

124 FERC ¶ 61,263
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

E.ON U.S. LLC

Docket No. OA08-27-000

ORDER ON COMPLIANCE FILING

(Issued September 18, 2008)

1. On December 7, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ E.ON U.S. LLC, on behalf of its operating companies Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU),² submitted a transmission planning process as a proposed attachment to LG&E/KU's joint Open Access Transmission Tariff (OATT), as required by Order No. 890.³ In this order, we accept LG&E/KU's compliance filing, as modified, effective December 7, 2007, subject to a further compliance filing, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process.⁴ To remedy the

¹ 16 U.S.C. § 824e (2006).

² For ease of reference, we refer to the applicants as LG&E/KU.

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), 123 FERC ¶ 61,299 (2008).

⁴ The Commission, among other things, also amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability (ATC) and standardization of charges for generator and energy imbalance

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

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

II. Compliance Filing

4. LG&E/KU state that they are submitting their proposed transmission planning process as Attachment K to the LG&E/KU joint OATT based on the guidance provided by the planning principles in Order No. 890, the White Paper,⁶ comments received from Commission staff at technical conferences, and comments from stakeholders.

services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity. These reforms have been or will be addressed in other orders.

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

⁶ On August 2, 2007, Commission staff published Order No. 890 Transmission Planning Process Staff White Paper in Docket No. RM05-17-000 to assist transmission

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5. The proposed Attachment K also describes the Southeast Inter-Regional Participation Process (SIRPP), which will perform inter-regional economic studies. LG&E/KU explain that Alabama Electric Cooperative, Dalton Utilities, Duke Energy Carolinas, LLC, Entergy Operating Companies, Georgia Transmission, Municipal Electric Authority of Georgia, Progress Energy Carolinas, Inc., Santee Cooper, South Carolina Electric & Gas Company, South Mississippi Electric Power Association and the Tennessee Valley Authority (TVA) (collectively, SIRPP Participants) also participate in the SIRPP.

III. Notice of Filing and Responsive Pleadings

6. Notice of LG&E/KU's filing was published in the *Federal Register*, 72 Fed. Reg. 71,884 (2007), with interventions and protests due on or before December 28, 2007. On December 20, 2007, the Commission issued a notice granting an extension of time to and including January 7, 2008, to file comments regarding the December 7, 2007 Order No. 890 Attachment K compliance filings, including Docket No. OA08-27-000. Duke Energy Carolinas, LLC and Electric Power Supply Association filed timely motions to intervene. Energy Consulting Group, LLC (Energy Consulting) and Kentucky Municipals⁷ filed timely motions to intervene and comments.

7. Kentucky Municipals state that they support LG&E/KU's Attachment K filing and urge the Commission to accept it. Kentucky Municipals explain that they were in constant communication with LG&E/KU during the drafting process of Attachment K and while they did not agree on every issue with LG&E/KU, Kentucky Municipals believe that "the end result provides a solid foundation for what Kentucky Municipals hopes will be a cooperative, responsive dialogue on the long-term transmission needs of all transmission customers."⁸ Energy Consulting's comments are discussed below.

providers in their development of planning processes consistent with the requirements of Order No. 890.

⁷ Kentucky Municipals consist of Owensboro Municipal Utilities, Frankfort Electric and Water Plant Board and the Cities of Barbourville, Bardstown, Bardwell, Benham, Berea, Corbin, Falmouth, Madisonville, Nicholasville, Paris, and Providence, Kentucky, as well as Paducah Power System and the Princeton Electric Plant Board.

⁸ See Kentucky Municipals' Comments at 7.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding

B. Substantive Matters

9. As discussed below, we find that LG&E/KU's Attachment K transmission planning process, with certain modifications, complies with each of the nine planning principles adopted in Order No. 890. Accordingly, we accept for filing LG&E/KU's Attachment K, as modified below, effective December 7, 2007. We also direct LG&E/KU to file, within 90 days of issuance of this order, a further compliance filing, as discussed below.

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

1. Compliance with Order No. 890 Planning Principles

a. Coordination

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

Attachment K planning process, each transmission provider must clearly identify the details of how its planning process will be coordinated with interested parties.⁹

i. LG&E/KU's Proposal

12. LG&E/KU state that, each year, they apply their planning criteria to power flow models to identify overloaded elements. Potential solutions are identified, and a least cost revenue requirements analysis is applied to select solutions to resolve identified problems. LG&E/KU coordinate the development of this annual transmission plan with stakeholders through a Stakeholder Planning Committee. The Stakeholder Planning Committee will provide a forum to allow members the opportunity to comment on all aspects of the study development cycle, from the development of accurate data inputs for study simulations to the review of study results. LG&E/KU state that they will be responsible for coordinating the first meeting of the Stakeholder Planning Committee. The Stakeholder Planning Committee will be responsible for appointing a chair, rotating annually among the members of the Stakeholder Planning Committee, to lead and coordinate any teleconferences or meetings.

13. LG&E/KU explain that the Stakeholder Planning Committee will decide its own processes and procedures, including frequency, location and format of meetings, and membership criteria (e.g., number of representatives per Eligible Customer, provisions for alternates, etc.). The Stakeholder Planning Committee will also determine the responsibilities of the Stakeholder Planning Committee Chair, such as: supervision of Stakeholder Planning Committee activities, scheduling and posting notice of meetings, developing agendas, and presiding at meetings.

14. LG&E/KU state that they are responsible for drafting the annual transmission plan, with input from the Stakeholder Planning Committee and stakeholders, which is then reviewed and revised by the Southwest Power Pool (SPP), acting in its capacity as the Independent Transmission Organization (ITO) for the LG&E/KU system. LG&E/KU state that the Stakeholder Planning Committee will be responsible for coordinating conference calls monthly or quarterly, depending upon the workload at the time, to provide input to LG&E/KU on planning issues. SPP will coordinate semi-annual stakeholder meetings, at which LG&E/KU will present the annual transmission plan and take stakeholder comments. Specifically, comments and suggestions for the upcoming year's transmission plan will be taken at a spring stakeholder meeting, while the draft plan will be discussed at a fall stakeholder meeting. LG&E/KU note that stakeholders also may address their written comments to LG&E/KU or the Stakeholder Planning Committee at any time, and all comments received outside of the semi-annual

⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 451-54.

stakeholder meetings and the Stakeholder Planning Committee meetings will be posted on OASIS to be available to other stakeholders.

ii. Commission Determination

15. We find that LG&E/KU's proposed Attachment K partially complies with the coordination principle stated in Order No. 890. Through the Stakeholder Planning Committee, interested parties can comment on the development of transmission plans, including offering suggestions for upcoming plans and reviewing draft plans before they are finalized. However, while LG&E/KU state that all aspects of the study development cycle are subject to stakeholder review, they do not identify the opportunities for stakeholders to provide input regarding the criteria, assumptions and data that LG&E/KU will use to develop transmission plans. In order for stakeholders to offer meaningful suggestions regarding transmission plan development, they must also be able to offer input regarding development of the underlying criteria, assumptions and data used to create the transmission plan.¹⁰ Therefore, we direct LG&E/KU to make, within 90 days of issuance of this order, a further compliance filing allowing stakeholders an opportunity to review and comment on the criteria, assumptions and data used by LG&E/KU to develop their transmission plans.

b. Openness

16. The openness principle requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders. Although the Commission recognized in Order No. 890 that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties, such as a particular meeting of a sub-regional group, the Commission emphasized that the overall development of the transmission plan and the planning process must remain open.¹¹ Transmission providers, in consultation with affected parties, must also develop mechanisms to manage confidentiality and Critical Energy Infrastructure Information (CEII) concerns, such as confidentiality agreements and password-protected access to information.¹²

¹⁰ *Id.* P 454.

¹¹ The Commission made clear in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's Attachment K planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

¹² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

i. LG&E/KU's Proposal

17. LG&E/KU state that the Stakeholder Planning Committee is open to all eligible customers, as defined under their OATT. The chair of the Stakeholder Planning Committee shall be responsible for coordinating and notifying members of monthly and quarterly conference calls. In addition to eligible customers, representatives from the Kentucky Public Service Commission and utilities with whom the LG&E/KU system is interconnected will be invited to the semi-annual stakeholder meetings coordinated by SPP. A notice of the semi-annual meetings will be placed on LG&E/KU's OASIS, as well as SPP's website, and emailed to customers, neighboring utilities, and state commission representatives. Persons attending the semi-annual stakeholder meetings will be required to sign a confidentiality agreement included as an appendix to the Attachment K. The confidentiality agreement defines confidential information to include the annual transmission plan, the guidelines, criteria, and data used in the planning process, the status of expansion projects, and any information LG&E/KU designates as confidential or CEII.

ii. Commission Determination

18. We find that LG&E/KU's proposed Attachment K partially complies with the openness principle stated in Order No. 890. Customers may participate in planning activities through the Stakeholder Planning Committee and the SPP semi-annual meetings. LG&E/KU also have provided a process for obtaining confidential information and CEII used in the transmission planning process. However, we find that LG&E/KU's proposal to allow only eligible customers to be members of the Stakeholder Planning Group, and to limit SPP semi-annual meetings only to eligible customers, neighboring utilities, and state commission representatives, unreasonably restricts the ability of interested parties to participate in LG&E/KU's transmission planning process. The openness principle requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders.¹³ Therefore, LG&E/KU are directed to file, within 90 days of issuance of this order, a further compliance filing revising their proposed Attachment K to allow all interested parties the opportunity to participate in their transmission planning process.

19. It is also inappropriate for LG&E/KU to treat as confidential all planning-related information and to require every participant in the transmission planning process to execute a confidentiality agreement. Stakeholders should be able to access non-confidential information and participate in the transmission planning process without executing confidentiality agreements. In addition, stakeholders should be able to access

¹³ *Id.*

confidential information that is not CEII without satisfying the standards for access to CEII. We direct LG&E/KU, in consultation with affected parties, to revise their Attachment K within 90 days of issuance of this order to provide for access to non-confidential planning-related information without execution of a confidentiality agreement and access to confidential information that is not CEII without satisfying the standards for access to CEII.

c. Transparency

20. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. To that end, each transmission provider must describe in Attachment K the method(s) it will use to disclose the criteria, assumptions and data that underlie its transmission system plans.¹⁴ The Commission specifically found that simple reliance on Form Nos. 714 and 715 failed to provide sufficient information to provide transparency in planning because those forms were designed for different purposes. Transmission providers were also directed to provide information regarding the status of upgrades identified in the transmission plan.

21. The Commission explained that sufficient information should be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained in Order No. 890 that simultaneous disclosure of transmission planning information should alleviate Standards of Conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand resources in transmission planning. Where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis.¹⁵

i. LG&E/KU's Proposal

22. LG&E/KU state that an outline of the planning criteria, assumptions, and data that underlie their transmission planning activities are provided in their Planning Guidelines,

¹⁴ In Order No. 890-A, the Commission made clear that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to adequately understand the results reached in a transmission plan. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 199.

¹⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-79.

which are posted on their OASIS.¹⁶ LG&E/KU state that the Planning Guidelines are designed to allow others to replicate the transmission modeling process. All of the underlying data and assumptions used in developing the transmission plan also will be made available on the OASIS, subject to execution of a confidentiality agreement. In addition, semi-annual updates on the status of all transmission expansion projects, including projected completion dates, will be posted.

ii. Commission Determination

23. We find that LG&E/KU's proposed Attachment K, with the modifications required above regarding stakeholder access to non-confidential information and confidential information that is not CEII, complies with the requirements of the transparency principle stated in Order No. 890. All underlying criteria, data, and assumptions will be made available through postings on OASIS and sufficient information will be provided for interested parties to replicate LG&E/KU's transmission modeling process.

d. Information Exchange

24. The information exchange principle requires network customers to submit information on their projected loads and resources on a comparable basis (e.g., planning horizon and format) as used by transmission providers in planning for their native load. Point-to-point customers are required to submit any projections they have for service over the planning horizon and anticipated receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as a proxy for actual reservations.¹⁷ Transmission providers, in consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

25. The Commission also provided that, to the extent applicable, transmission customers should provide information on existing and planned demand resources and their impacts on demand and peak demand. Stakeholders, in turn, should provide proposed demand resources if they wish to have them considered in the development of the transmission plan. The Commission stressed that information collected by transmission providers to provide transmission service to their native load customers must be transparent and equivalent information must be provided by transmission customers to ensure effective planning and comparability. In Order No. 890-A, the

¹⁶ The Planning Guidelines are posted at <http://sppoasis.spp.org/oasis/lgee> under the heading "E.ON US Transmission Planning Guidelines."

¹⁷ Order No. 890-A, FERC Stats. & Regs ¶ 31,261 at P 207.

Commission made clear that customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer and that the transmission provider must maintain the confidentiality of this information. To that end, transmission providers must clearly define in their Attachment K the information sharing obligations placed on customers in the context of economic planning.¹⁸

26. The Commission emphasized that transmission planning is not intended to be limited to the mere exchange of information and after the fact review of transmission provider plans. The planning process is instead intended to provide a meaningful opportunity for customers and stakeholders to engage in planning along with their transmission providers. To that end, the Commission clarified that information exchange relates to planning, not other studies performed in response to interconnection or transmission service requests.¹⁹

i. LG&E/KU's Proposal

27. LG&E/KU state that network customers are required to provide, by September 1 of each year, network resource availability forecasts for the following year, including all off-line and on-line data for planned outages, and load forecasts for the next ten years. Network customers must update these forecasts during the year to the extent they change. LG&E/KU do not require any particular information of point-to-point customers but invite long-term firm point-to-point customers to provide information regarding their usage by September 1 of each year.

ii. Commission Determination

28. We find that LG&E/KU's proposed Attachment K partially complies with the requirements of the information exchange principle stated in Order No. 890. Customers will be able to submit information to LG&E/KU regarding anticipated uses of the system pursuant to a clearly identified process and schedule. However, LG&E/KU fail to identify the particular information point-to-point customers should submit if they desire to contribute to the transmission planning process. Therefore, LG&E/KU are directed to file, within 90 days of issuance of this order, a further compliance filing revising their proposed Attachment K to identify the information that point-to-point customers can submit for inclusion in the transmission planning process.

¹⁸ *Id.* P 206.

¹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 486-88.

e. **Comparability**

29. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop a transmission system plan that meets the specific service requests of their transmission customers and otherwise treats similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. In Order No. 890, the Commission expressed concern that transmission providers historically have planned their transmission systems to address their own interests without regard to, or ahead of, the interests of their customers. Through the comparability principle, the Commission required that the transmission providers' similarly-situated customers be treated on a comparable basis during the planning process. The Commission also explained that demand resources should, where appropriate, be considered on a comparable basis to the service provided by generation resources.²⁰ Lastly, in Order No. 890-A, the Commission clarified that, as part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.²¹

i. **LG&E/KU's Proposal**

30. LG&E/KU state that for the purposes of transmission planning, including participation in the Stakeholder Planning Committee and stakeholder meetings, all network customers, LG&E/KU's native load, and long-term point-to-point customers with a term of five years or more will be treated comparably. Where demand resources are able to meet the same criteria as generation resources, as those criteria are specified in LG&E/KU's business practices, demand and generation resources will be treated comparably for transmission planning purposes. LG&E/KU adds that the same criteria will be applied to the same types of projects and addressed on a first-come, first-served basis to ensure that LG&E/KU's interests do not take precedence over those of their similarly situated customers.

ii. **Commission Determination**

31. We find that LG&E/KU's transmission planning process complies with the comparability principle stated in Order No. 890. LG&E/KU will treat similarly-situated customers on a comparable basis in their transmission planning process and will apply the same planning criteria to the same types of projects. However, we note that Order No. 890-A was issued on December 27, 2007, after LG&E/KU submitted their

²⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 494-95.

²¹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

Order No. 890 Attachment K compliance filings. In Order No. 890-A, the Commission provided additional guidance, among other things, as to how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process “how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.”²² Here, LG&E/KU have submitted tariff language providing that, as a general matter, demand resources will be treated comparably if they are able to meet the same criteria as generation resources. Since Order No. 890-A was issued subsequent to the filing before us, LG&E/KU did not have an opportunity to demonstrate that they comply with this requirement of Order No. 890-A. Therefore, we direct LG&E/KU to file, within 90 days of issuance of this order, a compliance filing providing the necessary demonstration required by Order No. 890-A.²³

f. Dispute Resolution

32. The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise from the planning process. The Commission explained that an existing dispute resolution process may be used but transmission providers seeking to rely on an existing dispute resolution process must specifically address how their procedures will address matters related to transmission planning. The Commission encouraged transmission providers, customers, and other stakeholders to use the Commission’s Dispute Resolution Service (DRS) to help develop a three-step dispute resolution process, consisting of negotiation, mediation, and arbitration. In order to facilitate resolution of all disputes related to planning activities, a transmission provider’s dispute resolution process must be available to address both procedural and substantive planning issues. The Commission made clear, however, that all affected parties retain any rights they may have under FPA section 206 to file complaints with the Commission.²⁴

i. LG&E/KU’s Proposal

²² Order No. 890-A, FERC Stats. & Regs. ¶ 61,261 at P 216; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, 487, 494 and 549. In addition, the Commission disagreed with commenters that comparability required that generation and demand resources be subject to the same operational parameters in every circumstance. Order No. 890-A, FERC Stats. & Regs. ¶ 61,261 at P 216.

²³ For example, tariff language should provide for participation throughout the transmission planning process by sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources.

²⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-03.

33. LG&E/KU propose that any dispute, claim or controversy among LG&E/KU, SPP, and/or a customer regarding its transmission planning procedures first be referred to their respective representatives for negotiation. If a dispute is not resolved within 15 days, then each party shall have five days to appoint an executive management representative who shall negotiate to resolve the dispute. If the parties' executive management representatives are unable to resolve the dispute within 30 days, the parties shall submit the matter to a mediator mutually acceptable to the disputing parties. If the parties are unable to resolve the dispute within 30 days after the appointment of a mediator, then the dispute may be filed as a complaint at the Commission or resolved through binding arbitration.

ii. Commission Determination

34. We find that LG&E/KU's proposed Attachment K partially complies with the requirements of the dispute resolution principle stated in Order No. 890. LG&E/KU's dispute resolution provision requires the use of negotiation, mediation and a choice of arbitration or filing a complaint with the Commission. We encourage parties to seek the resolution of issues relating to transmission planning through this dispute resolution process. However, during the dispute resolution process affected parties should retain any rights they may have under FPA section 206 to file a complaint with the Commission.²⁵ The proposed dispute resolution process may inappropriately affect the ability of a party to exercise its rights under FPA section 206 during the negotiation and mediation steps. In addition, LG&E/KU provide no dispute resolution procedures for planning-related disputes involving stakeholders that are not customers. Consistent with our directive above to allow an opportunity for any interested party to participate in the transmission planning process, LG&E/KU must provide dispute resolution procedures that include disputes involving stakeholders that are not customers. Accordingly, we direct LG&E/KU, in a compliance filing to be made within 90 days of issuance of this order, to revise its dispute resolution provision to include procedures for resolving planning-related disputes involving all stakeholders and to preserve the ability of a party to exercise its rights under section 206 of the FPA.

g. Regional Participation

35. The regional participation principle provides that, in addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider must coordinate with interconnected systems to: (1) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data; and (2) identify system enhancements that could relieve congestion or integrate new resources. The Commission stated that the specific features

²⁵ *Id.*

of the regional planning effort should take into account and accommodate, where appropriate, existing institutions, as well as physical characteristics of the region and historical practices. The Commission declined to mandate the geographic scope of particular planning regions, instead stating that the geographic scope of a planning process should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and subregions. The Commission also made clear that reliance on existing North American Electric Reliability Council (NERC) planning processes may not be sufficient to meet the requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations. To the extent a transmission provider's implementation of the NERC processes is not appropriate for such economic issues, individual regions or subregions must develop alternative processes.²⁶

36. In Order No. 890-A, the Commission clarified that, while the obligation to engage in regional coordination is directed to transmission providers, participation in such processes is not limited to transmission providers and should be open to all interested customers and stakeholders.²⁷ In Order No. 890-A, the Commission also emphasized that effective regional planning should include coordination among regions and subregions as necessary, in order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.²⁸

i. LG&E/KU's Proposal

37. LG&E/KU refer generally in the proposed Attachment K to several regional planning activities. LG&E/KU state that they are involved in TVA's subregional planning process (the Central Public Power Partners group), as well as the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) -PJM Interconnection (PJM) -TVA planning process as an interested neighboring utility. LG&E/KU state that they also participate in the NERC Working Group annual Multiregional Modeling process through SERC Reliability Corporation (SERC). Additionally, LG&E/KU state that their transmission system is interconnected with the transmission systems of East Kentucky Power Cooperative, Inc., American Electric Power subsidiaries Kentucky Power Company, Appalachian Power Company, and Ohio Power Company, and Duke Energy Ohio and Duke Energy Indiana. Under the terms of wires-to-wires interconnection agreements, LG&E/KU and each of these entities provide input to NERC, which in-turn develops models of the eastern interconnections.

²⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-28.

²⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

²⁸ *Id.*

38. As discussed more fully below in the section on economic planning studies, LG&E/KU also joined with the SIRPP Participants to develop the SIRPP to enhance inter-regional coordination efforts in compliance with the requirements of Order No. 890. LG&E/KU explain that the SIRPP will provide a means for conducting stakeholder-requested economic planning studies across multiple interconnected systems and is also intended to provide stakeholders more access to the reliability planning that occurs at the SERC-wide level. For example, the SIRPP Participants will review with stakeholders the regional data, assumptions, and reliability assessments that are being performed on an inter-regional (i.e., SERC-wide basis). LG&E/KU provide no further detail regarding the SIRPP.

ii. Comments

39. Energy Consulting contends that since the SIRPP describes transmission planning and is for a planning region, the SIRPP should be required to comply with the nine principles of Order No. 890. Energy Consulting requests that the Commission direct LG&E/KU, and all companies that have also filed the SIRPP as part of their Attachment K compliance filings, to modify the SIRPP to be in the compliance with Order No. 890's intent as it applies to regional planning.

iii. Commission Determination

40. We find that LG&E/KU's proposed Attachment K partially complies with the regional participation principle stated in Order No. 890. LG&E/KU indicate that they are involved in regional planning activities with TVA, Midwest ISO, and PJM. LG&E/KU also state that they will coordinate economic planning studies on an inter-regional basis through the SIRPP. However, LG&E/KU have not provided sufficient detail to allow customers and other interested stakeholders to understand how their own planning activities will be integrated into and coordinated with these regional processes. For example, LG&E/KU do not identify the particular regional planning activities performed by TVA, Midwest ISO, and PJM, nor how LG&E/KU will participate in those activities. LG&E/KU refer to the development of models by SERC and NERC, but do not identify the process for developing those models, including the timelines and milestones for coordinating model development and opportunities for stakeholders to provide input and comment. Similarly, LG&E/KU commit to participate in the SIRPP, but provide no detail regarding the SIRPP process. It also is unclear how each of these regional planning activities will interact with each other when coordinated with LG&E/KU's planning activities. Accordingly, we direct LG&E/KU to revise their Attachment K, in a compliance filing to be made within 90 days of issuance of this order, to describe in detail their process for coordinating with interconnected systems to share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and identify system enhancements that could relieve congestion or integrate new resources.

41. We disagree with Energy Consulting, however, that LG&E/KU must demonstrate that the SIRPP complies independently with all nine planning principles of Order No. 890. The SIRPP Participants have committed to using the SIRPP process to satisfy their obligations under Order No. 890 to engage in economic planning on a regional basis. The obligation to comply with the requirements of Order No. 890 fall on transmission providers, not the processes in which they participate. In Order No. 890-A, for example, the Commission specifically denied a request to expand the regional participation principle to expressly require regions to adopt interregional planning processes subject to the same nine principles applicable to individual regions.²⁹ The Commission concluded that effective regional planning should include coordination among regions, and each of these regions or sub-regions should coordinate as necessary to share data, information and assumptions in order to maintain reliability and allow customers to consider resource options that span the regions.³⁰ LG&E/KU's participation in the SIRPP, subject to the compliance directive above, satisfies that requirement as it relates to regional participation.

h. Economic Planning Studies

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

43. The Commission also stressed that existing regional processes conducted by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) are not exempt from economic planning study requirements. All transmission providers, including RTOs and ISOs, were directed to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies would be recovered as part of the transmission provider's overall OATT

²⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

³⁰ *Id.*

cost of service, while the cost of additional studies would be borne by the stakeholder(s) requesting the study.³¹

44. In Order No. 890-A, the Commission made clear that the transmission provider's Attachment K must clearly describe the process by which economic planning studies can be requested and how they will be prioritized.³² The Commission also made clear that a transmission provider's affiliates should be treated like any other stakeholder and, therefore, their requests for studies should be considered comparably, pursuant to the process outlined in the transmission provider's Attachment K.³³ Additionally, in Order No. 890-A, the Commission clarified that, to the extent an RTO or ISO delegates any of its responsibilities in the context of economic planning, it will be the obligation of the RTO or ISO, as the transmission provider, to ensure ultimate compliance with the requirements of Order No. 890.³⁴

i. LG&E/KU's Proposal

45. LG&E/KU state that the Stakeholder Planning Committee will form an Economic Expansion Planning subcommittee to develop a process for considering economic projects. Economic planning studies will be open to all transmission and network customers and may be used to evaluate network additions or upgrades that are not required to maintain NERC or SERC standards of reliability, or to accommodate a request for transmission service, but that may alleviate significant and/or recurring congestion on some portion of the transmission system. Economic planning studies may also be used to evaluate network additions or upgrades necessary to integrate new generation resources or load on the system.

46. In January of each year, SPP will open a queue on the OASIS, which will remain open for 60 days, for the submission of requests for economic planning studies. In March, each transmission or network customer, or other recognized stakeholder, may nominate one person to the Economic Expansion Planning subcommittee. The Economic Expansion Planning subcommittee will evaluate and prioritize the requests for economic studies, including clustering any study requests, and will identify the top five requests to present at the spring stakeholder meeting held by SPP. The top five requests identified by the Economic Expansion Planning subcommittee shall be performed by the LG&E/KU by September 1 of each year, so that the results can be viewed in conjunction with the transmission expansion planning process. The costs to study the top five

³¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 542-51.

³² Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

³³ *Id.* P 237.

³⁴ *Id.* P 238.

requests will be included in their transmission rates via a line-item added to LG&E/KU's formula rate.³⁵ If a customer's request was not identified in the top five, then the customer may request that LG&E/KU complete the study and assess the customer directly for the costs of the study.

47. LG&E/KU state that they also will participate in the SIRPP to conduct requests for economic planning studies across multiple interconnected systems. As noted above, LG&E/KU provided no detail regarding the SIRPP study procedures. However, other SIRPP Participants have included in their Attachment Ks a detailed summary of the SIRPP study procedures,³⁶ which we describe and rely on here. The SIRPP Participants have committed to study up to five inter-regional economic planning studies per year. In addition to submitting inter-regional economic study requests through each transmission owner, stakeholders also will be able to directly request the performance of an inter-regional economic study through a SIRPP stakeholder group.³⁷ These inter-regional economic studies consist of an initial Step 1, which consists of a high level screen of the request, followed by a more detailed Step 2 evaluation only if the SIRPP stakeholder group decides to pursue a more detailed study of the request.

48. To facilitate the development of these inter-regional economic studies and to provide for stakeholder feedback and interaction, the SIRPP provides for an annual series of three meetings with stakeholders, who organize themselves into the stakeholder group. Through these meetings, the stakeholder group will be allowed to select the five annual

³⁵ LG&E/KU, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 174j-174k.

³⁶ See filings in Docket Nos. OA08-37-000 (Southern Company), OA08-46-000 (South Carolina Electric & Gas Company), OA08-59-000 (Entergy Services, Inc.) and OA08-50-000 and OA08-51-000 (Duke Energy Carolinas, LLC/Progress Energy Carolinas, Inc.). This summary also can be found on the SIRPP's website at <http://www.southeastirpp.com/>.

³⁷ A valid stakeholder under the SIRPP is defined as "any eligible customer, generation owner/development company, state or federal agency, and any organization capable of providing Ancillary Services under one of the Participating Transmission Owners' OATTs." See Appendix 1 (Southeast Inter-Regional Participation Process) of the Attachment Ks at 6. In addition, any transmission owner, transmission operator, or transmission planner as those terms or their successors are used in the NERC Functional Model, as may be amended from time to time, are eligible stakeholders under the SIRPP. Authorized agents of the above identified stakeholder organizations will also be permitted to represent those organizations in the SIRPP. Any individual wishing to become a SIRPP member can make an application for membership on the SIRPP website. *Id.*

inter-regional economic studies and provide input regarding the assumptions, criteria, and methodologies used for each inter-regional economic study. A SIRPP study coordination team will perform the studies, developing inter-regional study assumptions and additional model development, as well as coordinating with stakeholders and impacted external planning processes. The transmission owners shall provide transmission planning personnel to serve on the SIRPP coordination team. After a study is completed, the coordination team will distribute applicable reports to the SIRPP transmission owners and stakeholders, subject to appropriate confidentiality restrictions.

49. Members of the SIRPP stakeholder group may also request data and information that would facilitate their ability to replicate study results if they first: request and obtain from FERC the Form No. 715 data (including CEII data) for the relevant participating transmission owner(s); have a current SERC Confidentiality Agreement in place; have a current SIRPP Confidentiality Agreement in place; and formally request the data on the SIRPP website. The SIRPP transmission owners will process such requests and, if approved, provide the data to the stakeholder group member. Several elements of the SIRPP will be developed in more detail in the future, for example: (i) a process for inter-regional transmission upgrade(s) resulting from inter-regional economic planning studies, and (ii) possible changes in meeting procedures governing the stakeholder group.

ii. Comments

50. Energy Consulting states that there should be a dispute resolution process at the SIRPP level, to allow settlement of disputes between participating transmission owners and LG&E/KU's stakeholders or between any of the parties and the SIRPP itself. Energy Consulting expresses concern that, without such a process, the relevant participating transmission owner could decline to settle the dispute. For these reasons, Energy Consulting requests that the Commission direct LG&E/KU, as well as other companies that filed the SIRPP with their proposed Attachment K compliance filings, to include a dispute resolution process in the SIRPP consistent with Order No. 890.

51. Energy Consulting also raises a concern as to the ability of stakeholders to participate in the SIRPP planning process because there will be only three meetings a year, and it is unclear if stakeholders will be able to review the relevant materials in advance. Energy Consulting argues that many decisions will be made out of the public eye, and that stakeholder participation will not be meaningful. Therefore, Energy Consulting requests that the Commission direct LG&E/KU, as well as other companies that filed the SIRPP with their proposed Attachment K compliance filings, to modify the SIRPP to include a subcommittee of the stakeholder group in its planning process as it produces the initial plan, the final plan, and the report of the SIRPP economic planning studies. According to Energy Consulting, this involvement need not concern daily issues but should be frequent enough to allow inclusion of stakeholders and openness as system issues are revealed and solutions are proposed and evaluated.

iii. Commission Determination

52. We find that LG&E/KU's proposed Attachment K partially complies with the economic planning studies principle stated in Order No. 890. LG&E/KU have developed a process for evaluating network additions or upgrades that may alleviate significant or recurring congestion or integrate new generation resources or load on the transmission system. However, the scope of such economic planning studies is limited, excluding the integration of other types of resources. LG&E/KU also fail to explain which stakeholders are eligible to submit requests for economic planning studies during the annual open queue on OASIS. In addition, LG&E/KU do not explain how stakeholders can be recognized for the purpose of nominating a person to the Economic Expansion Planning subcommittee nor how members nominated to be on the subcommittee will be selected. Accordingly, we direct LG&E/KU to revise their Attachment K, in a compliance filing to be made within 90 days of issuance of this order, to identify how interested parties may be recognized for the purpose of nominating a person to the Economic Expansion Planning subcommittee and to request that an economic planning study be performed to evaluate network additions or upgrades necessary to integrate *any* new resource on the transmission system and to provide detail about membership on the Economic Expansion Planning subcommittee.

53. With regard to economic planning on a regional basis, we accept LG&E/KU's commitment to participate in the SIRPP, as modified below, based on our understanding of that proposal from other SIRPP Participants' filings.³⁸ We find that the SIRPP, an inter-regional process created to conduct stakeholder requested economic planning studies across multiple interconnected systems, is an open and coordinated process that generally satisfies the requirements of the economic planning studies principle as it relates to those entities that participate in the SIRPP. The SIRPP consolidates the data and assumptions developed at the participating transmission owners' planning level to use in the development of inter-regional models, which ensures consistency throughout the regional and inter-regional economic planning processes. There will be three specific meetings with stakeholders, although stakeholders also will be able to comment and provide input throughout the process. Participating transmission owners will perform up to five inter-regional economic planning studies annually, as selected by stakeholders at the first annual meeting, and the study coordination team will coordinate with stakeholders throughout the process regarding study assumptions, initial analysis and final draft reports. In addition, the SIRPP calls for the formation of a SIRPP stakeholder group to provide a structure to facilitate the stakeholders' participation in the inter-regional process and to work with the participating transmission owners.

³⁸ See *supra* note 36.

54. We are concerned, however, that the definition of stakeholder in the SIRPP process may also unduly restrict the ability of all interested parties to participate in the inter-regional economic planning process. We also agree with Energy Consulting that stakeholders should have an appropriate amount of time to review information before meetings. Although the SIRPP process provides that the SIRPP stakeholder group will provide timely input on study assumptions and results, it does not obligate transmission owning members in the SIRPP process to provide study information in advance of meetings of the stakeholder group. In addition, it is not clear that requests may be clustered or batched by the SIRPP stakeholder group to streamline processing of economic studies. Accordingly, we direct LG&E/KU to revise their proposed planning process, in a compliance filing to be submitted within 90 days of issuance of this order, to provide for: participation by any interested party in the SIRPP stakeholder group; the distribution of information that is to be discussed at a stakeholder meeting sufficiently in advance of that meeting to provide for meaningful stakeholder review; and, the ability of the SIRPP stakeholder group to cluster or batch requests for economic studies.

55. Moreover, although the SIRPP process provides a mechanism for SIRPP stakeholders to request data and information to permit replication of inter-regional economic studies, we find that process to be unduly restrictive. For example, stakeholders may not obtain data supporting a SIRPP study unless they first request and obtain from the Commission the FERC Form No. 715, including CEII, for the relevant SIRPP participants. This effectively requires participants to meet the criteria for accessing CEII even if the data which they seek includes confidential information that is not CEII. Accordingly, we direct LG&E/KU to revise their Attachment K (and/or any SIRPP document they append to their Attachment K in compliance with our directive above) in a compliance filing to be submitted within 90 days of issuance of this order, to remove the requirement that stakeholders seeking non-CEII confidential information from SIRPP participants first request and obtain from the Commission the Form No. 715, including CEII, for the relevant SIRPP participants.

56. We disagree, however, that it is necessary to establish a subcommittee of the stakeholder group in the SIRPP planning process. We note that the SIRPP provides a detailed description of its stakeholder participation, including the formation of the stakeholder group, that is widely inclusive. We conclude that reliance on this stakeholder group, when modified as directed above, to provide advice and input regarding economic planning studies is adequate to ensure coordination of those studies with stakeholders.

57. We also disagree with Energy Consulting that the SIRPP must independently meet the specific requirements of the dispute resolution principle. The responsibility to implement an open and transparent planning process on a local and regional level rests with each transmission provider. This includes the obligation to ensure that its dispute resolution process is adequate to address matters related to each aspect of transmission planning. Although the SIRPP is not independently subject to the nine planning

principles stated in Order No. 890, LG&E/KU nonetheless must establish a mechanism for resolving disputes that arise in regional planning activities, including those performed by the SIRPP. It is unclear whether section VI of LG&E/KU's Attachment K is sufficient to address this requirement. For example, it is unclear how disputes involving an LG&E/KU stakeholder and other SIRPP stakeholders would be addressed and resolved under LG&E/KU's dispute resolution provisions if LG&E/KU were not a party to the dispute. We therefore direct LG&E/KU to demonstrate, in a compliance filing to be submitted within 90 days of issuance of this order, how the dispute resolution provisions of their Attachment K can be used to address and resolve disputes related to SIRPP planning activities or, alternatively, propose different dispute resolution provisions that can be used to address and resolve such disputes and implement agreements reached through such dispute resolution.³⁹

58. Lastly, as discussed above in the Regional Participation section, LG&E/KU failed to file with the Commission a sufficient description of the SIRPP. Therefore, in making our findings regarding the SIRPP and the economic planning studies principle, we have once again relied on information provided by other utilities participating in the SIRPP.⁴⁰ As a result, we require LG&E/KU to file a more detailed description of the SIRPP in order to comply with the economic planning studies principle. Specifically, we direct LG&E/KU to file, within 90 days of issuance of this order, a further compliance filing that revises their Attachment K to provide additional detail about their participation in the SIRPP to meet the economic planning studies principle.

i. Cost Allocation

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

³⁹ LG&E/KU and the transmission owning sponsors of the SIRPP could, for example, establish an inter-regional dispute resolution process to address disputes arising in the SIRPP planning process. We encourage LG&E/KU and other SIRPP sponsors to contact the Commission's Dispute Resolution Service for assistance in developing any alternative dispute resolution provisions that may be necessary.

⁴⁰ See *supra* note 36.

60. The Commission did not prescribe any specific cost allocation methodology in Order No. 890. The Commission instead suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.⁴¹ In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.⁴²

i. LG&E/KU's Proposal

61. LG&E/KU propose a “requestor pays” cost allocation methodology for upgrades identified in an economic planning study that are approved for construction. Economic upgrades requested by a single customer shall be paid for by that customer. The cost of an economic upgrade requested by more than one customer shall be allocated by agreement of the requesting customers. If the customers fail to reach an agreement, then SPP will allocate the costs on an equal, per capita basis to each requesting customer.⁴³ LG&E/KU note that this cost allocation methodology does not apply to network upgrades or additions necessary to maintain system reliability pursuant to NERC or SERC standards, nor do they apply to network upgrades or additions identified in conjunction with a transmission service request.

62. LG&E/KU state that the Stakeholder Planning Committee also will examine the cost allocation criteria contained in LG&E/KU's proposed Attachment K to determine whether revised criteria should be developed. LG&E/KU state that all stakeholders and interested parties, including the Kentucky Public Service Commission, will have an opportunity to provide input to the Stakeholder Planning Committee during its evaluation of the cost allocation criteria.

63. As noted above, LG&E/KU also propose to coordinate inter-regional economic planning studies through participation in the SIRPP. The SIRPP process provides that

⁴¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-61.

⁴² Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

⁴³ LG&E/KU, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 174k-174l.

costs will be allocated as determined by each region in which the construction of such upgrades (in whole or in part) would occur.

ii. Comments

64. Kentucky Municipals note that they have reservations about LG&E/KU's "requestor pays" methodology for cost allocation but are comfortable supporting LG&E/KU's filing because of the opportunity to be involved in developing a new methodology that is broadly acceptable.

65. Energy Consulting contends that the SIRPP produces transmission projects that are not covered under existing cost allocation rules. Energy Consulting asserts that the cost allocation for these projects was required by Order No. 890 and should be included in each participating transmission owner's proposed Attachment K. Energy Consulting requests that the Commission direct LG&E/KU, as well as the other companies that filed the SIRPP as part of their proposed Attachment K filing, to modify the SIRPP to add cost allocation in compliance with Order No. 890.

iii. Commission Determination

66. We find that LG&E/KU's proposed Attachment K partially complies with the cost allocation principle stated in Order No. 890. LG&E/KU have outlined cost allocation criteria for economic upgrades or additions identified in an economic planning study requested by either a single or multiple transmission customers. LG&E/KU have failed, however, to identify the cost allocation methodology that will be used for economic upgrades identified through a SIRPP study. The Commission made clear in Order No. 890 that each region should address cost allocation issues up front and affirmed in Order No. 890-A that the details of each cost allocation methodology must be clearly defined.⁴⁴ Our review of the SIRPP proposal reveals only a general statement that cost allocation for economic projects identified in a SIRPP study will be determined by each region in which the construction of such upgrades, in whole or in part, would occur. Accordingly, we direct LG&E/KU to address, in a compliance filing to be made within 90 days of issuance of this order, the allocation of costs for upgrades identified through the SIRPP economic planning process.

2. Recovery of Planning Costs

67. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically, addressing that issue after discussing the nine principles that govern the planning principles. The Commission directed transmission providers to

⁴⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 561; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

work with other participants in the planning process to develop cost recovery proposals that allow all relevant parties, including state agencies, to recover the costs of participating in the planning process. The Commission also suggested that transmission providers consider whether mechanisms for regional cost recovery are appropriate, such as through agreements (formal or informal) to incur and allocate costs jointly.⁴⁵

a. LG&E/KU's Proposal

68. LG&E/KU state that they do not separately track planning-related costs and, instead, the cost of reliability planning is included in the rates for jurisdictional transmission services. To the extent that LG&E/KU are required to provide economic planning, and to the extent that they are permitted to recover costs for such economic planning, LG&E/KU propose to book such expenses in a separate transmission operating subaccount and charge these costs to all entities that sign an economic expansion study agreement.

b. Commission Determination

69. The Commission directs LG&E/KU, in a compliance filing to be made within 90 days of issuance of this order, to clarify the treatment of costs associated with the performance of economic planning studies. As discussed above in the Economic Planning section, LG&E/KU state that the cost of the top five yearly economic planning studies shall be included in transmission rates via a line-item added to their formula rate, while the cost of additional studies will be recovered directly from customers requesting the study. When discussing the recovery of planning-related costs, however, LG&E/KU's proposed Attachment K states more broadly that all costs of economic planning studies will be charged to entities that sign an economic expansion study agreement. LG&E/KU must correct this discrepancy and provide details about the economic expansion study agreement it references, in the compliance filing directed above.

3. Revisions to Appendices

a. LG&E/KU's Filing

70. LG&E/KU attached three appendices to their Attachment K. Appendix 1 is a Confidentiality Agreement for the Treatment of Confidential Transmission Planning Information. Appendix 2 is a flowchart that illustrates LG&E/KU's proposed 18 month Transmission Planning Cycle. Appendix 3 is LG&E/KU's Transmission System Planning Guidelines.

⁴⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586.

b. Comments

71. Kentucky Municipals state that they have identified two textual oversights in the filed Attachment K, which they understand that LG&E/KU planned to correct on compliance. Kentucky Municipals state that the first oversight appears in the Confidentiality Agreement attached as Appendix 1, where LG&E/KU refer to a non-disclosure certificate that Kentucky Municipals claim does not exist due to LG&E/KU's decision, following input from Kentucky Municipals, to have a representative of the stakeholder organization execute the agreement and enumerate the individuals covered by it. Kentucky Municipals explain that the second oversight appears in the Transmission System Planning Guidelines attached as Appendix 3, where Part 1 currently states that LG&E/KU are "committed to provide the same reliability and priority of service to Long-Term Firm Point-to-Point Transmission Service with contract period of five years or more as it does for its Network Customers."⁴⁶ Kentucky Municipals state that the Attachment K planning process is aimed at meeting long-term transmission needs and, therefore, LG&E/KU should modify the sentence to refer to comparable planning rather than a reference to the provision of transmission service in general.

c. Commission Determination

72. We agree with Kentucky Municipals' proposed edits to LG&E/KU's Attachment K appendices and direct LG&E/KU to include the changes in their compliance filing to be submitted within 90 days of issuance of this order.

4. Effective Date

73. LG&E/KU request that their proposed Attachment K be made effective as of the date of the Commission's approval of the filing. However, the effective date for Attachment K filings is the date transmission providers were directed to submit their compliance filings. Therefore, LG&E/KU's proposed Attachment K shall be effective December 7, 2007, subject to modification, as directed in this order.

The Commission orders:

(A) LG&E/KU's compliance filing is hereby accepted, as modified, effective December 7, 2007, as discussed in the body of this order.

⁴⁶ Kentucky Municipals Comments at 9 (quoting Appendix 3 to Attachment K).

(B) LG&E/KU are hereby directed to submit a compliance filing, within 90 days of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.