171.

for Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation;<sup>32</sup> Reevaluation Process for Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation;<sup>33</sup> Cost Allocation for Transmission Projects Selected in the Regional Transmission Plan for Purposes of Cost Allocation;<sup>34</sup> and Cost Allocation.<sup>35</sup> We therefore direct Duke-Progress to make a further compliance filing within 60 days of the date of this order that addresses all the compliance requirements related to the SERTP process that the Commission imposed on the SERTP Sponsors in the SERTP First Compliance Order. We note that Duke-Progress is participating in SERTP's Order No. 1000 revised compliance process as the SERTP Sponsors develop their second compliance filing for the SERTP region.<sup>36</sup>

27. In the rest of this order, we address: (1) requests for rehearing of the First Compliance Order; (2) the Duke-Progress local transmission planning process;<sup>37</sup> and (3) those provisions in the Duke-Progress regional transmission planning process that Duke-Progress explains in its Second Compliance Filing are different than the provisions proposed by the SERTP Sponsors and that, therefore, the Commission did not address in the SERTP First Compliance Order.

**b. Scope of Transmission Planning Region**

28. Order No. 1000 required each public utility transmission provider to participate in a transmission planning region, which is a region in which public utility transmission providers, in consultation with stakeholders and affected states, agree to participate for purposes of regional transmission planning.<sup>38</sup> The scope of a transmission planning

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<sup>32</sup> *Id.* PP 195-205.

<sup>33</sup> *Id.* PP 215-221.

<sup>34</sup> *Id.* PP 227-230.

<sup>35</sup> *Id.* PP 248-257.

<sup>36</sup> Duke-Progress Transmittal at 13.

<sup>37</sup> Because we are addressing Duke-Progress' local transmission planning process in this order, the findings in the SERTP First Compliance Order relating to Consideration of Transmission Needs Driven by Public Policy Requirements in the Local Transmission Planning Process do not apply. SERTP First Compliance Order, 144 FERC ¶ 61,054 at PP 124-127.

<sup>38</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160.

region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.<sup>39</sup> However, an individual public utility transmission provider cannot, by itself, satisfy Order No. 1000.<sup>40</sup>

**i. First Compliance Order**

29. In the First Compliance Order, the Commission found that Duke-Progress and Yadkin failed to form a compliant transmission planning region.<sup>41</sup> The Commission found that the merger of Duke and Progress changed the circumstances under which the Commission had examined NCTPC for compliance with Order No. 890, and that the scope of the transmission planning region proposed by Duke-Progress and Yadkin did not comply with the requirements of Order No. 1000.<sup>42</sup> The Commission found that post-merger, Duke and Progress are no longer separate transmission providers and, because Yadkin owns and operates so few transmission facilities, including Yadkin in the proposed transmission planning region did not cure this deficiency.<sup>43</sup>

30. First, the Commission found that Duke and Progress are no longer separate transmission providers, and thus that the NCTPC transmission planning region does not comply with the Commission's finding in Order No. 1000 that an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements.<sup>44</sup> The Commission found that the elimination of rate pancaking between the Duke and Progress zones, the decision to merge operations, their closer coordination, and the combination of service companies, information technology systems, supply chain functions, generation operations, corporate and administrative programs and inventories

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<sup>39</sup> *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

<sup>40</sup> *Id.*

<sup>41</sup> First Compliance Order, 142 FERC ¶ 61,130 at P 11.

<sup>42</sup> *Id.* P 26.

<sup>43</sup> *Id.* P 26.

<sup>44</sup> *Id.* P 35.

supported the finding that Duke-Progress acts as a single transmission provider.<sup>45</sup> The Commission further found that, even though Duke-Progress decided to maintain separate zonal rates post-merger, Duke-Progress acts as a single transmission provider for purposes of Order No. 1000 regional transmission planning. The Commission stated that the distinctions Duke-Progress articulated in its First Compliance Filing, such as the maintenance of separate OASIS sites, separate NERC registrations and the filing of separate FERC forms, did not cure this deficiency.<sup>46</sup>

31. The Commission went on to explain that, regardless of whether Duke and Progress can each individually meet the definition of transmission provider under the Code of Federal Regulations (C.F.R.) and regardless of whether they will continue to perform specified functions separately for the foreseeable future, as Duke-Progress argued, the claims Duke and Progress set forth in their federal and state merger applications indicate that Duke and Progress fully intend to achieve closer coordination and are effectively acting as one company. The Commission found that Duke and Progress, two utilities that had previously been operating separately, and which had separate corporate interests, are now closely coordinating in a number of different ways as set forth in both the Commission and North Carolina Utilities Commission merger applications, and now report to the same senior management, board of directors, and shareholders. Furthermore, the Commission pointed out that the North Carolina Utilities Commission merger application expressly noted that, post-merger, Duke-Progress would more closely coordinate planning efforts, even as they file separate resource plans.<sup>47</sup>

32. The Commission also found Duke-Progress' reliance on the definition of transmission provider in the Joint OATT and the C.F.R. was misplaced.<sup>48</sup> The issue of whether the definition of transmission provider in the Joint OATT would compel a finding with respect to Order No. 1000 was not before the Commission when it accepted the Joint OATT in connection with the merger of Duke and Progress. The Commission

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<sup>45</sup> *Id.* PP 29-32 (citing Application for Authorization of Disposition of Jurisdictional Assets and Merger Under Sections 203(a)(1) and 203 (a)(2) of the Federal Power Act at 3, Docket No. EC11-60-000 (April 4, 2011); and Application of Duke Energy Corporation and Progress Energy, Inc. to Engage in a Business Combination Transaction and Address Regulatory Conditions and Code of Conduct at 8, Docket No. E-2 Sub 998 and docket No. E-7, Sub 986 (April 4, 2011)).

<sup>46</sup> *Id.* P 27.

<sup>47</sup> *Id.* P 33.

<sup>48</sup> *Id.* P 34.

further stated that it did not make any finding (nor did Duke-Progress make any argument) that the Joint OATT's definition of transmission provider was consistent with the definition of transmission provider in Part 37 of the C.F.R., or that the proposed change to the *pro forma* definition of transmission provider would satisfy the C.F.R. definition. The Commission rejected Duke-Progress' arguments that the definition of transmission provider in the C.F.R. applied to its definition in the Joint OATT. The Commission stated that this argument undermines the reasons why the Commission issued Order No. 1000, namely, to require public utility transmission providers to engage in regional transmission planning to identify more efficient or cost-effective transmission solutions.<sup>49</sup> Accordingly, the Commission concluded that Duke-Progress is a single transmission provider for determining compliance with the regional transmission planning requirements of Order No. 1000.<sup>50</sup>

33. Next, the Commission found that the presence of Yadkin in the NCTPC region was not sufficient to qualify NCTPC as a transmission planning region for purposes of Order No. 1000.<sup>51</sup> The Commission noted Yadkin's limited size and facilities, stating that Yadkin owns and operates approximately 21 miles of 13 kV and 100 kV transmission lines that interconnect its hydroelectric facility with Duke-Progress, and that its load consists of a single customer (its own production facility) with a typical peak demand of less than 5 MW.<sup>52</sup> The Commission further found that, based on the limited nature of Yadkin's transmission facilities, it did not appear that Yadkin would have a need to plan for transmission on a scale comparable to how Duke-Progress or other public utility transmission providers with a number of customers would need to plan.<sup>53</sup> The Commission found that, given the limited role that Yadkin would necessarily play in the regional transmission planning process, its inclusion in the NCTPC would not satisfy Order No. 1000's regional scope requirement.<sup>54</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.* P 35.

<sup>51</sup> *Id.* P 37.

<sup>52</sup> *Id.* (referencing Yadkin's Compliance Filing at 2 and Duke-Progress's Compliance Filing at n.5).

<sup>53</sup> *Id.* P 38.

<sup>54</sup> *Id.*

34. The Commission stated that the deficiency in the proposed NCTPC transmission planning region is not due to its geographic or electric scope or the amount of load it serves, but rather that it consists of a single public utility transmission provider of a significant size (i.e., the combined Duke-Progress), coupled with a public utility transmission provider with limited transmission facilities that only serve its own hydroelectric plant (i.e., Yadkin).<sup>55</sup> The Commission further stated that, in the proposed NCTPC transmission planning region, a nonincumbent transmission developer seeking to propose transmission solutions would be facing a transmission planning region being dominated by a single transmission provider. The Commission stated that, at best, a transmission planning region comprised of a single transmission provider creates a perception that only the views of that single transmission provider will be further considered in the regional transmission planning process. The Commission found that, as stated by LS Power, a nonincumbent transmission developer will not be encouraged to invest its resources without believing that it has a fair opportunity for success.<sup>56</sup> The Commission explained that this result would be at odds with Order No. 1000, which is intended to encourage nonincumbent transmission developer participation in regional transmission planning processes.<sup>57</sup>

35. Finally, in response to Duke-Progress' commitment to municipal entities to retain the NCTPC region, the Commission stated that Duke-Progress is not prevented from maintaining NCTPC as part of its local transmission planning process such that North Carolina load-serving entities will still have the same role they now have under the NCTPC.<sup>58</sup>

## ii. Requests for Rehearing or Clarification

36. Duke-Progress argues that, contrary to the Commission's finding, Duke and Progress are separate public utility transmission providers as defined in the C.F.R., which defines a transmission provider as "a public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce."<sup>59</sup> Furthermore, Duke-Progress asserts that Order No. 1000 is codified in section 35.28 of

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<sup>55</sup> *Id.* P 40.

<sup>56</sup> *Id.* P 41 (citing LS Power's Protest at 5).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* P 39.

<sup>59</sup> Duke-Progress Rehearing at 4 (citing 18 C.F.R. § 37.3(a)).

the C.F.R., which provides in subsection (a) that Order No. 1000 applies to any “public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce.”<sup>60</sup> Duke-Progress contends that since both definitions of transmission provider are the same, and Duke and Progress each individually meet the definitions, then they must be considered as two separate transmission providers regardless of their joint OATT or merged status.<sup>61</sup> Thus, Duke-Progress argues that the proposed NCTPC transmission planning region complies with Order No. 1000’s requirements.<sup>62</sup>

37. Duke-Progress also disputes the Commission’s finding that reporting to the same board of directors is evidence of a single transmission provider, noting that six separate Duke Energy Corporation transmission providers report to the same senior management, board of directors and shareholders and yet the Commission found that only two of these six transmission providers comprise a single transmission provider. Duke-Progress asserts that the Commission erred in using Duke and Progress’ affiliate relationship as a basis for finding that Duke-Progress is a single transmission provider.<sup>63</sup>

38. Moreover, Duke-Progress argues, the Commission’s observation that Duke and Progress will closely coordinate post-merger is an irrational basis for finding Duke-Progress is a single transmission provider. Duke-Progress states that it agrees with the Commission that Duke and Progress do closely coordinate transmission planning in the region, but asserts that such close coordination is the purpose of Order No. 1000.<sup>64</sup>

39. Duke-Progress also asserts that the Commission produced only theoretical and speculative evidence supporting its claim that nonincumbent transmission developers will not be encouraged to invest their resources in the NCTPC transmission planning region in light of the merger between Duke and Progress.<sup>65</sup> Duke-Progress argues that when an agency relies solely on theory to support its action, the theory must be a “well supported

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<sup>60</sup> *Id.* (citing 18 C.F. R. § 35.28).

<sup>61</sup> *Id.* at 4-5.

<sup>62</sup> *Id.* at 3.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 6.



and highly developed prediction of what will actually happen in the real world and not mere speculation on the part of the agency.”<sup>66</sup>

40. According to Duke-Progress, the Commission’s theory ignores the NCTPC structure as well as other factors that nonincumbent transmission developers would consider before investing in a transmission planning region, including: (1) the retention of a right of first refusal for certain types of transmission projects; (2) state law that provides for a right of first refusal or prohibits nonincumbent transmission developers from developing transmission projects; (3) whether there is a voting structure to select regional transmission projects for cost allocation; (4) the complexity of the application process for transmission developers; (5) the level of support on the part of the relevant state commissions for Order No. 1000; and (6) the number of entities that typically propose or bid on transmission projects.<sup>67</sup>

41. Duke-Progress asserts that the Commission’s only support for its finding that the NCTPC transmission planning region would not be welcoming to nonincumbent transmission developers is a statement LS Power made in its protest of the initial compliance filing. However, Duke-Progress argues that LS Power made similar statements in other protests it filed in response to the Order No. 1000 compliance filings submitted by the public utility transmission providers in other transmission planning regions, including ISO New England, Inc. and New York Independent System Operator, Inc. Duke-Progress argues that LS Power perceives the potential for discrimination by incumbent transmission providers, even by independent system operators, to be a national problem, not one specific to the proposed NCTPC transmission planning region or to the Duke-Progress merger.<sup>68</sup>

42. Finally, in the alternative, Duke-Progress requests clarification that if Duke-Progress is a single transmission provider under Order No. 1000 then Duke-Progress is comprised of a single footprint for purposes of Order No. 1000.<sup>69</sup> Duke-Progress asserts that since determining the scope of retail distribution service territories is exclusively a state issue, the Commission lacks jurisdiction over the scope of Duke-Progress’ retail distribution service territory. Therefore, Duke-Progress contends that the “Duke-

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<sup>66</sup> *Id.* (citing *Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006) and *Elec. Consumers Res. Council v. FERC*, 747 F.2d 1511, 1517 (D.C. Cir. 1984)).

<sup>67</sup> *Id.* at 6-7

<sup>68</sup> *Id.* at 7-8.

<sup>69</sup> *Id.* at 11.

Progress transmission provider” found to exist by the Commission has no retail distribution service territory, but instead has a single footprint for purposes of Order No. 1000. Accordingly, Duke-Progress states that, pursuant to the definition of a local transmission facility in Order No. 1000, any transmission facility located solely within the Duke-Progress footprint is a local transmission project.<sup>70</sup>

43. LS Power seeks clarification that the Commission’s finding that Duke-Progress constitutes a single transmission provider does not mean that the combined Duke-Progress footprint constitutes a “local footprint” for purposes of Order No. 1000. LS Power argues that even as a single transmission provider, Duke-Progress maintains separate and distinct retail distribution service territories and that any transmission project between the two entities should be considered a regional transmission project for purposes of Order No. 1000.<sup>71</sup> Moreover, LS Power argues, any transmission project for which Duke-Progress jointly plans, especially a project addressing the needs of unaffiliated load-serving entities, should be considered a regional transmission project under Order No. 1000, and not a local transmission project. LS Power argues that to find otherwise would undermine Order No. 1000. LS Power argues that local transmission planning should be reserved for those transmission projects located solely within a single retail distribution service territory.<sup>72</sup>

### **iii. Commission Determination**

44. We deny Duke-Progress’ request for rehearing and affirm the finding in the First Compliance Order that Duke and Progress are not separate transmission providers for purposes of determining compliance with the regional transmission planning requirements of Order No. 1000.<sup>73</sup> Duke-Progress again claims that Duke and Progress each individually meet the definition of “transmission provider” in the C.F.R. and, therefore, are separate transmission providers for purposes of Order No. 1000 compliance. However, as the Commission explained in the First Compliance Order, the claims Duke and Progress set forth in their federal and state merger applications indicate that Duke and Progress had fully intended to achieve closer coordination and are effectively acting as a single company, regardless of whether they each individually meet

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<sup>70</sup> *Id.* at 9-10.

<sup>71</sup> LS Power Rehearing at 1-2.

<sup>72</sup> *Id.* at 3.

<sup>73</sup> First Compliance Order, 142 FERC ¶ 61,130 at P 35.

the definition of “transmission provider” under the relevant C.F.R. provisions.<sup>74</sup> The Commission was therefore correct to conclude that the Duke-Progress transmission system is in many respects planned as if the two operating companies were a single entity.<sup>75</sup> In addition, as the Commission explained in the First Compliance Order, Duke-Progress’ argument regarding the definition of “transmission provider” in the C.F.R. would undermine the reasons why the Commission issued Order No. 1000, namely, to require public utility transmission providers to engage in regional transmission planning to identify more efficient or cost-effective transmission solutions than what may be included in the local transmission plans of individual public utility transmission providers. As the Commission noted in the First Compliance Order, the success of the regional transmission planning process depends on the consideration of a wider set of needs and interests than is currently being considered in each individual transmission provider’s local transmission planning process.<sup>76</sup> Allowing a transmission planning region that consists of just two adjacent, electrically integrated affiliates that report to the same senior management, board of directors, and shareholders, and that are already closely coordinating based on commitments made as part of their merger, would not provide for the consideration of a wider set of needs and interests than are currently being considered in the local planning process. This result would contradict Order No. 1000’s requirement that transmission planning take place on a regional rather than on an individual utility level, and would challenge the improvements to transmission planning that the Commission intended to achieve in Order No. 1000.<sup>77</sup>

45. Duke-Progress also disputes the Commission’s finding that reporting to the same board of directors is evidence of a single transmission provider, noting that six separate Duke Energy Corporation transmission providers report to the same senior management, board of directors, and shareholders, and yet the Commission found that only two of these six transmission providers comprise a single transmission provider. As an initial matter, we note that Duke-Progress fails to acknowledge that the other four affiliates it refers to are geographically separate from Duke-Progress and none of the other affiliates have proposed to join a transmission planning region made up of only Duke Energy

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<sup>74</sup> *Id.* P 33.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* P 28.

<sup>77</sup> *Id.* P 27 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 78-84, 146-148 (explaining the need for Order No. 1000’s requirement for regional transmission planning)).

Corporation affiliates.<sup>78</sup> In addition, the Commission did not only rely on the fact that Duke and Progress report to the same senior management, board of directors, and shareholders to demonstrate that Duke-Progress is a single transmission provider in the First Compliance Order. Instead, the Commission found that Duke-Progress is a single transmission provider for purposes of determining compliance with the regional transmission planning requirements of Order No. 1000 based on a number of considerations, including the close coordination and integration that Duke and Progress outlined as part of their federal and state merger applications. Combined with this other evidence, the fact that Duke and Progress report to the same senior management, board of directors, and shareholders further supports the Commission's conclusion in the First Compliance Order.

46. We also disagree with Duke-Progress' argument that the Commission's observation that Duke and Progress will closely coordinate post-merger is an irrational basis for finding Duke-Progress is a single transmission provider. Duke-Progress is correct that one of the purposes of Order No. 1000 is to require closer coordination in regional transmission planning. However, coordination in a transmission planning region made up only of entities owned by the same parent company is not an outcome that would address the problems the Commission was trying to remedy in Order No. 1000. Order No. 1000 states that the development of transmission facilities that span the service territories of multiple public utility transmission providers may obviate the need for transmission facilities identified in multiple local transmission plans while simultaneously reducing congestion across the region.<sup>79</sup> As discussed above, the evidence strongly shows that Duke-Progress is a single transmission provider and, consequently, the closer coordination would not be occurring on a regional level, as required by Order No. 1000.

47. Duke-Progress asserts that the Commission produced only theoretical and speculative evidence supporting its claim that nonincumbent transmission developers will not be encouraged to invest their resources in the NCTPC transmission planning region because of the merger between Duke and Progress. Initially, the Commission's determination that Duke and Progress are not separate transmission providers for purposes of determining compliance with Order No. 1000 was based on a number of considerations that are addressed above. Nonetheless, we clarify that our finding that nonincumbent transmission developers will not be encouraged to invest their resources in

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<sup>78</sup> In addition to Duke-Progress, Duke Energy Corporation is the parent company of the following subsidiaries: Duke Energy Florida, Duke Energy Ohio, Duke Energy Kentucky, and Duke Energy Indiana.

<sup>79</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 81.

the NCTPC transmission planning region is based on the presumption that the transmission provider will act in its own self-interest, as any economically rational company would.<sup>80</sup> Self-interest dictates that the incumbent transmission provider will seek to exclude competition from nonincumbent transmission developers in the transmission planning region. Nonincumbent transmission developers will perceive this and consequently be discouraged from participating in the regional transmission planning process. Duke-Progress characterizes this position as an unsupported theory. Duke-Progress notes that “the Commission cannot produce any actual evidence as to whether non-incumbents are hesitating to expend resources in the NCTPC in light of the merger, as the NCTPC Order No. 1000 planning process never took effect;”<sup>81</sup> however, Duke-Progress’ apparent claim that nonincumbent transmission developers *would* be encouraged to invest resources in a transmission planning region made up of affiliated entities reporting to the same parent company is likewise not supported by any actual evidence.

48. Duke-Progress maintains that a nonincumbent transmission developer might consider a number of factors aside from affiliate relationships in deciding whether to propose a regional transmission project for selection in the regional transmission plan for purposes of cost allocation. We agree; however, the existence of multiple factors does not mean a transmission planning region being dominated by a single transmission provider is not by itself a sufficient reason for a nonincumbent transmission developer to be deterred from participating in that region’s transmission planning process. In balancing the relevant factors that may influence a nonincumbent transmission developer’s decision to propose a regional transmission facility in the regional transmission planning process for purposes of cost allocation, we find a transmission planning region being dominated by a single transmission provider will discourage nonincumbent transmission developers from investing their resources in the proposed NCTPC transmission planning region.

49. In response to Duke-Progress’ and LS Power’s requests for clarification regarding local transmission facilities, we clarify that the combined Duke-Progress transmission system constitutes a single “footprint” for purposes of Order No. 1000. Order No. 1000 defines a local transmission facility as “a transmission facility that is located solely

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<sup>80</sup> *See, e.g.*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 39 (“it is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets, to deny transmission or to offer transmission on a basis that is inferior to that which they provide to themselves.”).

<sup>81</sup> Duke-Progress Rehearing at 5.

within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation."<sup>82</sup> LS Power argues that, because Duke-Progress continues to have distinct retail distribution service territories, any transmission facility that goes between Duke and Progress cannot be considered a local transmission facility. In contrast, Duke-Progress argues that, in the context of a single Duke-Progress transmission provider, a local transmission facility is one located solely within the combined Duke-Progress footprint. Duke-Progress asserts that, if Duke-Progress is one transmission provider, as the Commission posits, then it can only have one "footprint."<sup>83</sup>

50. Given our denial of Duke-Progress' request for rehearing and our finding above that Duke-Progress is a single transmission provider for purposes of Order No. 1000 compliance, we grant clarification regarding the definition of local transmission facility as it applies to Duke-Progress. While Duke and Progress have separate retail distribution service territories, the Commission found that this fact does not control whether Duke and Progress are separate transmission providers for purposes of Order No. 1000 compliance.<sup>84</sup> It follows that, because the combined Duke-Progress transmission system cannot, by itself, form an Order No. 1000-compliant regional transmission planning region, a transmission facility located entirely within the combined Duke-Progress transmission system that is not selected in the regional transmission plan for purposes of cost allocation is a local transmission facility.

51. We therefore clarify that the Duke-Progress retail distribution service territories taken together constitute a single footprint for purposes of defining local transmission facilities pursuant to Order No. 1000. Thus, a transmission facility located entirely within the combined Duke-Progress transmission system footprint or within either Duke's retail distribution service territory or Progress' retail distribution service territory

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<sup>82</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 60. Order No. 1000 also defines a local transmission planning process as the process that a public utility transmission provider performs for its individual retail distribution service territory or footprint pursuant to the requirements of Order No. 890. *Id.* P 68.

<sup>83</sup> In Order No. 1000-A, the Commission clarified that the term "footprint," was "intended to include, but not be limited to, the location of the transmission facilities of a transmission-only company that owns and/or controls the transmission facilities of formerly vertically-integrated utilities, as well as the location of the transmission facilities of any other transmission-only company." Order No. 1000-A, 139 FERC ¶ 61,132 at P 420.

<sup>84</sup> First Compliance Order, 142 FERC ¶ 61,130 at P 27.

and that is not selected in the regional transmission plan for purposes of cost allocation will be a “local transmission facility” as defined by Order No. 1000.<sup>85</sup> However, we note that Duke-Progress omits the second part of Order No. 1000’s definition of a local transmission facility (i.e., a local transmission facility must not be selected in the regional transmission plan for purposes of cost allocation).<sup>86</sup> As discussed below, we require Duke-Progress to revise its OATT to state that a Local Project is a transmission facility that is (1) located solely within the combined Duke-Progress transmission system footprint and (2) not selected in the regional transmission plan for purposes of cost allocation, consistent with the definition of a local transmission facility in Order No. 1000.

**c. Local Transmission Planning Process**

**i. Summary of Compliance Filing**

52. As noted above, Duke-Progress states that, to comply with the requirements in the First Compliance Order, it proposes to enroll in the SERTP region and retain the NCTPC process as its local transmission planning process.<sup>87</sup> Duke-Progress states that, because it always considered the NCTPC process to be a regional transmission planning process, it must make modifications other than just renaming NCTPC as its local transmission planning process.<sup>88</sup> According to Duke-Progress, the NCTPC process remains fully compliant with Order No. 890.<sup>89</sup> Duke-Progress states that many of the changes in its Attachment N-1 are minor language changes and rearrangements to better reflect the consideration of the NCTPC process as a local transmission planning process. For example, Duke-Progress states that the transmission plan the NCTPC produces, which was formerly called the Collaborative Transmission Plan, will now be called the Local

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<sup>85</sup> As clarified in Order No. 1000-A, “the term ‘selected in a regional transmission plan for purposes of cost allocation’ excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located.” Order No. 1000-A, 139 FERC ¶ 61,132 at P 423.

<sup>86</sup> Duke-Progress Rehearing at 10.

<sup>87</sup> Duke-Progress Transmittal at 3-4.

<sup>88</sup> *Id.* at 4, 5.

<sup>89</sup> *Id.* at 12.

Transmission Plan.<sup>90</sup> Duke-Progress also proposes to rename sections 2-11 of Attachment N-1 to its OATT as “Part I – Local Planning Process” and add new sections 12- 30 to attachment N-1 as “Part II – Regional Transmission Planning.”<sup>91</sup> In addition, Duke-Progress proposes to replace the term “Transmission Provider” with the term “Company” where the separate corporate nature of Duke and Progress needs to be recognized, such as in the local transmission planning process, and to adopt the term “Duke Transmission Provider” where Duke-Progress is treated as a single entity for purposes of regional transmission planning.<sup>92</sup>

53. On a more substantive basis, Duke-Progress proposes to revise Attachment N-1 to its OATT to eliminate the role of the Independent Third Party in the NCTPC process. According to Duke-Progress, while the Independent Third Party’s role was partially administrative, the Independent Third Party also had the tie-breaking vote in committees and was a liaison between various NCTPC committees such that it had to be familiar with transmission planning and thus was costly to retain. Duke-Progress states that, due to the added expense of implementing Order No. 1000’s requirements, it decided to eliminate the position from its OATT and reassign some of its duties to the Chair and Vice-Chair of the Oversight and Steering Committee. As support for its belief that the position is not needed at this time, Duke-Progress states that the Independent Third Party has never had to break any tie votes. Duke-Progress also states that Order Nos. 890 and 1000 did not require an Independent Third Party and that, other than to recite Duke-Progress’ own explanation of the NCTPC process, the Commission did not discuss the Independent Third Party in its orders addressing the Duke-Progress Order No. 890 compliance filings and did not find the Independent Third Party as being necessary to comply with the transmission planning principles of Order No. 890.<sup>93</sup>

54. In addition, Duke-Progress proposes to add the following provision at the beginning of section 4 – Description of the Local Planning Process:

The NCTPC Process is a coordinated local transmission planning process. The entire, iterative process ultimately

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<sup>90</sup> *Id.* at 7 (citing Duke-Progress OATT, Attachment N-1 § 2.4.3.1).

<sup>91</sup> *Id.* at 5.

<sup>92</sup> *Id.* at 4-5.

<sup>93</sup> *Id.* at 7 (citing *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267 (2008), *order accepting compliance filing*, 127 FERC ¶ 61,281 (2009), and Docket No. OA08-50-005 (Feb. 2, 2010) (delegated letter order)).



results in a single Local Transmission Plan that appropriately balances the costs, benefits and risks associated with the use of transmission, generation, and demand-side resources. The Local Transmission Plan will identify local transmission projects (Local Projects). A Local Project is defined as a transmission facility located solely within the NCTPC footprint.<sup>94</sup>

55. Duke-Progress states that, because the Order No. 1000 regional transmission planning process provides the opportunity to propose regional transmission projects driven by any type of need, it has eliminated the Enhanced Transmission Access Planning Process from Attachment N-1 of its OATT. Duke-Progress states that the Enhanced Transmission Access Planning Process allowed entities to engage in analysis of economically-driven projects and included a means for interested entities to propose and subscribe to Regional Economic Transmission Path Projects. Duke-Progress explains that Regional Economic Transmission Path Projects, which it also proposes to eliminate from its OATT, were a participant-funded form of regional transmission project that is no longer necessary to define as part of its local transmission planning process.<sup>95</sup> Duke-Progress states, however, that the concept of Transmission Advisory Group participant-requested economic studies located in the NCTPC footprint was reinvigorated by the rejection of the NCTPC process as a regional transmission planning process.<sup>96</sup> Duke-Progress has thus largely retained the provisions that allow Transmission Advisory Group participants to request economic planning studies in section 4 of Attachment N-1 to its OATT, but proposes to rename the Enhanced Transmission Access Planning Process as the Local Economic Study Process.<sup>97</sup>

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<sup>94</sup> Duke-Progress OATT, Attachment N-1 at §4.

<sup>95</sup> Duke-Progress Transmittal at 8-9.

<sup>96</sup> *Id.* at 9. The purpose of the Transmission Advisory Group is to provide advice and recommendations to the NCTPC participants to aid in the development of an annual Local Transmission Plan. Anyone may participate in Transmission Advisory Group meetings and sign-up to receive Transmission Advisory Group communications. The Transmission Advisory Group is comprised of Transmission Advisory Group participants. Transmission Advisory Group members may be individuals or representatives of entities, such as corporations or government bodies. Web-based registration is required. Duke-Progress OATT, Attachment N-1, §2.4.3.

<sup>97</sup> *Id.* at 8-9, Duke-Progress OATT, Attachment N-1 §4.2.4.2.

56. Duke-Progress states that, other than eliminating references to Regional Economic Transmission Path Projects, the only substantive change to the local economic planning studies process in section 4 is to reduce the number of Transmission Advisory Group participant-requested economic studies it will perform without charge from five to three. Duke-Progress states that the reduction in the number of local economic studies that it will perform without charging stakeholders that request them is counterbalanced by the addition of five regional economic studies included in the SERTP process. Furthermore, Duke-Progress states that NCTPC stakeholders have shown little interest in such studies being performed over the years and have never requested even a single economic study under this process, let alone five.<sup>98</sup> Duke-Progress also proposes to revise section 4.4.2 to state that Transmission Advisory Group participants will be directed to submit regional study requests in the SERTP process.<sup>99</sup>

57. Duke-Progress states that section 5, which discusses the data, assumptions, and analysis used to perform local transmission planning, reflects only a few changes from the prior accepted version of the section.<sup>100</sup> For example, Duke-Progress proposes to replace the term enhanced transmission access project with local economic project<sup>101</sup> and add the word “local” in appropriate places throughout the section. Duke-Progress also proposes to add new section 5.7.4, which states that “[a] solution that is seeking regional cost allocation must be submitted in accordance with the procedures set forth in Part II [Regional Transmission Planning] and will be evaluated through the SERTP Process.”<sup>102</sup> In addition, Duke-Progress proposes to add new section 5.9.6, which states:

The Local Transmission Plan . . . will be an input into the SERTP Process. Local Projects identified in a Local Transmission Plan may later be removed from a Local Transmission Plan due to, for example, the iterative nature of transmission planning in subsequent planning cycles, additional transmission planning coordination provided through the SERTP Process, or if a project seeking regional

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<sup>98</sup> *Id.*

<sup>99</sup> Duke-Progress OATT, Attachment N-1 §4.2.2.

<sup>100</sup> Duke-Progress Transmittal at 9.

<sup>101</sup> Duke-Progress OATT, Attachment N-1 § 5.1.5.

<sup>102</sup> *Id.* at §5.7.4.

cost allocation has been selected in the regional transmission expansion plan to replace a Local Project.<sup>103</sup>

58. In section 7 of Attachment N-1, Transmission Cost Allocation for Local Projects, Duke-Progress states that it proposes to apply its existing approach to assigning the costs of Regional Reliability Projects and Regional Economic Transmission Path Projects, which it states the Commission previously approved as part of Duke-Progress' Order No. 890 compliance, to what it now calls Joint Local Projects (i.e., projects within the NCTPC footprint that involve both Duke and Progress). Duke-Progress states that it will apply the avoided cost approach to Joint Local Reliability Projects<sup>104</sup> and that for Joint Local Economic Projects,<sup>105</sup> the requester will pay.<sup>106</sup> Duke-Progress states that it is not proposing these approaches to assigning the costs of Joint Local Projects to comply with Order No. 1000, as they are being applied to multi-owner local transmission projects rather than regional transmission projects. Therefore, Duke-Progress asserts they are not designed to meet the six Order No. 1000 cost allocation principles.<sup>107</sup> Duke-Progress states that it also made some minor modifications in section 7 with regard to economic transmission projects by dropping the open season concept. Duke-Progress states that customers interested in pursuing such projects should be able to identify each other without the formal structure of an open season.<sup>108</sup>

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<sup>103</sup> *Id.* at §5.9.6. A Local Project is defined in the Duke-Progress OATT as a transmission facility located solely within the NCTPC footprint. *Id.*

<sup>104</sup> Duke-Progress proposes to define a Joint Local Reliability Project as “any reliability project that requires an upgrade to a Company's system that would not have otherwise been made based upon the reliability needs of the Company.” *Id.* at § 7.2.1.

<sup>105</sup> Duke-Progress proposes to define a Joint Local Economic Project as “a project that permits energy to be transferred on a Point-to-Point basis from an interface or a Point of Receipt on a Company's system to an interface or a Point of Delivery on another Company's system for a specified time period.” *Id.* at § 7.3.1.

<sup>106</sup> Duke-Progress Transmittal at 11.

<sup>107</sup> *Id.* at 10.

<sup>108</sup> *Id.* at 11.

59. Duke-Progress states that section 11 of its Attachment N-1 has been retitled from Inter-Regional Coordination to Additional Coordination to indicate that the activities described are neither regional nor interregional, but are coordination activities that predated both Order No. 890 and Order No. 1000 and are expected to continue.<sup>109</sup>

**ii. Commission Determination**

60. As discussed below, we find that Duke-Progress' proposal to retain the NCTPC process as its local transmission planning process complies with the requirements in the First Compliance Order, subject to one condition.

61. We find Duke-Progress' proposal to eliminate the role of the Independent Third Party in the NCTPC process to be reasonable. As Duke-Progress explains, while the Independent Third Party's role was partially administrative, the Independent Third Party was also an added cost. We agree with Duke-Progress that reassigning some of the Independent Third Party's duties to the Chair and Vice-Chair of the Oversight and Steering Committee could be a more efficient use of resources under these circumstances, where the NCTPC process is now the local planning process. Furthermore, neither Order Nos. 890 nor 1000 required an Independent Third Party and, other than to recite Duke-Progress' own explanation of the NCTPC Independent Third Party process, the Commission did not discuss the Independent Third Party in its orders addressing the Duke-Progress Order No. 890 compliance filings and did not find that the Independent Third Party was necessary to comply with the transmission planning principles of Order No. 890.<sup>110</sup>

62. We find Duke-Progress' proposal reducing from five to three the number of Transmission Advisory Group participant-requested local economic planning studies it will perform without charge is reasonable as part of the changes it proposes to comply with Order No. 1000. In particular, we find that reducing the number of "free" local economic studies is counterbalanced by the addition of five stakeholder-requested regional economic studies included in the SERTP transmission planning process. We also accept Duke-Progress' proposal directing Transmission Advisory Group participants to submit regional study requests to the SERTP process because regional studies will be now conducted through the SERTP process and not by NCTPC.<sup>111</sup>

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<sup>109</sup> *Id.*

<sup>111</sup> *See* Duke-Progress OATT, Attachment N-1, § 4.2.2.

63. However, we find that Duke-Progress' proposed definition of Local Project does not comply with Order No. 1000.<sup>112</sup> Duke-Progress proposes to define a Local Project as "a transmission facility located solely within the NCTPC footprint."<sup>113</sup> Order No. 1000 defines a local transmission facility as "a transmission facility that is located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation."<sup>114</sup> Duke-Progress' proposed definition of Local Project is inconsistent with Order No. 1000's definition of local transmission facility in two ways. First, Duke-Progress proposes to define a Local Project as one located within the "NCTPC" footprint rather than in the Duke-Progress footprint. The definition of local transmission facility in Order No. 1000 is based on a public utility transmission provider's individual footprint, not on the footprint of a particular local transmission planning process such as NCTPC. While Duke and Progress currently own and operate all of the bulk transmission system in NCTPC,<sup>115</sup> we note that the composition of the NCTPC could change in the future. Second, Duke-Progress' proposed definition does not state that a Local Project is one that is not selected in the regional transmission plan for purposes of cost allocation. Thus, we direct Duke-Progress to make a further compliance filing, within 60 of the date of this order, that revises its OATT to state that a Local Project is a transmission facility that is (1) located solely within the combined Duke-Progress transmission system footprint and (2) not selected in the regional transmission plan for purposes of cost allocation.

64. We accept the additional modifications Duke-Progress proposed to its local transmission planning process, which provide more clarity and help distinguish between the NCTPC local transmission planning process and the SERTP process. For example, Duke-Progress has renamed the "Enhanced Transmission Access Planning Process" as the "Local Economic Study Process" and has renamed enhanced transmission access projects as local economic projects. Duke-Progress also proposes to include the word "local" in appropriate places throughout its OATT. Additionally, Duke-Progress proposes to apply its existing approach to assigning the costs of Regional Reliability Projects and Regional Economic Transmission Path Projects to what it now calls Joint Local Projects.

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<sup>112</sup> *Id.* at § 4

<sup>113</sup> Duke-Progress Rehearing at 9-10.

<sup>114</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 60.

<sup>115</sup> First Compliance Order, 142 FERC ¶ 61,130 at P 16.

65. Due to the fact that customers interested in pursuing economic projects should be able to identify each other without the formal structure of an open season, we also accept Duke-Progress' proposal to remove the open season concept for economic transmission projects. Furthermore, neither Order Nos. 890 nor 1000 required an open season for economic transmission projects. Since Duke-Progress is also removing the OATT sections regarding Regional Economic Transmission Paths, we find that the Open Season related to the Regional Economic Transmission Paths is no longer necessary.

66. Additionally, we accept Duke-Progress' proposal to retitle section 11 from "Inter-Regional Coordination" to "Additional Coordination" to indicate that the activities described are neither regional nor interregional, but are coordination activities that predated both Order No. 890 and Order No. 1000, and which are expected to continue.

**d. Consideration of Transmission Needs Driven by Public Policy Requirements**

67. 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.<sup>116</sup> 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.<sup>117</sup> 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).<sup>118</sup> 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.<sup>119</sup>

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<sup>116</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

<sup>117</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 204, 206, 208-211, 317-319.

<sup>118</sup> 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.

<sup>119</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

68. 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.<sup>120</sup> The process for identifying transmission needs driven by Public Policy Requirements must allow stakeholders, including, but not limited to, those responsible for complying with the Public Policy Requirements at issue and the developers of potential transmission facilities that are needed to comply with one or more Public Policy Requirements, an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements.<sup>121</sup> 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.<sup>122</sup>

69. 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.<sup>123</sup> 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.<sup>124</sup> 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.<sup>125</sup>

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<sup>120</sup> *Id.* PP 206, 207.

<sup>121</sup> *Id.* PP 207, 208.

<sup>122</sup> *Id.* P 335.

<sup>123</sup> *Id.* P 209.

<sup>124</sup> *Id.* P 335.

<sup>125</sup> *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

70. 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.<sup>126</sup> These procedures must include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by Public Policy Requirements.<sup>127</sup> Stakeholders must be provided an opportunity to provide input during the evaluation of potential solutions to identified needs.<sup>128</sup> 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.<sup>129</sup> 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.<sup>130</sup>

71. 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.<sup>131</sup> 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.<sup>132</sup> 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

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<sup>126</sup> *Id.* P 211.

<sup>127</sup> 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.”).

<sup>128</sup> *Id.* P 220.

<sup>129</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

<sup>130</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

<sup>131</sup> *Id.* P 203.

<sup>132</sup> *Id.* P 214; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.



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.<sup>133</sup> In addition, public utility transmission providers are not required to consider Public Policy Requirements themselves as part of the transmission planning process.<sup>134</sup>

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

**(a) Summary of Compliance Filing**

72. Duke-Progress states that it added section 4.3, “Overview of Process to Identify If Any Public Policies Exist that Drive Local Transmission Needs,” to incorporate transmission needs driven by public policy requirements in its local transmission planning process.<sup>135</sup>

73. Under the proposal, the Oversight and Steering Committee will determine whether there are any public policies driving the need for local transmission.<sup>136</sup> The Oversight and Steering Committee will seek input (e.g., written comments) from Transmission Advisory Group participants prior to the first Transmission Advisory Group meeting of the local transmission planning process cycle, asking that they identify any public policies that are driving the need for local transmission and meet the required criteria,<sup>137</sup> as well as discuss during the first Transmission Advisory Group meeting whether there are public policies that are driving the need for Local Projects.<sup>138</sup> Additionally the

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<sup>133</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216.

<sup>134</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 204.

<sup>135</sup> Duke-Progress Transmittal at 9.

<sup>136</sup> Duke-Progress OATT, Attachment N-1, §4.3.1.

<sup>137</sup> *Id.* at §4.3.1.1.

<sup>138</sup> *Id.* at §4.3.1.3.

Oversight and Steering Committee may itself identify public policies that are driving the need for Local Projects.<sup>139</sup>

74. Duke-Progress proposes two criteria that the Oversight and Steering Committee will use to determine if a public policy drives a local transmission need. First, the public policy must be reflected in a federal, state or local law or regulation (including order of a state, federal or local agency).<sup>140</sup> Second, a transmission need will not be considered to be driven by public policy if that need is readily addressed through the individual resource planning process of the load serving entities and individual requests for network resource designations, i.e., where there is not apparent benefit to a collective approach.<sup>141</sup> Duke-Progress states that a local public policy project is not a project that satisfies the needs of a single load-serving entity, but rather should provide a collective local benefit. According to Duke-Progress, individual service requests will not be handled through the NCTPC process, as it would disrupt the interconnection and transmission queuing processes included in the OATT.<sup>142</sup>

75. Within two weeks of the first Transmission Advisory Group meeting, the Oversight and Steering Committee will issue a decision as to whether any public policies are driving transmission needs and post its determination on the NCTPC website.<sup>143</sup> If one or more public policies are identified as driving local transmission needs, then the NCTPC will consider solutions to those needs and Transmission Advisory Group participants may suggest projects to meet those needs in accordance with the planning process. However, if no policies are identified for the planning year, then public policy projects cannot be proposed as solutions.<sup>144</sup> Duke-Progress states that there is no separate solution-analysis process for public policy solutions. It states that, once the need is identified, solutions may be proposed just as they are for all other types of transmission needs.<sup>145</sup>

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<sup>139</sup> *Id.* at §§ 4.3.1.2 and 4.3.1.

<sup>140</sup> *Id.* at § 4.3.2.1.

<sup>141</sup> *Id.* at § 4.3.2.2.

<sup>142</sup> Duke-Progress Transmittal at 9.

<sup>143</sup> Duke-Progress OATT, Attachment N-1, § 4.3.3.

<sup>144</sup> *Id.* at § 4.3.3.

<sup>145</sup> Duke-Progress Transmittal at 9.

**(b) Commission Determination**

76. We find that Duke-Progress' filing partially complies with the provisions of Order No. 1000 addressing local transmission needs driven by public policy requirements. Accordingly, we require Duke-Progress to file a further compliance filing revising its OATT as described below.

77. Duke-Progress proposes to define a public policy requirement in its local transmission planning process as a requirement that is stated in a federal, state, or local law or regulation (including order of a state, federal, or local agency). We find that this proposed definition is consistent with the definition of public policy requirements in Order No. 1000.

78. Order No. 1000 requires that the process for identifying transmission needs driven by public policy requirements must allow stakeholders an opportunity to provide input, and offer proposals regarding the transmission needs they believe are driven by public policy requirements.<sup>146</sup> Duke-Progress proposes to have the Oversight and Steering Committee seek input from Transmission Advisory Group participants to determine whether there are any public policies driving the need for local transmission. The Oversight and Steering Committee can also itself identify public policies that are driving the need for Local Projects. Furthermore, there will be a discussion at the first Transmission Advisory Group meeting of whether there are any public policies that are driving the need for Local Projects. Given this involvement of the Oversight and Steering Committee and Transmission Advisory Group participants, and the inclusive nature of these committees, we find that Duke-Progress' proposal complies with Order No. 1000's requirement that each public utility transmission provider establish procedures in the local transmission planning processes 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.<sup>147</sup> We find that Duke-Progress has described in sufficient detail how stakeholders can offer proposals in the local transmission planning process regarding the transmission needs they believe are driven by public policy requirements, such that the process for doing so is transparent to all interested stakeholders.

79. However, we are concerned by Duke-Progress' proposal to limit the transmission needs driven by public policy requirements that stakeholders may provide input on or propose to those transmission needs not readily addressed through the individual resource

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<sup>146</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 207, 208.

<sup>147</sup> *Id.* PP 206, 207, 208.

planning process of the load serving entities and individual requests for network resource designations. 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,<sup>148</sup> we are concerned that Duke-Progress' proposal would categorically exclude from consideration certain transmission needs driven by public policy requirements, thereby denying the stakeholders offering those transmission needs a meaningful opportunity to submit them for consideration. Even if a transmission need driven by public policy requirements is already being addressed through individual resource planning processes of the load-serving entities or individual requests for network resource designations, there may be another more efficient or cost-effective transmission solution to that need that could be considered in the local transmission planning process. We therefore conclude that Duke-Progress' proposal to limit the transmission needs driven by public policy requirements that stakeholders may propose to those transmission needs not readily addressed through the individual resource planning process of the load-serving entities or individual requests for network resource designations does not fully comply with Order No. 1000's requirement to consider transmission needs driven by public policy requirements. Accordingly, we direct Duke-Progress to submit, within 60 days of the date of this order, a further compliance filing that removes this provision from its OATT.

80. We reiterate that Order No. 1000 also requires that public utility transmission providers establish a just and reasonable and not unduly discriminatory process for identifying, out of the larger set of transmission needs driven by Public Policy Requirements proposed by stakeholders, the needs driven by Public Policy Requirements for which transmission solutions will be evaluated and does not require that public utility transmission providers identify any particular set of transmission needs driven by Public Policy Requirements. To the extent that Duke-Progress chooses not to identify any transmission needs driven by public policy requirements as transmission needs for which solutions will be evaluated, including those addressed through the individual resource planning process of the load serving entities and individual requests for network resource designations, it must post an explanation of why the suggested transmission needs will not be evaluated, consistent with the requirements of Order No. 1000.

81. Order No. 1000 requires that 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 the larger set of needs proposed, those needs for which transmission solutions will be evaluated.<sup>149</sup>

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<sup>148</sup> *Id.* P 207.

<sup>149</sup> *Id.* P 209.

Duke-Progress proposes that, after seeking input from Transmission Advisory Group participants prior to the first Transmission Advisory Group meeting of the local transmission planning process cycle and discussing during the first Transmission Advisory Group meeting whether there are public policies that are driving the need for Local Projects, the Oversight and Steering Committee will determine whether there are any public policies driving the need for local transmission.<sup>150</sup> Within two weeks of the first Transmission Advisory Group meeting, Duke-Progress proposes that the Oversight and Steering Committee will issue its decision and, if one or more public policies are identified as driving local transmission needs, the NCTPC will consider solutions to those needs.<sup>151</sup> Thus, we find that Duke-Progress complies with Order No. 1000 because it has established a just and reasonable and not unduly discriminatory process through which it will identify those transmission needs driven by public policy requirements for which transmission solutions will be evaluated.

82. However, we find that Duke-Progress' proposal to post only the Oversight and Steering Committee's determination as to whether any public policies are driving transmission needs partially complies with the requirements of Order No. 1000. Order No. 1000 requires that each public utility transmission provider post on its website an explanation of which transmission needs driven by public policy requirements it has identified to be evaluated for potential solutions in the local transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated.<sup>152</sup> Consistent with Order No. 1000, Duke-Progress has revised its OATT to provide that the Oversight and Steering Committee will post to the NCTPC website its decision as to whether any public policies are driving transmission needs and to provide that the NCTPC will consider solutions to identified needs.<sup>153</sup> We accept this aspect of Duke-Progress' proposal. However, Duke-Progress' proposed OATT revisions do not require it to post an explanation of why other suggested needs will not be evaluated, as required by Order No. 1000. Accordingly, we require Duke-Progress, in a further compliance filing submitted within 60 days of the date of this order, to revise its OATT to provide that, consistent with the requirements of Order No. 1000, it will post on its website an explanation why other suggested transmission needs driven by public policy requirements introduced by stakeholders were not selected for further evaluation.

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<sup>150</sup> Duke-Progress OATT, Attachment N-1, §§ 4.3.1, 4.3.1.1, and 4.3.1.3.

<sup>151</sup> *Id.* at § 4.3.3.

<sup>152</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

<sup>153</sup> Duke-Progress OATT, Attachment N-1, § 4.3.3.

83. Moreover, we find that Duke-Progress does not comply with Order No. 1000's requirement that public utility transmission providers establish procedures in their OATTs to evaluate at the local level potential solutions to identified transmission needs driven by Public Policy Requirements.<sup>154</sup> In the transmittal letter of the Second Compliance Filing, Duke-Progress states that there is no separate solution-analysis process for public policy solutions and that solutions may be proposed just as they are for all other types of transmission needs.<sup>155</sup> Duke-Progress' current OATT includes a Commission-approved process for evaluating at the local level transmission projects that allow for stakeholder input and provide stakeholders with an opportunity to propose alternative transmission solutions. However, Duke-Progress has not stated explicitly in its OATT that it will apply this process to potential solutions to identified transmission needs driven by public policy requirements, as required by Order No. 1000. Accordingly, we direct Duke-Progress to submit, within 60 days of the date of this order, a further compliance filing that revises its OATT to reflect that it will use its existing local transmission planning process to evaluate at the local level potential solutions to identified transmission needs driven by public policy requirements, including those proposed by stakeholders, and to provide stakeholders an opportunity to provide input.

e. **Provisions of the Duke-Progress Regional Transmission Planning Process that are Different from the SERTP Regional Transmission Planning Process**

i. **Summary of Compliance Filing**

84. Duke-Progress notes that Southern Companies, LG&E/KU and OVEC included in their Order No. 1000 compliance filings a description of the SERTP process in an Attachment K to their respective OATTs.<sup>156</sup> Duke-Progress states that it used sections 11-31 of the LG&E/KU Attachment K as its base document in creating sections 12-30 of Attachment N-1 to the Duke-Progress OATT. Duke-Progress explains that Southern Companies, LG&E/KU and OVEC submitted very similar regional compliance filings, although OVEC and Southern Companies effectively combined their local and regional transmission planning processes, while LG&E/KU retained a separate local transmission planning process. Duke-Progress states that, because Duke-Progress also proposes to retain a local transmission planning process, there are very few substantive differences

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<sup>154</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

<sup>155</sup> Duke-Progress Transmittal at 9.

<sup>156</sup> *Id.* at 3.

between sections 11-31 of LG&E/KU's Attachment K and sections 12-30 of Duke-Progress' proposed Attachment N-1.<sup>157</sup>

85. Duke-Progress states that the first substantive difference between what LG&E/KU submitted and what Duke-Progress proposed is Duke-Progress' proposal to delete a sentence discussing the original purpose of SERTP in light of Duke-Progress' non-participation in the origins of the SERTP.<sup>158</sup> Next, Duke-Progress states that, given that its Attachment N-1 fully addresses the recovery of the costs of transmission planning activities in Section 8, it decided to eliminate the brief section on that subject submitted by LG&E/KU, which was merely a cross-reference to another OATT provision.<sup>159</sup>

86. Duke-Progress states that it added an additional criterion in its regional transmission planning process that a transmission project must meet to be eligible for potential selection in the regional transmission plan for purposes of cost allocation.<sup>160</sup> Duke-Progress proposes to add a new section providing that, to be eligible for selection in the regional transmission plan for purposes of cost allocation, a transmission project "must not be a Local Project as that term is defined in this Attachment N-1."<sup>161</sup> Local Project is defined as "a transmission facility located solely within the NCTPC footprint."<sup>162</sup>

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<sup>157</sup> *Id.* at 12.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> Duke-Progress OATT, Attachment N-1, § 23.2.5.

<sup>161</sup> Duke-Progress Transmittal at 12; Duke-Progress OATT, Attachment N-1, §23.2.5.

<sup>162</sup> Duke-Progress Transmittal at 12. Duke Progress OATT, Attachment N-1, §4. As discussed above in P 51 and 63, we require Duke-Progress to revise its OATT to state that a Local Project is a transmission facility that is (1) located solely within the combined Duke-Progress transmission system footprint and (2) not selected in the regional transmission plan for purposes of cost allocation, consistent with the definition of a local transmission facility in Order No. 1000.

87. To explain why this additional eligibility criterion is needed, Duke-Progress states that, in Order No. 1000, the Commission found that the requirement to eliminate a federal right of first refusal does not apply to local transmission facilities.<sup>163</sup> Duke-Progress states that, without this additional limitation on eligibility, transmission projects located entirely within the Duke-Progress footprint could qualify for potential selection in the regional transmission plan for purposes of cost allocation and thus be open to development by nonincumbent transmission developers. Duke-Progress states that Order No. 1000 “does not require removal of a federal right of first refusal for a local transmission facility,”<sup>164</sup> and, therefore, that the proposed addition related to local transmission facilities (i.e., those within the NCTPC footprint) is fully consistent with the Commission’s finding that the NCTPC can be used as a local transmission planning process.<sup>165</sup>

## ii. Commission Determination

88. Regarding Duke-Progress’ proposal that to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a transmission facility must not be a “Local Project” as defined in Attachment N-1,<sup>166</sup> we find that this provision does not comply with Order No. 1000’s requirements.<sup>167</sup> Order No. 1000 does not preclude a local transmission facility from being proposed in the regional transmission planning process for potential selection in the regional transmission plan for purposes of cost allocation. Under Duke-Progress’ proposal, a local transmission facility would be presumed ineligible for even *consideration* for selection in the regional transmission plan for purposes of cost allocation, even if it provided significant regional benefits.

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<sup>163</sup> Duke-Progress Transmittal at 12-13 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 258, 318).

<sup>164</sup> *Id.* at 13 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 258).

<sup>165</sup> *Id.* (citing First Compliance Order, 142 FERC ¶ 61,131 at P 39).

<sup>166</sup> *Id.* at 12 (reference Attachment N-1, 23.2.5).

<sup>167</sup> *See also* SERTP First Compliance Order, 144 FERC ¶ 61,054 at P 78 (2013) (rejecting several “minimum thresholds” for eligibility to propose a transmission project in a regional transmission planning process, including the requirement that a regional transmission facility transverse two balancing authority areas.).



89. Furthermore, we disagree with Duke-Progress that, because Order No. 1000 does not require the removal of a federal right of first refusal for local transmission facilities, its proposal to preclude a local transmission facility from being eligible for potential selection in the regional transmission plan for purposes of cost allocation is consistent with Order No. 1000. As noted above, Order No. 1000 defines a local transmission facility as “a transmission facility that is located solely within a public utility transmission provider’s retail distribution service territory or footprint *that is not selected in the regional transmission plan for purposes of cost allocation.*”<sup>168</sup> Thus, if a transmission developer, whether incumbent or nonincumbent, proposes a transmission facility that is located solely within a public utility transmission provider’s retail distribution service territory or footprint for selection in the regional transmission plan for purposes of cost allocation and the transmission facility is selected, then it is no longer a local transmission facility and may not be subject to a federal right of first refusal. We therefore require Duke-Progress to revise its OATT to remove the requirement that, to be eligible for potential selection in the regional transmission plan for purposes of cost allocation, a transmission facility must not be a Local Project as defined in Duke-Progress’ OATT. However, we note that the requirements to eliminate a federal right of first refusal does not apply to a transmission facility located solely within the Duke-Progress footprint and not selected in the regional transmission plan for purposes of regional cost allocation.

## 2. Yadkin

### a. First Compliance Order

90. In the First Compliance Order, the Commission determined that the addition of Yadkin in the NCTPC did not satisfy the regional scope requirement of Order No. 1000, due to the limited role that Yadkin would play in the regional transmission planning process. Because Yadkin has very limited transmission facilities that serve its own hydroelectric facility, it appeared that Yadkin would not need to plan for transmission on a scale comparable to how Duke-Progress or other public utility transmission providers with a number of customers would need to plan.<sup>169</sup> The Commission directed Yadkin to submit a further compliance filing that, at a minimum, includes another transmission provider of sufficient scope to allow the public utility transmission provider in a

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<sup>168</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 60 (emphasis added).

<sup>169</sup> First Compliance Order, 142 FERC ¶ 61,130 at P 38.

transmission planning region to meet the Order No. 1000 requirements or that indicates Yadkin has joined an Order No. 1000-compliant transmission planning region.<sup>170</sup>

**b. Summary of Compliance Filing**

91. In its second compliance filing, Yadkin did not propose any revisions to its tariff. Yadkin indicates that its transmission facilities consist of a few miles of 100 kV lines that connect the Yadkin Hydroelectric Project No. P-2197 to the transmission system through interconnections with Duke-Progress. Yadkin states that given its facilities are minimal and completely landlocked by the Duke-Progress transmission system, Yadkin's only realistic prospect for Order No. 1000 compliance was to join Duke-Progress in whatever transmission planning arrangements they were committed to. Yadkin states that it will keep the Commission informed as to those arrangements, and requests that such efforts be deemed compliant with Order No. 1000 in light of the First Compliance Order's determinations.<sup>171</sup>

**c. Commission Determination**

92. We find that Yadkin's compliance filing does not comply with the directives in the First Compliance Order. Yadkin has failed to submit any tariff revisions that reflect participation or enrollment in a transmission planning region that complies with Order No. 1000, and we therefore direct Yadkin to file a revised compliance filing with tariff sheets within 60 days of the date of issuance of this order or request a waiver of the requirements of Order No. 1000.

93. In Order No. 1000, the Commission stated that the criteria for waiver of the requirements of the Final Rule are unchanged from that used to evaluate requests for waiver under Order Nos. 888, 889, and 890.<sup>172</sup> The Commission subsequently clarified that "[t]his determination, however, was not meant to affect the ability of an entity that does not have a waiver to seek one [and we would] entertain requests for waiver of Order No. 1000 on a case-by-case basis from any entity, including a generation tie line owner, that believes it meets the criteria for such waiver [...]."<sup>173</sup> To the extent Yadkin believes

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<sup>170</sup> *Id.* P 42.

<sup>171</sup> Yadkin Transmittal at 3.

<sup>172</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 832.

<sup>173</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 753. Yadkin may also consider the Commission's recent waiver in *Lockhart Power Co.* 143 FERC ¶ 61,040 (2013).

it may qualify for waiver, Yadkin may request waiver of our compliance directives in this order and Order No. 1000.

The Commission orders:

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

(B) Duke-Progress' compliance filing is hereby accepted, effective June 1, 2014, subject to further compliance filings, as discussed in the body of this order.

(C) Yadkin's compliance filing is hereby rejected without prejudice to Yadkin either filing further compliance filings or requesting waiver within 60 days of the date of this order, as discussed in the body of this order.

(D) Duke-Progress is hereby directed to submit further compliance filings, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.