

144 FERC ¶ 059  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.	Docket Nos. ER13-366-000 ER13-367-000
Public Service Company of Colorado	ER13-75-000
Kansas City Power & Light Company	ER13-100-000

ORDER ON COMPLIANCE FILINGS

(Issued July 18, 2013)

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Appendix A: List of Intervenors, Commenters, and Entities Submitting Answers  
Appendix B: Abbreviated Names of Entities

1. On November 13, 2012, in Docket Nos. ER13-366-000 and ER13-367-000, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> Southwest Power Pool, Inc. (SPP) submitted a filing to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.<sup>2</sup> SPP proposes a new Attachment Y (Transmission Owner Designation Process) in its Open Access Transmission Tariff (OATT), revises SPP’s existing transmission planning process as outlined in Attachment O (Transmission Planning Process), and revises SPP’s Membership Agreement. In this order, we accept SPP’s compliance filing, subject to a further compliance filing, as discussed below.

2. Separately, in Docket No. ER13-75-000, pursuant to FPA section 206, Xcel Energy Services, Inc. (Xcel) submitted, on behalf of its affiliate, Southwestern Public Service Company (SPS), revisions to the Xcel OATT related to SPS’s local transmission planning process to comply with Order No. 1000.<sup>3</sup> In this order, we accept those proposed OATT revisions, subject to a further compliance filing, as discussed below. In Docket No. ER13-100-000, pursuant to FPA section 206, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (collectively, KCP&L

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<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> Xcel also filed in Docket No. ER13-75-000 on behalf of another affiliate, Public Service Company of Colorado. The Public Service Company of Colorado-related portion of this filing was addressed in a different proceeding. *See Pub. Serv. Co.*, 142 FERC ¶ 61,206, at n.1 (2013).

Companies) submitted a compliance filing, arguing that SPP's compliance filing should satisfy KCP&L Companies' individual filing obligations under Order No. 1000. In this order, we find that SPP's compliance filing satisfies the KCP&L Companies' Order No. 1000 filing obligation, as discussed below.

## **I. Background**

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

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

5. The Commission acknowledged in Order No. 1000 that each transmission planning region has unique characteristics, and, therefore, Order No. 1000 accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate regional differences.<sup>5</sup> Order No. 1000 does not prescribe the exact manner in which public utility transmission providers

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<sup>4</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).

<sup>5</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

must fulfill the regional transmission planning requirements.<sup>6</sup> Similarly, because the Commission did not want to prescribe a uniform method of cost allocation for every transmission planning region, Order No. 1000 adopts the use of cost allocation principles.<sup>7</sup> The Commission stated that it was acting to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential, and it acknowledged that public utility transmission providers in some regions may already meet or exceed some requirements of Order No. 1000.<sup>8</sup>

## II. Compliance Filings

6. In its compliance filing, in Docket Nos. ER13-366-000 and ER13-367-000, SPP states that, with minor modifications, its Commission-approved Integrated Transmission Plan (ITP) process<sup>9</sup> as well as its Highway/Byway<sup>10</sup> and Balanced Portfolio<sup>11</sup> cost

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<sup>6</sup> *Id.* P 157.

<sup>7</sup> *Id.* P 604.

<sup>8</sup> *Id.* P 13.

<sup>9</sup> The Commission conditionally accepted SPP's ITP process on July 15, 2010. *See Sw. Power Pool, Inc.*, 132 FERC ¶ 61,042 (2010) (ITP Order), *order on reh'g*, 136 FERC ¶ 61,050 (2011).

<sup>10</sup> Under SPP's Highway/Byway cost allocation method, the cost of Base Plan Upgrades are allocated as follows: (1) projects at or above 300 kV: 100 percent on a regional postage-stamp basis (Highway facilities); (2) projects 100-300 kV: 1/3 on a regional post-stamp basis, 2/3 zonally (Byway facilities); and (3) projects at or below 100 kV: 100 percent to the zone in which the project is located. For Base Plan Upgrades that are associated with designated resources that are wind generation resources where the upgrade is located in a different zone than the point of delivery, the Highway/Byway cost allocation methodology prescribes: (1) projects above at or 300 kV: 100 percent on a regional postage-stamp basis; (2) projects operating at less than 300 kV (including those operating at or below 100 kV): 2/3 on a regional post-stamp basis, 1/3 directly to the transmission customer. *See Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010) (Highway/Byway Order), *order on reh'g*, 137 FERC ¶ 61,075 (2011).

<sup>11</sup> A Balanced Portfolio is a group or portfolio of extra-high voltage transmission upgrades that provides economic benefits across the SPP region; the costs of the upgrades included in a Balanced Portfolio are allocated on a 100 percent region-wide postage stamp basis. *See Sw. Power Pool, Inc.*, 125 FERC ¶ 61,054 (2008), *order on reh'g*, 127 FERC ¶ 61,271 (2009), *order on reh'g*, 137 FERC ¶ 61,227 (2011).

allocation methods comply with the requirements of Order No. 1000.<sup>12</sup> Specifically, SPP states that its existing transmission planning and cost allocation processes comply with the directives of Order No. 1000 regarding regional transmission planning and consideration of transmission needs driven by public policy requirements and the regional cost allocation requirements and six cost allocation principles. Therefore, SPP proposes to retain most of the current language of Attachment O of its OATT, which governs the ITP process and the development of the annual SPP Transmission Expansion Plan (STEP).<sup>13</sup> SPP also proposes to retain its current cost allocation methods set forth in OATT Attachment J (Recovery of Costs Associated with New Facilities), including its Highway/Byway and Balanced Portfolio cost allocation methods.

7. SPP proposes minor revisions to Attachment O of its OATT to provide greater clarity regarding how SPP will identify and consider transmission needs driven by public policy requirements in the ITP process, including making the relevant internet postings required by Order No. 1000.<sup>14</sup>

8. If the Commission determines that SPP's Membership Agreement<sup>15</sup> provisions governing transmission construction rights and obligations are not protected by the *Mobile-Sierra* doctrine,<sup>16</sup> or if the evidence indicates that the existing provisions seriously harm the public interest and extraordinary circumstances exist so that modification is an unequivocal public necessity, then SPP asks the Commission to consider the following proposed revisions to its Membership Agreement and OATT to adopt reforms consistent with Order No. 1000's nonincumbent transmission developer requirements.<sup>17</sup>

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<sup>12</sup> SPP Transmittal at 13.

<sup>13</sup> SPP explains that the STEP report is a comprehensive listing of all transmission projects in SPP over a 20-year planning horizon, including projects identified during the ITP process and other projects, such as generation interconnection projects and projects required to satisfy requests for transmission service. *See* SPP Transmittal at 16 (citing SPP OATT, Attachment O, § V.3.j).

<sup>14</sup> *Id.* at 13-14.

<sup>15</sup> Southwest Power Pool, Inc., Membership Agreement, First Revised Volume No. 3, Docket No. ER13-367-000 (Nov. 13, 2012) (Membership Agreement).

<sup>16</sup> The *Mobile-Sierra* doctrine originated in the Supreme Court's decisions in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (*Mobile*), and *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

<sup>17</sup> SPP refers to these proposed revisions as "conditional revisions." *See* SPP Transmittal at 1.

9. In this instance, SPP first proposes to remove the current construction rights and obligations provisions from the Membership Agreement and instead indicate in that document that SPP will determine transmission project construction responsibility in accordance with the OATT.<sup>18</sup> Second, SPP proposes to adopt a new Attachment Y under its OATT, setting forth the transmission owner designation process for projects selected in the regional transmission plan for purposes of cost allocation and for other transmission facilities. Third, SPP proposes to move the current provisions governing designation of transmission owners from Attachment O to Attachment Y and to create a new provision in Attachment Y setting forth the Transmission Owner Selection Process for Competitive Upgrades.<sup>19</sup> Finally, SPP proposes to codify in the OATT its current practice of issuing notifications to construct to entities and its current tracking process for project schedules and costs.

10. SPP states that it developed the proposed Transmission Owner Selection Process to avoid making major changes to its Commission-approved ITP process. SPP explains that, to achieve that goal, the Transmission Owner Selection Process takes place *after* the ITP process is complete and transmission projects have been approved by SPP's Board of Directors (Board) for inclusion in the STEP and designated as Competitive Upgrades.<sup>20</sup> SPP states that the existing, Commission-approved transmission owner designation process will continue to apply to projects included in SPP's regional transmission plan that are not designated as Competitive Upgrades, pursuant to the provisions of proposed Attachment Y, section IV. SPP seeks an effective date for its compliance filing of March 30 following the date of Commission's issuance of an order in this proceeding.

11. SPP requests that the Commission consolidate the proceedings in Docket Nos. ER13-366-000 and ER13-367-000.<sup>21</sup>

12. In its compliance filing, in Docket No. ER13-75-000, Xcel proposes revisions to the Xcel OATT related to SPS's local transmission planning process to comply with Order No. 1000's public policy requirements. In their compliance filing, in Docket No. ER13-100-000, KCP&L Companies argue that SPP's compliance filing satisfies KCP&L

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<sup>18</sup> *Id.* at 14-15.

<sup>19</sup> For an explanation of the Transmission Owner Selection Process for Competitive Upgrades and a definition of Competitive Upgrade, see *infra* PP 10, 136.

<sup>20</sup> SPP Transmittal at 70 (emphasis added).

<sup>21</sup> SPP November 13, 2012 Motion to Consolidate (explaining that SPP intended to make one compliance submission; however, the technical limitations of SPP's eTariff system prevented SPP from submitting in the same filing the proposed revisions to the SPP OATT, the proposed changes to the Membership Agreement, the associated transmittal letter, testimony, and other materials).



Companies individual filing obligations under Order No. 1000 and the transmission planning and cost allocation processes in SPP's compliance filing fulfill the Order No. 1000 requirements that apply to KCP&L Companies.

### **III. Notice of Filing and Responsive Pleadings**

13. Notice of SPP's filing in Docket Nos. ER13-366-000 and ER13-367-000 was published in the *Federal Register*, 77 Fed. Reg. 69,816 (2012), with interventions and comments due on or before December 27, 2012. Appendix A contains the list of intervenors, commenters, and entities filing answers in this proceeding. On December 10, 2012, LS Power filed a supplemental protest in Docket Nos. ER13-187-000, ER13-193-000, ER13-195-000, and ER13-366-000. The portion related to SPP's compliance filing is addressed in this order.

14. Notice of Xcel's filing in Docket No. ER13-75-000 was published in the *Federal Register*, 77 Fed. Reg. 64,502-03 (2012), with interventions and protests due on or before November 9, 2012, subsequently extended to November 26, 2012.<sup>22</sup> No comments were filed related to the proposed revisions to Xcel OATT related to SPS's local transmission planning processes.

15. Notice of KCP&L Companies' filing in Docket No. ER13-100-000 was published in the *Federal Register*, 77 Fed. Reg. 64,502-03 (2012), with interventions and protests due on or before November 9, 2012, subsequently extended to November 26, 2012. Appendix A contains the list of intervenors in this proceeding. No comments were filed.

### **IV. Discussion**

#### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.<sup>23</sup>

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<sup>22</sup> See *Pub. Serv. Co. of Colo.*, 142 FERC ¶ 61,206 at Appendix A (listing intervenors, commenters and protestors).

<sup>23</sup> In its comments, AEP indicates that it filed a motion to intervene in this proceeding. See AEP December 21, 2012 Comments, Docket No. ER13-366-00, at n.3. We cannot find a record of AEP's motion to intervene. Also, although the Missouri PSC filed comments, it did not move to intervene in this proceeding. Therefore, while we will consider AEP's and Missouri PSC's comments, AEP and Missouri PSC are not parties to this proceeding. See 18 C.F.R. § 385.211(a)(2).

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers filed by SPP and Duke-American in these proceedings because they have provided information that assisted us in our decision-making process.

18. We deny SPP's request to consolidate Docket Nos. ER13-366-00 and ER13-367-000. The Commission's policy is to consolidate matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency.<sup>24</sup> Although there are common issues of law and fact in the two proceedings, we do not believe consolidating these proceedings would achieve greater administrative efficiency because the issues in each proceeding can be resolved and have been resolved in this order based on the written record without need for an evidentiary hearing.<sup>25</sup>

19. Because the KCP&L Companies have transferred functional control of their transmission facilities to SPP, SPP's compliance filing satisfies the KCP&L Companies' Order No. 1000 filing obligation.<sup>26</sup> The KCP&L Companies are not required to make a separate filing to comply with Order No. 1000.<sup>27</sup>

## **B. Substantive Matters**

20. We find that SPP's compliance filing partially complies with the regional transmission planning and cost allocation requirements adopted in Order No. 1000. Accordingly, we accept SPP's compliance filing to become effective March 30, 2014,<sup>28</sup> subject to a further compliance filing as discussed below. We direct SPP to file the

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<sup>24</sup> See *S. Cal. Edison Co.*, 129 FERC ¶ 61,304, at P 26 (2009), *amended by* 130 FERC ¶ 61,092 (2010); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008), *order on reh'g*, 127 FERC ¶ 61,164 (2009), *order on remand*, 134 FERC ¶ 61,155, *reh'g denied*, 136 FERC ¶ 61,222 (2011); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008).

<sup>25</sup> See *S. Cal. Edison Co.*, 129 FERC ¶ 61,304 at P 26; *Columbia Gulf Trans. Co.*, 139 FERC ¶ 61,236, at P 20 (2012) (citing *El Paso Natural Gas Co.*, 136 FERC ¶ 61,180, at P 28 (2011)).

<sup>26</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 797; KCP&L Companies Filing, Docket No. ER13-100-000, at 2 (filed Oct. 11, 2012).

<sup>27</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 797.

<sup>28</sup> We find that this effective date reasonably accommodates SPP's transmission planning cycle. See *infra* PP 26, 32.

compliance filing within 120 days of the date of this order. We find that Xcel's compliance filing addressing SPS' public policy requirements in local planning partially complies with Order No. 1000. We accept Xcel's filing to become effective on March 30, 2014, subject to a further compliance filing as discussed below. We direct Xcel to file the compliance filing within 120 days of the date of this order.

### **1. Regional Transmission Planning Requirements**

21. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that complies with the identified transmission planning principles of Order No. 890 and that, in consultation with stakeholders, results in the development of a regional transmission plan.<sup>29</sup> The regional transmission plan will identify transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related<sup>30</sup> needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.<sup>31</sup> A primary objective of the reforms in Order No. 1000 is to ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet a transmission planning region's needs more efficiently and cost-effectively.<sup>32</sup>

#### **a. Transmission Planning Region**

22. Order No. 1000 specifies that a transmission planning region is one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate for purposes of regional transmission planning and development of a single regional transmission plan.<sup>33</sup> The scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.<sup>34</sup> However,

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<sup>29</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

<sup>30</sup> Public policy requirements are described below. *See infra* PP 59-63.

<sup>31</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 11, 148.

<sup>32</sup> *Id.* PP 4, 6.

<sup>33</sup> *Id.* P 160.

<sup>34</sup> *Id.* P 160 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements of Order No. 1000.<sup>35</sup>

23. In addition, Order No. 1000 requires that public utility transmission providers explain in their compliance filings how they will determine which transmission facilities evaluated in their local and regional transmission planning processes will be subject to the requirements of Order No. 1000.<sup>36</sup> Order No. 1000's requirements are intended to apply to new transmission facilities, which are those transmission facilities that are subject to evaluation, or reevaluation as the case may be, within a public utility transmission provider's local or regional transmission planning process after the effective date of the public utility transmission provider's compliance filing.<sup>37</sup> Each region must determine at what point a previously approved project is no longer subject to reevaluation and, as a result, whether it is subject to these requirements.<sup>38</sup>

24. Order No. 1000-A states that public utility transmission providers in each transmission planning region must have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region.<sup>39</sup> Each public utility transmission provider (or regional transmission planning entity acting for all of the public utility transmission providers in its transmission planning region) must include in its OATT a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region.<sup>40</sup> A non-public utility transmission provider will not be considered to have made the choice to join a transmission planning region and thus be eligible to be allocated costs under the regional cost allocation method until it has enrolled in the transmission planning region.<sup>41</sup>

**i. SPP's Filing**

25. SPP states that it is a Commission-approved Regional Transmission Organization (RTO) with 68 members serving more than six million households in a 370,000 square-

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<sup>35</sup> *Id.* P 160.

<sup>36</sup> *Id.* PP 65, 162.

<sup>37</sup> *Id.* PP 65, 162.

<sup>38</sup> *Id.* PP 65, 162.

<sup>39</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>40</sup> *Id.* P 275.

<sup>41</sup> *Id.* PP 276-277.

mile area.<sup>42</sup> Its members include 14 investor-owned utilities, 11 municipal systems, 12 generation and transmission cooperatives, four state agencies, eight independent power producers, 10 power marketers, and nine independent transmission companies.<sup>43</sup> As an RTO, SPP provides transmission planning duties and administers open access transmission service over approximately 48,930 miles of transmission lines covering portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.<sup>44</sup> SPP proposes to maintain its current transmission planning region for the purposes of Order No. 1000. As discussed in more detail below, SPP also proposes to maintain its current regional transmission planning process, the ITP process, which SPP asserts meets the Order No. 1000 requirements.

26. SPP also proposes to establish Competitive Upgrades as the facilities that are subject to the requirements of Order No. 1000.<sup>45</sup> SPP requests that its OATT revisions be effective on the March 30 following the Commission's order in this proceeding, with Order No. 1000's requirements applying to transmission facilities that the SPP Board approves for construction beginning in January following a March 30 effective date. SPP explains that, under its regional transmission planning cycle, the Board approves the SPP regional transmission plan in January. SPP states that, even though the Board approves transmission projects that will be subject to the Transmission Owner Selection Process in January, it requests a March 30 effective date because any entity that desires to bid on a transmission facility approved by the Board in January must have submitted an application to become a qualified bidder by the previous June 30. SPP explains, therefore, that, in order to ensure that the SPP transmission planning and selection process can operate as filed, the effective date must be before the date that entities apply to participate (i.e., before June 30) and also provide sufficient time prior to the June 30 submission deadline for SPP and potential participating entities to prepare for the Transmission Owner Selection Process. SPP adds that the facilities subject to the proposed process will be approved under the current SPP transmission planning process and then SPP will use the new Transmission Owner Selection Process to determine who will build the applicable projects.<sup>46</sup>

27. SPP asserts that, as an RTO, it already has an enrollment process for public and non-public utilities that choose to enroll in the SPP transmission planning region. According to SPP, any entity seeking to enroll in the SPP region to comply with the

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<sup>42</sup> SPP Transmittal at 6.

<sup>43</sup> *Id.* at 6-7.

<sup>44</sup> *Id.* at 7.

<sup>45</sup> *Id.* at 5.

<sup>46</sup> *Id.* at 96-97.

requirements of Order No. 1000 may become a member of SPP by executing the Membership Agreement and undertaking the obligations of a transmission owner<sup>47</sup> as defined under the Membership Agreement. These obligations include transferring control over its transmission system to SPP and participating in SPP's regional transmission planning and cost allocation.<sup>48</sup>

28. SPP proposes to add Addendum 2 to Attachment O, which lists the current enrollees in the SPP transmission planning region.<sup>49</sup>

**ii. Protests/Comments**

29. Duke-American argues that SPP's proposed effective date would unreasonably retain SPP's right of first refusal provisions until January 2015.<sup>50</sup> Duke-American claims that this delay is unnecessary and inconsistent with the Commission's policy goals in Order No. 1000. Duke-American requests that SPP's limited proposal to eliminate right of first refusal become effective when the Commission issues its order on SPP's compliance filing.

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<sup>47</sup> SPP proposes to revise the definition of transmission owner as follows (new language is underlined and removed language is struck through): "Each Member of SPP that has executed an SPP Membership Agreement as a Transmission Owner and therefore has the obligation to construct, own, operate, and maintain transmission facilities as directed by the Transmission Provider and: (i) whose [OATT] facilities (in whole or in part) make up the Transmission System; or (ii) who has accepted a Notification to Construct from SPP an assignment (notification to construct pursuant to Attachment O) to build and own transmission facilities but does not yet own transmission facilities under SPP's functional control. ~~and (ii) has executed an SPP Membership Agreement as a Transmission Owner~~ Those Transmission Owners that are not regulated by the Commission shall not become subject to Commission regulation by virtue of their status as Transmission Owners under this [OATT]; provided, however, that service over their facilities classified as transmission and covered by the [OATT] shall be subject to Commission regulation." *See* SPP OATT, § 1.1 (T – Definitions).

<sup>48</sup> SPP Transmittal at 28. SPP also notes that it permits enrollment in the SPP transmission planning region through the execution of a separate agreement that governs the entity's rights and obligations with respect to participation in the SPP transmission planning process and cost allocation processes as well as SPP's control of the entity's transmission system if, for example, the entity is governed by federal statute. *See Id.* at 28-29.

<sup>49</sup> *Id.* at 29; SPP OATT, Attachment O, Addendum 2.

<sup>50</sup> Duke-American Protest at 16-18.

**iii. Answer**

30. SPP argues that Duke-American's assertions that SPP's proposed effective date unreasonably delays the implementation of Order No. 1000 reforms lacks merit and should be rejected.<sup>51</sup> SPP explains that it requests that the Commission issue an order by March 30 of the year prior to the year in which SPP would implement its Transmission Owner Selection Process, so that SPP can begin its application and qualification process for prospective Qualified Request For Proposal Participants.<sup>52</sup> SPP states that, by design and pursuant to the requirements of Order No. 1000, SPP's qualification process must take place in advance of the issuance of Requests For Proposals. SPP further explains that, before it can implement its qualification process, SPP must have adequate time to recruit, hire, and train the additional staff that will be necessary to implement the qualification process. SPP states that, as a result, it has proposed an effective date that provides sufficient lead-time for SPP to ensure proper implementation of its qualification process and Transmission Owner Selection Process.<sup>53</sup>

**iv. Commission Determination**

31. We find that the scope of the transmission planning region, the description of facilities that will be subject to the requirements of Order No. 1000, and the enrollment process specified in SPP's filing comply with the requirements of Order No. 1000. Therefore, we accept SPP's proposal to comply with these requirements of Order No. 1000, as described more fully below. In Order No. 1000, the Commission stated that every public utility transmission provider has already included itself in a region for purposes of complying with Order No. 890 and that these existing regional processes should guide public utility transmission providers in formulating transmission planning regions to comply with the requirements of Order No. 1000.<sup>54</sup> SPP, a Commission-approved RTO, has a footprint reflecting a regional scope that complies with Order No. 890.<sup>55</sup> We note that there has been no significant decrease or limitation in the scope or configuration of the SPP transmission planning region since the Commission accepted

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<sup>51</sup> SPP Answer at 84.

<sup>52</sup> SPP defines a "Qualified Request For Proposal Participant" as an entity that has been determined by SPP to satisfy the qualification criteria set forth in section III.1 of Attachment Y of the OATT.

<sup>53</sup> SPP Answer at 84.

<sup>54</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160.

<sup>55</sup> See *Sw. Power Pool, Inc.*, 124 FERC ¶ 61,028 (2008), *order on compliance*, 127 FERC ¶ 61,171 (2009).

SPP's compliance with respect to Order No. 890. Accordingly, we find that the scope of the SPP region complies with the requirements of Order No. 1000.

32. SPP requests that its OATT revisions be effective on the March 30 following the Commission's order in this proceeding to ensure that SPP's transmission planning and selection process can operate as filed, with Order No. 1000's requirements applying to transmission facilities approved for construction beginning in the January following a March 30 effective date. Therefore, the facilities subject to the requirements of Order No. 1000 would be Competitive Upgrades approved for construction on or after January 1, 2015. In its answer, SPP explains that this date will provide SPP with sufficient lead time for SPP to ensure proper implementation of its qualification process and Transmission Owner Selection Process. We find it is reasonable to make the requirements of Order No. 1000 apply to Competitive Upgrades approved for construction by the Board in January 2015. Therefore, we reject Duke-American's proposed effective date. Accordingly, we accept SPP's proposal to make the revisions effective on March 30, 2014.

33. We also find that SPP has an existing, clear enrollment process through which public and non-public utility transmission providers may choose to enroll in the SPP transmission planning region such that they are eligible to be allocated costs under the regional cost allocation methods.<sup>56</sup> Any entity desiring to enroll in the SPP transmission planning region may become a member of SPP by executing the Membership Agreement, or a separate agreement if, e.g., the entity is governed by federal statute, and undertaking the obligations of a transmission owner, as defined under the Membership Agreement. These obligations include an entity transferring control over its transmission system to SPP and participating in SPP's regional transmission planning and cost allocation processes.<sup>57</sup> Additionally, SPP proposes including an Addendum 2 to Attachment O that lists all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region.

**b. Regional Transmission Planning Process General Requirements**

34. Order No. 1000 requires that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan and that complies with certain transmission planning principles of Order No. 890

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<sup>56</sup> See Order No. 1000-A, 139 FERC ¶ 61,132 at P 276 (noting that "a non-public utility transmission provider will not be considered to have made the choice to join a transmission planning region and thus eligible for cost allocation until it has enrolled in the transmission planning region").

<sup>57</sup> SPP Transmittal at 28.



identified in Order No. 1000.<sup>58</sup> Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.<sup>59</sup> Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.<sup>60</sup> The procedures must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's needs.<sup>61</sup> The process used to produce the regional transmission plan must satisfy the following Order No. 890 transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning.<sup>62</sup>

35. Application of these transmission planning principles will ensure that stakeholders have an opportunity to participate in the regional transmission planning process in a timely and meaningful manner. Stakeholders must have an opportunity to express their needs, have access to information, and an opportunity to provide information, and thus have an opportunity to participate in the identification and evaluation of regional solutions.<sup>63</sup> In addition, when evaluating the merits of alternative transmission solutions, proposed non-transmission alternatives must be considered on a comparable basis.<sup>64</sup> Public utility transmission providers must identify how they will evaluate and select from competing solutions and resources such that all types of resources are considered on a comparable basis.<sup>65</sup>

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<sup>58</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 146, 151.

<sup>59</sup> *Id.* P 148.

<sup>60</sup> *Id.* P 149.

<sup>61</sup> *Id.* P 147.

<sup>62</sup> *Id.* P 151. These transmission planning principles are explained more fully in Order No. 890.

<sup>63</sup> *Id.* P 150. As explained in Order No. 1000, the term "stakeholder" means any interested party. *Id.* P 151 n.143.

<sup>64</sup> *Id.* P 148.

<sup>65</sup> *Id.* P 155.

**i. SPP's Filing**

36. SPP explains that, through its ITP process set forth in Attachment O, SPP and its member transmission owners conduct a regional transmission planning process that produces a regional transmission plan. SPP states that the ITP process complies with the regional transmission planning requirements of Order No. 1000 because, in consultation with stakeholders, it evaluates alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.<sup>66</sup> SPP explains that the ITP process is an iterative, three-year planning process that includes 20-year, 10-year, and near-term assessments designed to identify transmission solutions that address both near-term and long-term transmission needs. SPP states that the ITP process focuses on identifying cost-effective regional transmission solutions, which are identified in the STEP report that SPP is required to produce each year.<sup>67</sup>

37. SPP states that the ITP process' near-term assessment focuses primarily on identifying solutions required to maintain near-term reliability within a shorter planning horizon.<sup>68</sup> According to SPP, the 10-year assessment focuses on a 10-year planning horizon and assesses the cost-effectiveness of proposed transmission solutions over a 40-year time horizon.<sup>69</sup> SPP explains that the ITP process' 20-year assessment (1) focuses generally on extra-high voltage transmission facilities designed to provide a grid flexible enough to provide benefits to the region across multiple scenarios; (2) seeks to identify transmission solutions needed in year 20; and (3) determines the cost-effectiveness of proposed regional transmission solutions over a 40-year time horizon.<sup>70</sup>

38. SPP asserts that each assessment provides robust stakeholder involvement throughout the process, including in the design of the study scope for each assessment and the identification of potential solutions.<sup>71</sup> SPP states that, for all proposed solutions, including reliability upgrades that transmission owners propose to address violations of their company-specific planning criteria, SPP is required to determine if there is a more comprehensive regional solution to address multiple reliability needs and economic

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<sup>66</sup> SPP Transmittal at 16.

<sup>67</sup> *See id.* (citing SPP OATT, Attachment O, § V.3.j).

<sup>68</sup> *Id.* at 17 (citing SPP OATT, Attachment O, § III.5.b).

<sup>69</sup> *Id.* (citing SPP OATT, Attachment O, § III.4.c).

<sup>70</sup> *Id.* at 16-17 (citing SPP OATT, Attachment O, § III).

<sup>71</sup> *Id.* at 17 & n.65.

issues identified in the ITP assessment. Additionally, SPP notes that it is required to assess the cost-effectiveness of all proposed solutions.<sup>72</sup>

39. SPP notes that the Commission has found that SPP's ITP process complies with the transmission planning principles established by Order No. 890.<sup>73</sup> Because it is not proposing any changes to the structure of the ITP process, SPP asks the Commission to find that SPP's ITP process complies with the Order No. 1000 directive that transmission providers have a regional transmission planning process that satisfies the Order No. 890 transmission planning principles.<sup>74</sup>

## ii. Protests/Comments

40. Clean Line acknowledges that the Commission previously found that SPP's ITP process complies with the transmission planning principles established by Order No. 890.<sup>75</sup> However, Clean Line highlights issues that have arisen in the current ITP 20-year assessment process and asserts that this process must change to comply with the Order No. 890 principles of transparency, comparability, and information exchange. According to Clean Line, these issues are as follows: (1) certain members who had agreements with SPP's software vendor had access to model data in the format used for the ITP analysis earlier than other members; (2) maps that showed specific megawatt levels at individual resource sites were not available; (3) the wind resource siting utilized was not realistic because potential or actual threatened and endangered biological species and other environmental constraints were not considered; and (4) the models used biased and sub-optimal sites for future wind resources because incumbent transmission owners were allowed to choose where independent wind resource developers might site wind generators over the 20-year planning horizon.<sup>76</sup>

41. Public Interest Organizations argue that SPP's proposed stakeholder participation provisions meet the standards of Order No. 1000 for meaningful and timely involvement in the transmission planning process.<sup>77</sup> However, Public Interest Organizations disagree

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<sup>72</sup> *Id.* at 17 (citing SPP OATT, Attachment O, § III.8).

<sup>73</sup> *Id.* at 18-24 (citing ITP Order, 132 FERC ¶ 61,042 at P 52; *Sw. Power Pool, Inc.*, 124 FERC ¶ 61,028 at P 10).

<sup>74</sup> *Id.* at 18 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 146, 151).

<sup>75</sup> Clean Line Comments at 7-8 (citing SPP Transmittal at 18; ITP Order, 132 FERC ¶ 61,042 at P 52; *Sw. Power Pool, Inc.*, 124 FERC ¶ 61,028 at P 10).

<sup>76</sup> *Id.* at 8-9.

<sup>77</sup> Public Interest Organizations Comments at 3-6.

that SPP's current OATT assures comparable treatment of all resources in the planning process, and Public Interest Organizations do not believe that compliance with Order No. 890 in this circumstance is sufficient to satisfy Order No. 1000's requirements.<sup>78</sup> Public Interest Organizations question whether comparable treatment is likely to occur under SPP's existing OATT because the two Attachment O provisions that address comparable treatment of non-transmission alternatives are included in a section focused on transmission solutions.<sup>79</sup> Public Interest Organizations question whether SPP has ever compared the performance of non-transmission alternatives against transmission solutions, so SPP's limited comparability rules may be falling short of ensuring the comparable consideration of non-transmission alternatives. Public Interest Organizations assert that, as a result, SPP may not be in a position to demonstrate that the transmission projects actually selected in its annual plan represent the most cost-effective and efficient solutions to grid needs.<sup>80</sup> Public Interest Organizations conclude that SPP's provisions for comparable treatment have fallen short, and will continue to fall short, of Order No. 1000's planning objectives.<sup>81</sup>

42. Public Interest Organizations ask the Commission to require SPP to develop OATT modifications capable of achieving comparable treatment in practice.<sup>82</sup> Public Interest Organizations state that these modifications could include more specific procedures and metrics to evaluate, on a comparable basis, all options, and to select solutions that are more efficient or cost-effective for inclusion in SPP's regional transmission plan. Public Interest Organizations add that SPP may need to provide more detailed information earlier in the process for states and utilities to develop non-transmission alternative solutions. Public Interest Organizations argue that procedures, metrics and information must communicate clearly and in sufficient detail the needs and how non-transmission alternatives could address those needs.<sup>83</sup>

### iii. Answer

43. With regard to Clean Line's complaint that certain stakeholders that already had executed agreements with a software vendor got earlier access to model data than other stakeholders, SPP claims that Order No. 890 does not obligate SPP to violate agreements

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<sup>78</sup> *Id.* at 4.

<sup>79</sup> *Id.* at 12-13 (citing SPP OATT, § III.8.d, h).

<sup>80</sup> *Id.* at 13.

<sup>81</sup> *Id.* at 14.

<sup>82</sup> *Id.* at 13.

<sup>83</sup> *Id.* at 13-14.

with software vendors to provide access to model data to stakeholders who refuse or delay in executing the proper agreements.<sup>84</sup> In SPP's view, to the extent that Clean Line is concerned about access to vendor proprietary data and software, Clean Line should ensure that it has executed all necessary agreements in a timely fashion. SPP asserts that Clean Line's other criticisms do not relate to whether SPP complies with the transparency, comparability, and information exchange requirements of Order No. 890, but instead relate to the quality of the inputs in the transmission planning process and information provided. SPP argues that Clean Line's concerns with the timing of execution of necessary vendor agreements and the quality of inputs to the transmission planning process do not provide a basis for the Commission to find SPP is not complying with Order No. 1000. SPP argues that the ITP process is the appropriate venue for Clean Line to express these concerns.<sup>85</sup>

44. SPP argues that Public Interest Organizations' comments that SPP fails to consider non-transmission alternatives adequately in the ITP process are meritless and should be rejected. SPP claims that Order No. 1000 did not impose any new requirements with respect to consideration of non-transmission alternatives other than the requirement that non-transmission alternatives be considered in the regional transmission planning process in the same manner that Order No. 890 required non-transmission alternatives to be considered on a comparable basis in local transmission planning processes.<sup>86</sup> SPP points out that, in Order No. 1000-A, the Commission elaborated that it did not require anything more than considering non-transmission alternatives as compared to potential transmission solutions.<sup>87</sup> SPP asserts that the title of the section in which these provisions are contained does not negate SPP's obligation to comply with those OATT provisions.

45. SPP contends that Public Interest Organizations' concern that regional transmission planning processes that do not address cost recovery for non-transmission alternatives will remain unduly discriminatory is a collateral attack on Order No. 1000. For support, SPP points to the Commission's finding in Order No. 1000 that the issue of cost recovery for non-transmission alternatives is beyond the scope of the transmission cost allocation reforms it adopted.<sup>88</sup>

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<sup>84</sup> SPP Answer at 80-81.

<sup>85</sup> *Id.* at 81.

<sup>86</sup> *Id.* at 73 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 148, 154).

<sup>87</sup> *Id.* at 74 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 193).

<sup>88</sup> *Id.* at 75 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 779; Order No. 1000-A, 139 FERC ¶ 61,132 at P 745).

**iv. Commission Determination**

46. The Commission previously found that the ITP process satisfied each of Order No. 890's transmission planning principles.<sup>89</sup> Therefore, the Commission's focus in this proceeding is on any incremental changes to the SPP regional transmission planning process developed to comply with the requirements of Order No. 1000. SPP has not proposed any incremental changes to the current ITP process because the Commission-approved process already evaluates, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning process. Thus, we find that SPP's existing ITP process complies with the comparability principle and the other planning related requirements of Order No. 1000.

47. We will not require SPP to modify its ITP process based on the concerns with the ITP process 20-year assessment raised by Clean Line. As SPP notes, the issues Clean Line raises relate to details of the SPP regional transmission planning process that SPP does not need to include in SPP's OATT to comply with the broader principles in Order No. 890.<sup>90</sup> The Commission found that SPP's ITP process complies with the broader Order No. 890 transmission planning principles, and SPP is not proposing to modify its ITP process here. Clean Line has not demonstrated that the concerns it raises indicate that the ITP process is unjust, unreasonable, unduly discriminatory or preferential. We agree with SPP that the appropriate venue for Clean Line to express these concerns is, in the first instance, in the ITP process.

48. We deny Public Interest Organizations' request that the Commission require SPP to develop OATT modifications that include more specific procedures and metrics to evaluate, on a comparable basis, all transmission and non-transmission alternative options when determining which transmission solutions to select in the regional transmission plan. The Commission has found that SPP's regional transmission planning process complies with the comparability principle.<sup>91</sup> Specifically, section III.8(d) of Attachment O provides that SPP will consider, on a comparable basis, any alternative proposals, which may include, but are not limited to, generation options, demand response programs, smart grid technologies, and energy efficiency programs. SPP will evaluate solutions against each other based on a comparison of their relative effectiveness of

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<sup>89</sup> See ITP Order, 132 FERC ¶ 61,042 at PP 52-63.

<sup>90</sup> See *Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (requiring the filing of "only those practices that affect rates and services *significantly*") (emphasis in original).

<sup>91</sup> See ITP Order, 132 FERC ¶ 61,042 at P 61.

performance and economics.<sup>92</sup> Thus, the OATT already provides sufficient detail about how stakeholders can propose, and how SPP will evaluate on a comparable basis, any alternative to an identified need. Therefore, contrary to Public Interest Organizations' request, we will not require SPP to provide further detail in its OATT. To the extent that Public Interest Organizations contend that non-transmission alternatives should be selected in the regional transmission plan for purposes of cost allocation, Order No. 1000 concluded that the issue of cost recovery associated with non-transmission alternatives is beyond the scope of Order No. 1000, which addresses the allocation of the costs of transmission facilities.<sup>93</sup>

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

49. Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.<sup>94</sup> Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively.<sup>95</sup> In addition, whether or not public utility transmission providers within a transmission planning region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is a more efficient or cost-effective solution to their needs.<sup>96</sup>

50. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer<sup>97</sup> must provide to the regional transmission planning process to

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<sup>92</sup> SPP OATT, Attachment O, § III.8(d).

<sup>93</sup> Order No. 1000 FERC Stats. & Regs. ¶ 31,323 at PP 779, 148 n.138; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 193.

<sup>94</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

<sup>95</sup> *Id.* P 149.

<sup>96</sup> *Id.* P 331.

<sup>97</sup> Order No. 1000 defines merchant transmission projects as projects “for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates.” *Id.* P 119. The Commission noted in Order

allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.<sup>98</sup>

51. Finally, the regional transmission planning process developed by public utility transmission providers, in consultation with stakeholders, must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's needs.<sup>99</sup> Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

**i. SPP's Filing**

52. SPP asserts that its regional transmission planning process, developed in consultation with stakeholders, results in a regional transmission plan that reflects the set of transmission facilities that more cost-effectively meet the region's needs.<sup>100</sup> SPP's ITP process includes 20-year, 10-year, and near-term assessments designed to identify transmission solutions that address both near-term and long-term transmission needs.<sup>101</sup> SPP's Attachment O requires SPP to develop the assessment study scope for the 20-year, 10-year, and near-term assessments in consultation with stakeholders and to study potential alternatives for improvements to the transmission system, including those identified by SPP and by stakeholders.<sup>102</sup> Attachment O also provides that, for all potential alternatives provided by the stakeholders, SPP shall determine if there is a more comprehensive regional solution to address reliability needs, economic needs, and needs driven by public policy requirements identified in the assessment.<sup>103</sup> SPP notes that it will evaluate all identified solutions based on their cost-effectiveness. According to SPP, this evaluation will be performed in accordance with the Integrated Transmission Planning Manual, which shall be developed in consultation with stakeholders and

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No. 1000 that "a merchant transmission developer assumes all financial risk for developing its transmission project and constructing the proposed transmission facilities. . . ." *Id.* P 163.

<sup>98</sup> *Id.* P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

<sup>99</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

<sup>100</sup> SPP Transmittal at 17-18.

<sup>101</sup> *See supra* note 9.

<sup>102</sup> SPP Transmittal at 17 n.65; SPP OATT, Attachment O, § III.3.d, III.4.d, III.5.d, III.8.a.

<sup>103</sup> SPP Transmittal at 17; SPP OATT, Attachment O, § III.8.c.



approved by the SPP Markets and Operations Policy Committee.<sup>104</sup> The evaluation will consider, among other things: (1) a 40-year financial modeling time frame; (2) quantification of benefits resulting from dispatch savings, loss reductions, avoided projects, applicable environmental impacts, reduction in required operating reserves, interconnection improvements, congestion reduction, and other appropriate metrics; (3) if possible, quantification of benefits related to any proposed transmission upgrade that is required to meet regional reliability criteria; and (4) different sensitivity scenarios for load forecasts, wind generation levels, fuel prices, and environmental costs.<sup>105</sup>

53. Regarding merchant transmission developers, SPP states that its stakeholders already have developed a process for merchant transmission developers to interconnect to the SPP transmission system, which includes information and study requirements. Specifically, SPP notes that Appendix 11 of the SPP Criteria, which is posted on the SPP website,<sup>106</sup> sets forth detailed processes for SPP and the party requesting interconnection to coordinate; perform studies, including power flow, short circuit, and dynamic analyses; and exchange data. According to SPP, Appendix 11 also contains a “Transmission Interconnection Review Data Checklist” with data and information that includes, but is not limited to, estimated or proposed in-service dates; a detailed description of the proposed interconnection; details of any required mitigation plans; interconnection design information and rating; maps; and one-line diagrams. SPP contends that this information enables it to determine the impact of an interconnection, including an interconnection by a merchant transmission developer, to the SPP transmission system.

## ii. Protests/Comments

54. Clean Line supports several aspects of SPP’s compliance filing that are designed to meet the Commission’s goal for regional transmission plans to identify transmission facilities that more efficiently or cost-effectively meet the region’s reliability, economic and public policy requirements by reflecting a fair consideration of transmission facilities proposed by nonincumbent transmission developers.<sup>107</sup> However, Clean Line asserts that SPP’s transmission planning process lacks a way to study the potential regional benefits

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<sup>104</sup> SPP OATT, Attachment O, § III.8.e.

<sup>105</sup> *Id.*, § III.8.f.

<sup>106</sup> SPP Transmittal at 29 (citing Southwest Power Pool, *Southwest Power Pool Criteria*, Appendix 11 (Jan. 30, 2012), <http://www.spp.org/publications/SPP%20Criteria%20and%20Appendices%20Jan.%202012.pdf>).

<sup>107</sup> Clean Line Comments at 5 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 11).

of participant-funded projects that allows for partial cost allocation of such projects.<sup>108</sup> Clean Line asserts that, if a merchant project is submitted for inclusion in the ITP as a detailed project proposal or sponsored project, the project sponsor should be allowed to propose that the project be studied as a solution to identified transmission needs. Clean Line argues that, if these studies show regional benefits, then some portion of the project's cost should be eligible for cost allocation through the process identified in SPP's compliance filing.<sup>109</sup>

### iii. Answer

55. SPP argues that Clean Line misunderstands SPP's proposed Transmission Owner Selection Process. SPP notes that proposing a detailed transmission project proposal does not entitle the proponent to build the transmission project and receive regional cost allocation. SPP explains that, instead, the detailed project proposal would entitle the proponent to 100 incentive points in the Transmission Owner Selection Process. SPP further explains that, if a merchant transmission developer proposed part of its project as a detailed project proposal and the project is selected in the ITP process, the merchant would be required to compete along with any other interested entity in the Transmission Owner Selection Process.<sup>110</sup> In addition, SPP states that, under existing processes, Sponsored Upgrades<sup>111</sup> are, by definition, participant-funded and therefore not eligible for cost allocation.

### iv. Commission Determination

56. We find that SPP's ITP process complies with the requirements of Order No. 1000 because it outlines the process by which SPP evaluates, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning processes. We agree with SPP that the ITP process results in a regional transmission plan that reflects the set of transmission facilities that more efficiently or cost-effectively meet the region's needs. SPP provides stakeholders with an initial list of cost-effective transmission solutions to meet the region's needs. Once stakeholders have had a chance

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<sup>108</sup> *Id.* at 6-7.

<sup>109</sup> *Id.* at 7.

<sup>110</sup> SPP Answer at 79.

<sup>111</sup> Sponsored Upgrades are network upgrades requested by a transmission customer or other entity, which do not meet the definition of any other category of network upgrades, and the costs of which are voluntarily borne by the project sponsor. *See* SPP OATT, § 1.1 (S – Definitions); SPP OATT, Attachment J, § V.A.

to review the initial list, the ITP process requires that SPP consider, on a comparable basis, any alternative proposals, which could include, but would not be limited to, generation options, demand response programs, “smart grid” technologies, and energy efficiency programs. This process results in SPP developing a regional transmission plan that selects transmission facilities that more efficiently or cost-effectively meet the region’s needs to identify transmission solutions that address both near-term and long-term transmission needs.

57. We also agree with SPP that Appendix 11 of its SPP Criteria enables SPP to assess the potential reliability and operational impacts of the merchant transmission developer’s proposed transmission facilities on other systems in the region. We reject Clean Line’s request that we direct SPP to allow transmission developers to submit merchant transmission projects for full evaluation in the SPP regional transmission planning process. Order No. 1000 requires a transmission developer proposing a merchant transmission project to “provide adequate information and data to allow public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer’s proposed transmission facilities on other systems in the region.”<sup>112</sup> Order No. 1000 further states that the public utility transmission providers in each transmission planning region, in the first instance, should propose what information would be required.<sup>113</sup> SPP proposes to continue its existing practice of obtaining adequate information and data to assess potential reliability and operational impacts of a merchant transmission project through Appendix 11 of the SPP Criteria, which details the process and information and study requirements for interconnecting with the SPP transmission system. While SPP includes in Appendix 11 the information a merchant transmission developer must submit to enable SPP to assess the potential reliability and operational impacts of the merchant transmission developer’s proposed transmission facilities on other systems in the region, SPP must include the information requirements in its OATT in order to comply with the merchant information requirement of Order No. 1000.<sup>114</sup> Accordingly, we direct SPP to file, within 120 days of the date of this order, a further compliance filing to include in its OATT the information requirements for merchant transmission developers that are currently listed in Appendix 11 of the SPP Criteria.

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<sup>112</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 164.

<sup>113</sup> *Id.* P 164.

<sup>114</sup> Specifically, SPP must include language in its OATT that merchant transmission developers must provide the information in the Transmission Interconnection Review Data Checklist of Appendix 11 of SPP’s Criteria, which includes, but is not limited to, estimated or proposed in-service dates; a detailed description of the proposed interconnection; details of any required mitigation plans; interconnection design information and rating; maps; and one-line diagrams.

58. Further, while Order No. 1000 established the information requirement discussed above, the Commission also concluded that, because a merchant transmission developer assumes financial risks for developing its transmission project and constructing the proposed transmission facilities, a merchant transmission developer is not required to participate in a regional transmission planning process for purposes of identifying the beneficiaries of its transmission project for potential selection in the regional transmission plan for purposes of cost allocation.<sup>115</sup> Thus, a transmission developer is not required to submit a merchant transmission project into the regional transmission planning process, and the regional transmission planning process is not required to evaluate a merchant transmission project for potential selection in the regional transmission plan for purposes of cost allocation.<sup>116</sup> However, nothing prevents a transmission developer from submitting its transmission project into the regional transmission planning process for potential selection in the regional transmission plan for purposes of cost allocation. In that case, the regional transmission planning process would evaluate the proposed transmission project as it would any other proposed project and, if the transmission project is selected in the regional transmission plan for purposes of cost allocation, it would be eligible to use the regional cost allocation method. If the proposed transmission facility is not selected in the regional transmission plan for purposes of cost allocation, then the transmission developer could choose to move forward as a merchant transmission facility.

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

59. 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>117</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

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<sup>115</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 163.

<sup>116</sup> *Id.* P 165; Order No. 1000-A, 139 FERC ¶ 61,132 at P 297. Although the transmission facilities proposed by a merchant transmission developer are not subject to the evaluation and selection processes that apply to transmission facilities for which regional cost allocation is sought, the Commission encouraged merchant transmission developers to voluntarily participate in the regional transmission planning process (beyond providing the information and data required above) even if they are not seeking regional cost allocation for their proposed transmission projects. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 165.

<sup>117</sup> *Id.* P 203.

as transmission needs driven by reliability or economic concerns are also considered.<sup>118</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>119</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>120</sup>

60. 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>121</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>122</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>123</sup>

61. 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>124</sup> Public utility

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<sup>118</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 204, 206, 208-211, 317-319.

<sup>119</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. *Id.* P 319.

<sup>120</sup> *Id.* P 205.

<sup>121</sup> *Id.* PP 206, 207.

<sup>122</sup> *Id.* PP 207, 208.

<sup>123</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

<sup>124</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

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>125</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>126</sup>

62. 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 tariffs to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements.<sup>127</sup> These procedures must include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by Public Policy Requirements.<sup>128</sup> Stakeholders must be provided an opportunity to provide input during the evaluation of potential solutions to identified needs.<sup>129</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>130</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>131</sup>

63. Public utility transmission providers must amend their tariffs to describe procedures that provide for the consideration of transmission needs driven by Public

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<sup>125</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

<sup>126</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

<sup>127</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

<sup>128</sup> *Id.*; *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>129</sup> *Id.* P 220.

<sup>130</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

<sup>131</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

Policy Requirements in the local and regional transmission planning processes.<sup>132</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>133</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 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>134</sup> In addition, public utility transmission providers are not required to consider Public Policy Requirements themselves as part of the transmission planning process.<sup>135</sup>

**i. Planning for Transmission Needs Driven by Public Policy Requirements**

**(a) Regional Planning for Transmission Needs Driven by Public Policy Requirements**

**(1) SPP's Filing**

64. SPP asserts that its existing ITP process substantially complies with the Order No. 1000 directives regarding consideration of transmission needs driven by public policy requirements. Specifically, SPP points to section III.6 of Attachment O that establishes “Policy, Reliability, and Economic Input Requirements to Planning Studies,” which includes, among other things, renewable energy standards, energy efficiency requirements, other relevant environmental or government mandates, and other input requirements identified during the stakeholder process.<sup>136</sup> SPP states that it also is required to develop and finalize the study scope for each ITP process assessment in consultation with stakeholders, post the assessment study scope on the SPP website, and include it in the annual STEP report.<sup>137</sup> Therefore, SPP contends that it already considers

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<sup>132</sup> *Id.* P 203.

<sup>133</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 214; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

<sup>134</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216.

<sup>135</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 204.

<sup>136</sup> SPP Transmittal at 25-26; SPP OATT, Attachment O, § III.6.

<sup>137</sup> SPP Transmittal at 26; SPP OATT, Attachment O, § III.3.g, III.4.g, III.5.e.

transmission needs driven by public policy requirements, including those proposed by stakeholders, and posts information on its website (and in the STEP) regarding study inputs, including inputs related to transmission needs driven by public policy requirements. SPP notes that, given the integrated nature of the ITP process, SPP does not separately plan for transmission facilities to address transmission needs driven by public policy requirements. SPP explains that, instead, it includes such requirements in its transmission planning studies and analyzes potential solutions according to the scope of the assessment study. SPP states that it evaluates all potential solutions based on their cost-effectiveness.

65. While SPP asserts that it substantially complies with the Order No. 1000 requirements regarding transmission needs driven by public policy requirements, in its compliance filing, SPP proposes several OATT revisions to clarify and provide greater detail regarding its process for considering transmission needs driven by public policy requirements. First, SPP proposes to adopt a definition of “public policy requirements,” which includes “[r]equirements established by local, state, or federal laws or regulations, including duly enacted statutes or regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level.”<sup>138</sup> SPP states that this language reflects the definition of public policy requirements established in Order Nos. 1000 and 1000-A. Second, SPP proposes to clarify in Attachment O that the relevant stakeholder working groups will review and develop the list of transmission needs driven in whole or in part by public policy requirements for which transmission solutions will be evaluated.<sup>139</sup> Third, SPP proposes to clarify that, to the extent a transmission owner engages in a local transmission planning process, the local process and the transmission owner’s company-specific planning criteria must provide for the identification and evaluation of transmission needs driven by public policy requirements.<sup>140</sup>

66. SPP also proposes language to (1) specify that the assessment study scope, which is posted on SPP’s website, will include an explanation of which transmission needs driven by public policy requirements will be evaluated for potential solutions and why other suggested needs will not be evaluated;<sup>141</sup> (2) clarify that the planning study inputs include “[t]ransmission needs driven by [public policy requirements] identified by SPP and stakeholders” and the alternatives that will be analyzed include alternatives proposed by stakeholders, including “upgrades to address transmission needs driven in whole or in part by identified [public policy requirements];”<sup>142</sup> (3) indicate that, for all proposed

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<sup>138</sup> SPP Transmittal at 26; SPP OATT, § I.1 (P – Definitions).

<sup>139</sup> SPP Transmittal at 27; SPP OATT, Attachment O, § II.2.a.vi.

<sup>140</sup> SPP Transmittal at 27 n.139.

<sup>141</sup> *Id.* at 27; SPP OATT, Attachment O, § III.3.g, III.4.g, III.5.e.

<sup>142</sup> SPP Transmittal at 27; SPP OATT, Attachment O, § III.6.o, III.8.c.



transmission solutions, including those proposed to address transmission needs driven by public policy requirements, SPP will determine if there is a more comprehensive regional solution;<sup>143</sup> and (4) make additional conforming revisions.<sup>144</sup>

(2) **Protests/Comments**

67. Several commenters agree that SPP's existing transmission planning process complies with the Order No. 1000 directive regarding regional transmission planning and consideration of transmission needs driven by public policy requirements.<sup>145</sup> However, in order to memorialize the role of local, state or federal policy in the transmission planning process, AWEA/Wind Coalition argue that SPP should revise its proposed definition for public policy requirements to include the words "but not limited to" so that the definition would state that "[r]equirements established by local, state or federal laws or regulations, including, *but not limited to*, duly enacted statues or regulations promulgated by a relevant jurisdiction, whether within a locality, state or at the federal level."<sup>146</sup> In addition, Public Interest Organizations suggest that SPP's definition of public policy requirements could be improved by including future, rather than only existing, policies.<sup>147</sup> Public Interest Organizations assert that limiting the definition of public policy requirements to only current laws and regulations could have the unintended negative consequence of restricting SPP's future needs assessments.<sup>148</sup>

68. AWEA/Wind Coalition also suggest that SPP broaden the definition of public policy requirements, as permitted in Order No. 1000, to include any type of legal or regulatory requirements or standards that affect transmission development that take effect in future years such as Federal Clean Air Act rules governing emissions from electric generating units.<sup>149</sup> According to AWEA/Wind Coalition, if regional participants are fairly aware of upcoming policy changes, it is imprudent to preclude a discussion of the

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<sup>143</sup> SPP Transmittal at 27; SPP OATT, Attachment O, § III.8.c.

<sup>144</sup> SPP Transmittal at 27; SPP OATT, Attachment O, § III.2.b.ii.

<sup>145</sup> See AWEA/Wind Coalition Comments at 6, 9-12; Clean Line Comments at 5; ITC Great Plains Comments at 2; AEP Comments at 4; Western Farmers Comments at 2-3; Public Interest Organizations Comments at 9.

<sup>146</sup> AWEA/Wind Coalition Comments at 7.

<sup>147</sup> Public Interest Organizations Comments at 9-10.

<sup>148</sup> *Id.* at 10.

<sup>149</sup> AWEA/Wind Coalition Comments at 8 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at PP 167, 303).

existing transmission planning process' ability to resolve these forthcoming needs because future transmission might not be sufficient to accommodate public policy requirements.<sup>150</sup> AWEA/Wind Coalition claim that, while SPP has recognized in practice in its ITP process that public policy objectives and public policy requirements have a place in regional transmission planning, SPP's proposed OATT is not clear on this point. AWEA/Wind Coalition ask the Commission to encourage SPP to revise its OATT to provide for the consideration of public policy objectives, as well as public policy requirements. AWEA/Wind Coalition add that it would not oppose an OATT provision that provides for preeminence of public policy requirements over public policy objectives.<sup>151</sup>

(3) Answer

69. SPP responds that it has fully complied with the Commission's mandates regarding consideration of transmission needs driven by public policy requirements. SPP suggests that parties' requests that SPP adopt additional provisions regarding public policy objectives raise issues beyond the scope of Order No. 1000 and should be ignored.

70. Specifically, SPP states that Order No. 1000 places no obligation on SPP to consider future public policy requirements that may or may not ever be codified in a local, state, or federal law or regulation.<sup>152</sup> SPP claims that Public Interest Organizations have ignored that, during SPP's Order No. 1000 stakeholder process, SPP and its stakeholders discussed whether to expand the definition of public policy requirements to include public policy goals not required by enacted laws and regulations and opted not to do so. Thus, SPP argues that this decision is consistent with the Commission's observation that "public utility transmission providers, in consultation with stakeholders, are in the best position to determine whether to consider in a transmission planning process any public policy objectives beyond those required by this Final Rule."<sup>153</sup>

71. Moreover, SPP notes that provisions of Attachment O of its current OATT permit SPP and its stakeholders to consider other public policy goals and objectives beyond those required by enacted statutes and promulgated regulations. SPP states that the provisions require SPP to include "[o]ther input requirements identified during the stakeholder process" as an input to its planning studies.<sup>154</sup> According to SPP, its

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<sup>150</sup> *Id.* at 8.

<sup>151</sup> *Id.* at 9.

<sup>152</sup> SPP Answer at 69-70.

<sup>153</sup> *Id.* at 70-71 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216).

<sup>154</sup> *Id.* at 71 (citing SPP OATT, Attachment O, § III.6.o). SPP notes that, other than being renumbered, this provision is unchanged. *Id.* at 71 (citing SPP OATT,

stakeholders have used this existing language to request that SPP consider public policy goals other than the requirements set forth in relevant law. SPP asserts that this case-by-case approach, rather than broadening the definition of public policy requirements, affords SPP and its stakeholders flexibility to consider objectives and anticipated mandates.

72. In response to AWEA/Wind Coalition's request to modify the definition of public policy requirements, SPP asserts that AWEA/Wind Coalition does not explain how SPP's current definition, which is taken directly from the language of Order No. 1000 as modified by Order No. 1000-A, does not comply with Order No. 1000. SPP also claims that AWEA/Wind Coalition fails to explain how a law that was not duly enacted or promulgated by a relevant jurisdiction could be considered a "requirement" as the term is defined by Order No. 1000 and therefore, SPP cannot determine if AWEA/Wind Coalition's suggestion would be acceptable.<sup>155</sup>

#### (4) **Commission Determination**

73. We find that SPP's ITP provisions, in conjunction with the proposed revisions in SPP's compliance filing, partially comply with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements. Order No. 1000 allows public utility transmission providers flexibility in developing proposals to consider transmission needs driven by public policy requirements.<sup>156</sup> Our focus here is on SPP's proposal to rely on the integrated nature of its existing ITP process, which does not separately plan transmission facilities to address needs driven by public policy requirements, to comply with the requirements of Order No. 1000. As discussed further below, SPP must submit a further compliance filing to address in greater detail the requirement in Order No. 1000 to establish procedures for identifying transmission needs driven by public policy requirements in its regional transmission planning process that allow stakeholders an opportunity to provide input and offer proposals regarding the transmission needs they believe are driven by public policy requirements.

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Attachment O, § III.6.p).

<sup>155</sup> *Id.* at 72.

<sup>156</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 220 ("Some public utility transmission providers might comply with [Order No. 1000] by implementing procedures to consider transmission needs driven by Public Policy Requirements separately from transmission addressing reliability needs or economic considerations. Other public utility transmission providers might comply with [Order No. 1000] by identifying and evaluating all transmission needs, whether driven by Public Policy Requirements, compliance with reliability criteria, or economic considerations.").

74. SPP proposes to define public policy requirements as “[r]equirements established by local, state, or federal laws or regulations, including duly enacted statutes or regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level.”<sup>157</sup> We find that the proposed definition is consistent with the definition established by the Commission in Order Nos. 1000 and 1000-A, and we will not require SPP to revise the proposed definition to add the phrase “but not limited to” as suggested by AWEA/Wind Coalition. Moreover, because Order No. 1000 defines public policy requirements as requirements established by local, state, or federal laws or regulations and SPP’s definition complies with Order No. 1000, we will not require SPP to revise the definition as requested by Public Interest Organizations, which argue that more than current laws and regulations should be included. The requirements of Order No. 1000 with respect to public policy requirements are limited to “enacted statutes (i.e., 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,” as well as “duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government.”<sup>158</sup> 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>159</sup>

75. We recognize that SPP’s ITP process, as described in Attachment O of SPP’s OATT, offers opportunities for stakeholders to provide input on the scope of SPP’s planning studies through transmission planning forums.<sup>160</sup> The transmission planning forums include planning summits and sub-regional planning meetings which, among other things, provide an open forum where all stakeholders, including those with local transmission needs, have an opportunity to provide advice and recommendations to SPP and transmission owners in the development of the STEP and local planning needs.<sup>161</sup> Moreover, SPP has revised the list of inputs it takes into consideration in developing the study scope to explicitly include “[t]ransmission needs driven by Public Policy Requirements identified by the Transmission Provider and stakeholders.”<sup>162</sup> However, we find that SPP’s OATT does not explicitly state at what point(s) in the process

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<sup>157</sup> SPP Transmittal at 26; SPP OATT, § I.1 (P – Definitions).

<sup>158</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

<sup>159</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216.

<sup>160</sup> *See, e.g.*, SPP OATT, Attachment O, § III.2 (Transmission Planning Forums).

<sup>161</sup> *Id.*, § III.2(a), III.2(b).

<sup>162</sup> *Id.*, § III.6(o).

stakeholders can offer proposals regarding the transmission needs they believe are driven by public policy requirements. To the extent that SPP plans to use its existing procedures that already allow for stakeholder input, it has to explicitly include or accommodate transmission needs driven by public policy requirements. Accordingly, we direct SPP to file, within 120 days of the date of this order, a further compliance filing to revise its OATT to include clear, transparent procedures for identifying transmission needs driven by public policy requirements in its regional transmission planning process that allow stakeholders an opportunity to provide input and offer proposals regarding the transmission needs driven by public policy requirements.

76. In addition, Order No. 1000 requires that public utility transmission providers, in consultation with their stakeholders, establish a just and reasonable and not unduly discriminatory process through which the public utility transmission provider will identify those transmission needs driven by public policy requirements for which transmission solutions will be evaluated.<sup>163</sup> We understand SPP's proposal to incorporate its identification of transmission needs driven by public policy requirements into its overall regional transmission planning process. However, SPP is required to explain in its OATT the process it will use to identify, out of the larger set of transmission needs driven by public policy requirements that stakeholders may propose, those needs for which transmission solutions will be evaluated. Thus, we direct SPP to file, within 120 days of the date of this order, a further compliance filing to include such a process in its OATT and, consistent with the requirements of Order No. 1000, to explain in its compliance filing the just and reasonable and not unduly discriminatory process.<sup>164</sup>

77. We find that SPP's proposal complies with the requirement to post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the regional transmission planning processes, and (2) why other suggested transmission needs driven by public policy requirements will not be evaluated.<sup>165</sup> Sections 3(g), 4(g), and 5(e) of Attachment O provide that the finalized 20-year, 10-year, and near term assessment study scopes are posted on the SPP website and included in the STEP. SPP has proposed to revise these OATT sections to provide that the assessment study scopes shall include an explanation of which transmission needs driven by public policy requirements will be evaluated for potential transmission solutions in the local and regional transmission

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<sup>163</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

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

<sup>165</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

planning process, as well as an explanation of why other suggested transmission needs will not be evaluated.<sup>166</sup>

78. Finally, Order No. 1000 requires that SPP, in consultation with stakeholders, establish procedures in its OATT to evaluate at the regional level potential transmission solutions to identified transmission needs driven by public policy requirements. These procedures must address the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements<sup>167</sup> and provide stakeholders with an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs.<sup>168</sup> We note that through the ITP process, SPP does not separately plan transmission facilities to address needs driven by public policy requirements. Instead, SPP includes such transmission needs as inputs to planning studies and analyzes potential transmission solutions in accordance with the assessment study scope. Thus, we find that SPP evaluates transmission needs driven by public policy requirements throughout its ITP process just as it evaluates transmission needs driven by reliability or economic concerns, and thus SPP complies with the evaluation requirement of Order No. 1000.

79. For instance, after the study scope for each assessment is developed and finalized, SPP analyzes any potential alternatives for improvements to its transmission system proposed by SPP and its stakeholders.<sup>169</sup> Existing section III.8(c) of Attachment O specifies that for all potential transmission alternatives provided by stakeholders, SPP will determine if there is a more comprehensive regional transmission solution to address reliability and economic needs. SPP revises this section to include the consideration of transmission needs driven by public policy requirements when determining if there is a more comprehensive regional solution. SPP considers, on a comparable basis, any alternative proposals, e.g., generation options, demand response programs, smart grid technologies, and energy efficiency programs. These solutions are evaluated against each other based “on a comparison of their relative effectiveness of performance and economics,”<sup>170</sup> and SPP assesses the cost-effectiveness of the proposed solutions. SPP then makes a comprehensive presentation of the preferred, potential solutions, including the results of the analysis and a discussion of all transmission provider and stakeholder alternatives considered and reasons for choosing the particular preferred solution to

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<sup>166</sup> SPP OATT, Attachment O, § III.3(g), III.4(g), III.5(e).

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

<sup>168</sup> *Id.* at P 220.

<sup>169</sup> SPP OATT, Attachment O, § III.8 (Process to Analyze Transmission Alternatives for Each Assessment).

<sup>170</sup> SPP OATT, Attachment O § III.8(d).

stakeholder working groups and solicits feedback on the solutions.<sup>171</sup> Upon consideration of the feedback and the cost effectiveness analysis, SPP prepares a draft list of transmission projects for review by stakeholder working groups and the SPP Regional State Committee and, ultimately, for approval by the SPP Board.<sup>172</sup>

(b) **Local Planning for Transmission Needs Driven by Public Policy Requirements**

(1) **SPP Local Planning**

80. With the exception of SPS, the transmission owners that belong to SPP do not have local transmission planning processes separate from regional planning. Section II.5 of Attachment O of SPP's OATT provides that SPP evaluates both regional and local planning criteria.<sup>173</sup> Thus, for these public utility transmission providers, Order No. 1000's requirements with regard to public policy requirements apply only to the regional transmission planning process, consistent with Order No. 1000.<sup>174</sup>

(2) **Southwestern Public Service Company Local Planning**

(i) **Southwestern Public Service Company Filing**

81. In Docket No. ER13-75-000, Xcel, on behalf of SPS, filed proposed changes to the Xcel OATT related to SPS's local transmission planning process to comply with Order No. 1000's public policy requirements. We address this portion of Xcel's filing here because SPS is a transmission-owning member of SPP and is subject to the SPP Order No. 1000 compliance filing for the SPS high voltage (69 kV and above) transmission system.<sup>175</sup> Xcel explains that SPS performs local transmission planning for lower voltage facilities and this local transmission planning process is then incorporated

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<sup>171</sup> *Id.*, § III.8(g)-(h).

<sup>172</sup> *Id.*, § III.8(i).

<sup>173</sup> *Id.*, § II.5.

<sup>174</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203 n.185 (“To the extent public utility transmission providers within a region do not engage in local transmission planning, such as in some ISO/RTO regions, the requirements of this Final Rule with regard to Public Policy Requirements apply only to the regional transmission planning process.”).

<sup>175</sup> Xcel Filing, Docket No. ER13-75-000, at 19 (filed Oct. 11, 2012).

into the SPP regional transmission planning process. For this reason, Xcel proposes revisions to Xcel's OATT to address the Order No. 1000's requirements with respect to consideration of transmission needs driven by public policy requirements in its local transmission planning process. Xcel proposes to add the underlined and bolded sentence to the following paragraphs:

As a part of the SPS local planning process, stakeholders are able to submit comments regarding planning activities, such as the development of assumptions and models and the identification of system needs **(including those driven by local, state, and federal public policies)** and potential solutions, at each stage of the local planning process. In particular, and as more fully described below, stakeholders can submit comments in: (1) annual meetings conducted by SPS as a part of its local planning process; and/or (2) through the submission of comments to the relevant person on the Points of Contact List (also referred to as "Contacts List") identified by SPS on its portion of the SPP OASIS [<http://www.oatioasis.com/SPS/index.html>].<sup>176</sup>

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SPS will coordinate the local planning meetings, preside over such meetings, and keep minutes of the meetings. Meeting minutes will be posted on OASIS. Meetings will be scheduled and conducted so as to permit interested [network integration transmission service] customers (whether service is provided under the Joint OATT or SPP OATT), and other Stakeholders to have the opportunity to express views related to the topics on the agenda. SPS will then forward information developed in the meetings to SPP for consideration in the STEP. **The information forwarded to SPP shall include, but not be limited to, transmission needs suggested by transmission customers and Stakeholders for the implementation of enacted local, state, or federal public policies.**<sup>177</sup>

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<sup>176</sup> *Id.* at Ex. D (Xcel Energy Operating Companies, Attachment R-SPS, § II.1) (filed Oct. 11, 2012).

<sup>177</sup> *Id.* at Ex. D (Xcel Energy Operating Companies, Attachment R-SPS, § II.1) (filed Oct. 11, 2012).



**(ii) Commission Determination**

82. We find that Xcel partially complies with the requirement to describe procedures that provide for the consideration of transmission needs driven by public policy requirements in the local transmission planning process. We direct Xcel to submit a further compliance filing to fully comply, as discussed below.

83. First, we find that Xcel has not included in its OATT a definition of public policy requirements that is consistent with the definition adopted in Order No. 1000. Order No. 1000 defines public policy requirements as 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>178</sup> Xcel proposes to consider “enacted federal, state, and local public policies,” but does not define what it means by “public policies.” Accordingly, we direct Xcel to file a further compliance filing revising its OATT to define public policy requirements as 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), consistent with the definition of public policy requirements set forth in Order No. 1000.

84. Next, with regard to identification of transmission needs driven by public policy requirements, we find that Xcel’s proposed revisions comply with requirement that public utility transmission providers amend their OATTs to describe the procedures by which transmission needs driven by public policy requirements will be identified in the local transmission planning processes, which must allow stakeholders an opportunity to provide input and offer proposals regarding the transmission needs they believe are driven by public policy requirements. Xcel proposes revisions to its OATT that will allow stakeholders “to submit comments regarding planning activities, such as the development of assumptions and models and the identification of system needs (including those driven by local, state, and federal public policies).”<sup>179</sup> Xcel’s OATT provides that stakeholders may submit such comments both at annual meetings conducted by SPS as a part of its local transmission planning process and/or to the relevant person on the Points of Contact List identified by SPS on its portion of the SPP OASIS.<sup>180</sup>

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<sup>178</sup> *See supra* P 59.

<sup>179</sup> Xcel Filing, Docket No. ER13-75-000, at Ex. D (Xcel Energy Operating Companies, Attachment R-SPS, § II.1) (filed Oct. 11, 2012).

<sup>180</sup> *Id.* at Ex. D (Xcel Energy Operating Companies, Attachment R-SPS, § II.1) (filed Oct. 11, 2012).

85. However, Order No. 1000 also requires that each public utility transmission provider, in consultation with its stakeholders, establish a just and reasonable and not unduly discriminatory process through which the public utility transmission provider will identify those transmission needs driven by public policy requirements, out of the larger set of identified needs, for which transmission solutions will be evaluated.<sup>181</sup> Xcel has not complied with this obligation. Thus, we direct Xcel to submit a compliance filing to include such a process in its OATT and, consistent with the requirements of Order No. 1000, to explain in its compliance filing how its open and transparent transmission planning process determines whether to move forward regarding transmission needs driven by public policy requirements.<sup>182</sup>

86. Moreover, while Xcel's OATT provides that it will post general information related to its transmission planning process on its website, in order to comply with Order No. 1000, SPS has not complied with Order No. 1000's requirement that it post on its website: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the local transmission planning process; and (2) why other suggested transmission needs driven by public policy requirements will not be evaluated.<sup>183</sup> Accordingly, we direct Xcel to revise its OATT to provide for such postings in the further compliance filing discussed below.

87. Moreover, Order No. 1000 requires that each public utility transmission provider, in consultation with stakeholders, establish procedures in its tariff to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements that both include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements<sup>184</sup> and allow stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs.<sup>185</sup> While Xcel's OATT provides for the evaluation of alternative solutions, Xcel has not explained whether this evaluation process will apply to potential transmission solutions to identified transmission needs driven by public policy requirements.<sup>186</sup> Because Xcel has not explained how SPS' local transmission planning process fulfills this requirement, we find

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<sup>181</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

<sup>182</sup> Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 335.

<sup>183</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

<sup>184</sup> *Id.* at P 211.

<sup>185</sup> *Id.* at P 220.

<sup>186</sup> *See* Xcel Filing, Docket No. ER13-75-000, at Ex. D (Xcel Energy Operating Companies, Attachment R-SPS, § II.5) (filed Oct. 11, 2012).

that it does not comply with Order No. 1000. We direct Xcel to file a further compliance filing adopting in its tariff procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements that comply with the above-mentioned requirements of Order No. 1000.

88. Accordingly, we direct Xcel to submit, within 120 days of the date of this order, a further compliance filing that includes tariff revisions to (1) include a definition of public policy requirements consistent with Order No. 1000; (2) describe a just and reasonable and not unduly discriminatory process through which Xcel will identify those transmission needs driven by public policy requirements for which transmission solutions will be evaluated; (3) provide for the posting on its website of an explanation of (i) those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the local transmission planning process and (ii) why other suggested transmission needs driven by public policy requirements will not be evaluated; and (4) establish procedures to evaluate at the local level potential transmission solutions to identified transmission needs driven by public policy requirements.

## 2. Nonincumbent Transmission Developer Reforms

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

### a. Federal Rights of First Refusal

90. Order No. 1000 requires that each public utility transmission provider eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.<sup>187</sup> Order No. 1000 defines a transmission facility selected in a regional transmission plan for purposes of cost allocation as a transmission facility that has been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because it is a more efficient or cost-effective solution to regional transmission needs.<sup>188</sup>

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<sup>187</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. The phrase "a federal right of first refusal" refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

<sup>188</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 5, 63.

If a public utility transmission provider's tariff or other Commission-jurisdictional agreements do not contain a federal right of first refusal provision, a public utility transmission provider should state this in its compliance filing.<sup>189</sup>

91. The requirement in Order No. 1000 to eliminate a federal right of first refusal does not apply to local transmission facilities,<sup>190</sup> which are defined as transmission facilities located solely within a public utility transmission provider's retail distribution service territory or footprint that are not selected in the regional transmission plan for purposes of cost allocation.<sup>191</sup> The requirement also does not apply to the right of an incumbent transmission provider to build, own, and recover costs for upgrades to its own transmission facilities, regardless of whether an upgrade has been selected in the regional transmission plan for purposes of cost allocation.<sup>192</sup> In addition, the Commission noted that the requirement does not remove, alter or limit an incumbent transmission provider's use and control of its existing rights-of-way under state law.<sup>193</sup>

92. The Commission clarified in Order No. 1000-A that Order No. 1000 does not require elimination of a federal right of first refusal for a new transmission facility if the regional cost allocation method results in an allocation of 100 percent of the facility's costs to the public utility transmission provider in whose retail distribution service

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<sup>189</sup> *Id.* P 314 n.294.

<sup>190</sup> *Id.* PP 226, 258, 318.

<sup>191</sup> *Id.* at P 63. The Commission clarified in Order No. 1000-A that a local transmission facility is one that is located within the geographical boundaries of a public utility transmission provider's retail distribution service territory, if it has one; otherwise the area is defined by the public utility transmission provider's footprint. In the case of an RTO or ISO whose footprint covers the entire region, local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owning members. Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

<sup>192</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

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

territory or footprint the facility is to be located.<sup>194</sup> The Commission also clarified in Order No. 1000-A that the phrase “selected in a regional transmission plan for purposes of cost allocation” excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located.<sup>195</sup> However, the Commission acknowledged in Order No. 1000-A that that there may be a range of examples of multi-transmission provider zones, and it would address whether a cost allocation to a multi-transmission provider zone is regional on a case-by-case basis based on the facts presented on compliance.<sup>196</sup>

93. The Commission received comments during the rulemaking process regarding the applicability of the *Mobile-Sierra* doctrine to rights of transmission owners to build found in agreements subject to Commission jurisdiction. The Commission stated in Order No. 1000 that the record was not sufficient in the generic rulemaking to address such issues, and those issues are better addressed as part of the proceeding on the compliance filing submitted pursuant Order No. 1000, where interested parties may provide additional information.<sup>197</sup> The Commission stated in Order No. 1000-A, and reiterated in Order No. 1000-B, that any compliance filing must include the revisions to any Commission-jurisdictional tariffs and agreements necessary to comply with Order No. 1000 as well as the *Mobile-Sierra* arguments. The Commission will first decide, based on a more complete record, including the viewpoints of other interested parties, whether the agreement has *Mobile-Sierra* protection, and if so, whether the Commission has met the applicable standard of review such that it can require the modification of the particular provisions involved. If the Commission determines that the agreement does have *Mobile-Sierra* protection and that it cannot meet the applicable standard of review, then the Commission will not consider whether the revisions submitted to the Commission-jurisdictional tariffs and agreements comply with Order No. 1000. However, if the Commission determines that the agreement is not protected by a *Mobile-Sierra* provision or that the Commission has met the applicable standard of review, then the Commission will decide whether the revisions to the Commission-jurisdictional tariffs and agreements comply with Order No. 1000 and, if such tariffs and agreements are accepted, they would become effective consistent with the approved effective date.<sup>198</sup>

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<sup>194</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 423.

<sup>195</sup> *Id.* at P 423.

<sup>196</sup> *Id.* at P 424; Order No. 1000-B, 141 FERC ¶ 61,044 at P 42.

<sup>197</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 292.

<sup>198</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 389.

**i. Mobile-Sierra**

94. SPP proposes to remove a federal right of first refusal for certain transmission facilities only if the Commission denies SPP's *Mobile-Sierra* arguments. Thus, we begin the nonincumbent transmission developer reform discussion below by first addressing SPP's argument that it should not be required to remove a federal right of first refusal from its Membership Agreement because the Membership Agreement is entitled to *Mobile-Sierra* protection.

**(a) SPP Filing**

95. SPP argues that its Membership Agreement is protected by the *Mobile-Sierra* doctrine because the agreement is silent on the standard of review.<sup>199</sup> SPP states that, absent an express waiver or limitation in an agreement, *Mobile-Sierra* protections apply even if the agreement is silent on the standard of review.<sup>200</sup> SPP notes that the Commission has found that a similar RTO agreement (that defines the roles of the RTO and members) imposes a *Mobile-Sierra* standard of review, so the Commission may modify the agreement only if it "adversely affect[s] the public interest."<sup>201</sup> Therefore, based on the plain text of the Membership Agreement and applicable precedent, SPP asserts that the Commission cannot compel SPP to modify its Membership Agreement to eliminate existing transmission construction rights and obligations, unless the Commission shows that the existing provision "seriously harms the public interest" and that the proposed modification is of "unequivocal public necessity."<sup>202</sup>

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<sup>199</sup> SPP Transmittal at 38-40, 42-43.

<sup>200</sup> *Id.* at 42 (citing *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 534 (2008) (*Morgan Stanley*); *Texaco Inc. v. FERC*, 148 F.3d 1091, 1096 (D.C. Cir. 1998); *Appalachian Power Co. v. Fed. Power Comm'n*, 529 F.2d 342, 348 (D.C. Cir. 1976); *Standard of Review for Modifications to Jurisdictional Agreements*, 125 FERC ¶ 61,310, at PP 4-5 (2008); *Wis. Pub. Serv. Corp.*, 120 FERC ¶ 61,177, at P 22 n.19 (2007)).

<sup>201</sup> SPP Transmittal at 42-43 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,090, at P 47 n.41 (2008) (citing *Sierra*, 350 U.S. at 355; *Permian Basin Area Rate Cases*, 390 U.S. 747, 822 (1968))).

<sup>202</sup> *See id.* at 39-40 (citing *Morgan Stanley*, 554 U.S. 527; *CALifornians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co.*, 134 FERC ¶ 61,060, at P 62, *reh'g denied*, 134 FERC ¶ 61,207 (2011); *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 130 S. Ct. 693, 696-97 (2010) (*NRG*); *Potomac Elec. Power Co. v. FERC*, 210 F.3d 403, 407 (D.C. Cir. 2000); *Papago Tribal Auth. v. FERC*, 723 F.2d 950, 954 (D.C. Cir. 1983)); *see also id.* at 42, 44.

96. SPP adds that absent a finding that section 3.3 of the Membership Agreement “seriously harms the public interest” and that the required modification is of “unequivocal public necessity,” the Commission cannot compel SPP to modify the rights and obligations to construct transmission facilities approved for construction under its OATT, as set forth in section VI of Attachment O.<sup>203</sup> SPP states that the OATT provisions implement the Membership Agreement rights and obligations, and they are thus adjunct to the construction and ownership provisions of the Membership Agreement.

97. SPP argues that the Commission cannot simply base its demand that SPP modify the Membership Agreement on speculation that an existing contract provision *may* lead to rates that are unjust and unreasonable, as the Commission did in Order No. 1000, because such a result would be contrary to the “purpose of the *Mobile-Sierra* doctrine . . . to preserve the benefits of the parties’ bargain as reflected in the contract.”<sup>204</sup> SPP asserts that the Commission also cannot point to any actual evidence of serious harm to the public interest.<sup>205</sup> SPP contends that, to the contrary, its Membership Agreement benefits the public interest by providing an open and collaborative transmission plan that minimizes costs, spurs transmission investment, and enables SPP to approve projects worth several billion dollars.<sup>206</sup>

98. SPP argues that, because the Commission has not offered evidence that the existing provisions in the Membership Agreement seriously harm the public interest, the Commission cannot compel SPP to modify its Membership Agreement and OATT to eliminate existing transmission construction rights and obligations.<sup>207</sup> SPP therefore requests that the Commission ignore the OATT revisions proposed in SPP’s compliance filing relating to the nonincumbent transmission developer reforms required by Order No. 1000.<sup>208</sup>

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<sup>203</sup> *Id.* at 43.

<sup>204</sup> *Id.* at 38-41, 43-45 (citing *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 14 (D.C. Cir. 2002) (citing *Town of Norwood v. FERC*, 587 F.2d 1306, 1312 (D.C. Cir. 1978); *Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 841, 843 (D.C. Cir. 2006))).

<sup>205</sup> *Id.* at 46-49.

<sup>206</sup> *Id.* at 46-49.

<sup>207</sup> *Id.* at 49.

<sup>208</sup> *Id.* at 49-50.

(b) **Protests/Comments**

99. Western Farmers and ITC Great Plains agree with SPP's argument that the Commission lacks authority under the *Mobile-Sierra* doctrine to order SPP to modify its Membership Agreement to remove existing transmission constructions rights and obligations.<sup>209</sup> Western Farmers claims that the Commission has identified only speculative, future harm to the public that may result if the federal right of first refusal is not eliminated from OATTs in general.<sup>210</sup> Western Farmers claims that the Commission has not made any finding particular to SPP, its OATT, or its Membership Agreement and that there is no evidence of harm in the SPP region. Therefore, Western Farmers claims that the Commission has not overcome the burden of the *Mobile-Sierra* doctrine to show that the existing SPP Membership Agreement provisions seriously harm the public interest and that extraordinary circumstances exist that make modifying the provisions an unequivocal public necessity.<sup>211</sup> ITC Great Plains agrees that, without a factual record, the Commission cannot require modifications to the Membership Agreement.<sup>212</sup>

100. Western Farmers claims that SPP's current transmission planning processes benefit the public.<sup>213</sup> ITC Great Plains argues that, because the existing Membership Agreement, including the right of first refusal for incumbent transmission owners, benefits the public interest, elimination of the right of first refusal is not required.<sup>214</sup> ITC Great Plains states that it has successfully used the process in the existing Membership Agreement for incumbent transmission owners to work with nonincumbent transmission developers to build projects identified in the STEP.<sup>215</sup> Western Farmers asks the Commission to maintain the right of first refusal in SPP's current transmission planning and cost allocation process.<sup>216</sup>

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<sup>209</sup> Western Farmers Comments at 3; ITC Great Plains Comments at 2.

<sup>210</sup> Western Farmers Comments at 3-4.

<sup>211</sup> *Id.* at 4.

<sup>212</sup> ITC Great Plains Comments at 6.

<sup>213</sup> Western Farmers Comments at 4 (citing SPP Transmittal, Ex. SPP-1 at 22-26).

<sup>214</sup> ITC Great Plains Comments at 6.

<sup>215</sup> *Id.* at 7.

<sup>216</sup> Western Farmers Comments at 4.



101. Duke-American, AEP, the Missouri PSC and LS Power claim that the Membership Agreement is not protected by the *Mobile-Sierra* doctrine.<sup>217</sup> Duke-American argues that the *Mobile-Sierra* doctrine does not apply to the Membership Agreement because the *Mobile-Sierra* doctrine applies only to a bilateral agreement that contains a fixed rate or a rate formula for the purchase of gas or electricity at wholesale.<sup>218</sup>

102. Duke-American disputes that *Appalachian Power Co. v. Fed. Power Comm'n*<sup>219</sup> supports SPP's assertion that the *Mobile-Sierra* doctrine is the standard that the Commission must meet when it orders or considers changes to all contracts.<sup>220</sup> Duke-American argues that neither the Commission nor the courts automatically extend a blanket *Mobile-Sierra* protection over all contracts under the Commission's jurisdiction.<sup>221</sup> Duke-American states that, because the *Mobile-Sierra* doctrine protects both the rates established at arm's length by sophisticated market participants and customers who could be harmed by those rates, the doctrine is not relevant to contracts that do not establish rates for the purchase or sale of gas or electricity.<sup>222</sup> Duke-American notes that, on several occasions, the Commission has considered revisions to the Membership Agreement without meeting, or even discussing, the public interest standard established by *Mobile-Sierra*.<sup>223</sup> Duke-American also contends that the *Mobile-Sierra*

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<sup>217</sup> Duke-American Protest at 5-16; AEP Comments at 2 n.4, 5 n.6; Missouri PSC Protest at 4-12. *See generally* LS Power December 10, 2012 Supplemental Protest (LS Power Supp. Protest).

<sup>218</sup> Duke-American Protest at 5, 6 (citing *Morgan Stanley*, 554 U.S. at 530, 534; *Regulation of Short-Term Natural Gas Transp. Servs.*, 106 FERC ¶ 61,088, at PP 83, 85 (2004); *Tenn. Gas Pipeline*, 59 FERC ¶ 61,045 (1992); *Texaco Inc. v. FERC*, 148 F.3d at 1095)).

<sup>219</sup> 529 F.2d 342.

<sup>220</sup> Duke-American Protest at 7 n.13.

<sup>221</sup> *Id.* at 8 (citing *Wyo. Colo. Intertie, LLC*, 141 FERC ¶ 61,111, at P 18 (2012); *Regulation of Short-Term Natural Gas Transp. Servs.*, 106 FERC ¶ 61,088 at P 84; *ISO New England, Inc.*, 109 FERC ¶ 61,147, at PP 72-74 (2004)).

<sup>222</sup> *Id.* at 7-8 (citing *Nev. Power Co. v. Enron Power Mktg, Inc.*, 105 FERC ¶ 61,185, at PP 15, 20 (2003); *Morgan Stanley*, 554 U.S. at 545-46).

<sup>223</sup> *Id.* at 9 (citing *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,289, at PP 19, 89-90 (2006)).

doctrine does not apply to the Membership Agreement because the agreement as a whole, and section 3.3 in particular, does not explicitly invoke the doctrine's protections.<sup>224</sup>

103. The Missouri PSC agrees with Duke-American that *Mobile-Sierra* does not apply because the Membership Agreement is not a wholesale energy contract that establishes rates for a power sale and is not the result of an arms-length negotiation process among parties with opposing interests.<sup>225</sup> The Missouri PSC adds that the right of first refusal provisions are not connected to contract or OATT rates.<sup>226</sup> AEP also asserts that the Membership Agreement provision that sets out the right of first refusal for Highway projects is not a "contract rate" to which the *Mobile-Sierra* public interest standard automatically applies.<sup>227</sup> The Missouri PSC states that the construction rights and obligations in the Membership Agreements are more akin to rules of "general applicability" than "contractually negotiated rates."<sup>228</sup>

104. LS Power contends that *Mobile-Sierra* does not apply because the Commission did not deprive incumbent transmission owners of any contractually-protected right when it restricted access to regional cost allocation to those projects selected in a fair and non-discriminatory process without rights of first refusal.<sup>229</sup> LS Power states that, under Order No. 1000, an incumbent transmission owner may continue to build the projects it chooses in its retail distribution service territory as long as it allocates 100 percent of the project cost to its ratepayers.<sup>230</sup> LS Power contends that, because there is no *Mobile-Sierra* protected right to access regional cost allocation or to any specific regional cost allocation methodology, the Commission does not need to meet the heightened standard of review for its Order No. 1000 requirements.<sup>231</sup>

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<sup>224</sup> *Id.* at 9 (citing *Appalachian Power Co. v. Fed. Power Comm'n*, 529 F.2d at 348); *see also id.* at 10.

<sup>225</sup> Missouri PSC Protest at 4-7.

<sup>226</sup> *Id.* at 6-8, 12.

<sup>227</sup> AEP Comments at 5 n.6 (noting that its comment are consistent with those filed with respect to MISO's Order No. 1000 compliance filing in Docket Nos. ER13-186-000 and ER13-187-000); *see also id.* at 2 n.4.

<sup>228</sup> Missouri PSC Protest at 8-9.

<sup>229</sup> LS Power Supp. Protest at 2-3, 5-10.

<sup>230</sup> *Id.* at 3 n.12.

<sup>231</sup> *Id.* at 3-4.

105. LS Power claims that, even if the Membership Agreement is entitled to *Mobile-Sierra* protection under the “default rule,” section 3.3, which contains the rights and obligations to construct transmission facilities approved for construction under the OATT, does not contain a regional cost allocation methodology or a right to access regional cost allocation on specific terms.<sup>232</sup> LS Power notes that section 3.3 states that transmission owner compensation is limited to the extent permitted by the Commission or other regulatory authority for the cost of construction undertaken pursuant to the OATT.<sup>233</sup> LS Power concludes that, although *Mobile-Sierra* may protect SPP’s right of first refusal, it does not protect a particular cost allocation methodology.<sup>234</sup>

106. Duke-American, LS Power and the Missouri PSC contend that, even if the Membership Agreement were protected by the *Mobile-Sierra* doctrine, the Commission has met the standard. Duke-American argues that the Commission has met the standard by demonstrating that the public interest requires the elimination of the right of first refusal to enhance and advance the development of competition for more efficient and cost-effective regional transmission planning.<sup>235</sup> Duke-American argues that it is well-established that competition and Commission policies and regulations that enhance the overall competitiveness and efficiency of the grid are in the public interest.<sup>236</sup>

107. LS Power claims that the Commission made sufficient findings in Order Nos. 1000 and 1000-A to establish that the national public interest requires removal of even contractually-protected right of first refusal in the limited context of regional cost

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<sup>232</sup> *Id.* at 18.

<sup>233</sup> *Id.* at 18-19 (citing Membership Agreement, § 3.3(a)). LS Power notes that SPP’s regional cost allocation methodologies are set forth in OATT Attachment J. *Id.* at 19.

<sup>234</sup> *Id.* at 19.

<sup>235</sup> Duke-American Protest at 5 (citing SPP Transmittal at 39); *see also id.* at 6, 10.

<sup>236</sup> *Id.* at 10 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at PP 50-51 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS*), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002); *Pub. Utils. Comm’n v. Sellers of Long Term Contracts*, 105 FERC ¶ 61,182, at P 65 (2003); Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 286).

allocation.<sup>237</sup> LS Power states that the removal of the right of first refusal was narrowly tailored and allows incumbent transmission owners to address rate-payer need locally, as they have historically done.<sup>238</sup> LS Power points out the specific data and studies, related to the transmission development and cost allocation issues, and specific complaints that were mentioned in Order No. 1000.<sup>239</sup> LS Power notes that the Commission also made generic findings in Order No. 1000 and argues that Order No. 1000, like Order No. 890, was the appropriate circumstance in which to make a generic *Mobile-Sierra* finding.<sup>240</sup> LS Power adds that, when the Commission stated that it does not interpret an individual contract in a generic rulemaking, the Commission did not rule that the general findings in Order Nos. 1000 and 1000-A cannot be applied to an individual contract.<sup>241</sup> LS Power also argues that the Commission is not required to review each individual region to determine whether national policies require a restriction on contractual provisions.<sup>242</sup>

108. The Missouri PSC asserts that, even if the *Mobile-Sierra* doctrine did apply, the Commission could order the removal of the right of first refusal because the FPA obliges the Commission to protect the public interest and nothing in the *Mobile-Sierra* doctrine relieves the Commission of that obligation.<sup>243</sup> The Missouri PSC claims that the Commission's rationale in Order Nos. 1000 and 1000-A provides the basis for making the required public interest finding: (1) a federal right of first refusal is a practice that has an adverse effect on competition and can lead to unjust and unreasonable rates for such services, and, alternatively (2) eliminating federal rights of first refusal was necessary to remedy undue discrimination and preference against nonincumbent transmission developers.<sup>244</sup>

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<sup>237</sup> LS Power Supp. Protest at 4, 19-31.

<sup>238</sup> *Id.* at 4.

<sup>239</sup> *Id.* at 27-28 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 38, 44-45); *see also id.* 29-30.

<sup>240</sup> *Id.* at 24-25 (citing *TAPS*, 225 F.3d at 710-11; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 52, 285 (citing 16 U.S.C. § 824e); *see also id.* 29 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 256, 260, 313; Order No. 1000-A, 139 FERC ¶ 61,132 at P 361).

<sup>241</sup> *Id.* at 4.

<sup>242</sup> *Id.* at 4.

<sup>243</sup> Missouri PSC Protest at 9.

<sup>244</sup> *Id.* at 11 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 253-257, 268, 284, 285; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 357-358, 361).

109. Duke-American compares the Commission's finding in Order No. 1000 that fundamental changes in the industry and markets in which utilities and their customers operate required it to institute reforms (including the elimination of the right of first refusal from tariffs and jurisdictional agreements) with the extraordinary circumstances facing the Commission when it issued Order No. 888.<sup>245</sup> Duke-American states that, just like Order No. 888, Order No. 1000 responds to the fundamental changes in the industry by removing certain barriers to competition, some of them in existing agreements, and balances the Commission's desire to honor those agreements with its need and obligation to increase participation in competitive markets for the benefit of the public as a whole.<sup>246</sup> Duke-American argues that the Commission has satisfied the *Mobile-Sierra* public interest standard by ordering targeted changes that alleviate serious harm by fostering the competitive market for the benefit of all its participants.<sup>247</sup>

110. Duke-American notes that the Commission has long-voiced its concerns regarding the anti-competitive effects of a right of first refusal, both in general and specifically in the SPP region, where circumstances require significant expansion of the SPP transmission system.<sup>248</sup> Duke-American adds that, in Order No. 1000, the Commission found right of first refusal provisions inadequate to advance the goal of competition and realize the benefits because the provisions discourage nonincumbent transmission developers from seeking to invest in transmission.<sup>249</sup>

111. LS Power also claims that the right of first refusal is on its face anticompetitive because it (1) allows incumbent transmission owners to foreclose competing companies from building similarly reliable and economic transmission projects, potentially at a lower cost, and (2) prevents nonincumbent transmission developers from participating fully in the regional transmission planning process, which could lead to the selection of

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<sup>245</sup> Duke-American Protest at 10-11 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at PP 60, 61, 64; *TAPS*, 225 F.3d at 711; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2), 14.

<sup>246</sup> *Id.* at 14 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at P 59).

<sup>247</sup> *Id.* at 14-15 (citing *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at PP 46, 49 (2003)).

<sup>248</sup> *Id.* at 11-12 (citing Highway/Byway Order, 131 FERC ¶ 61,252 at P 65; *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 186 (2004); *Sw. Power Pool, Inc.*, 127 FERC ¶ 61,171 at PP 13, 43).

<sup>249</sup> *Id.* at 12 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 3).

more expensive and less efficient transmission projects in the regional transmission plan.<sup>250</sup>

112. Duke-American states that the right of first refusal is a disincentive to robust participation in the transmission planning process and its anticompetitive practices undermine the identification and evaluation of more efficient or cost-effective regional transmission solutions.<sup>251</sup> Duke-American argues that, if not changed, the right of first refusal leads to rates that are unjust and unreasonable and permits undue discrimination by public utility providers because it deprives customers of the benefits of competition in transmission development and associated potential savings.<sup>252</sup> Duke-American asks that the Commission find that depriving customers of the benefits of competition in transmission development constitutes “serious harm,” as contemplated in *Morgan Stanley*.<sup>253</sup> Duke-American points out that Chairman Wellinghoff and Commissioner Norris explained after the Commission issued orders in the *Pioneer* and *Xcel* complaint proceedings that the elimination of the right of first refusal in Order No. 1000 was designed to enhance competition.<sup>254</sup>

113. Duke-American argues that the Commission does not need to make specific factual findings of discrimination in order to promulgate a generic rule to eliminate undue discrimination so long as its factual determinations are reasonable.<sup>255</sup> Duke-American notes that the Commission was concerned that the discrimination permitted by the right of first refusal has anti-competitive effects, which result in harm to the consumer, and

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<sup>250</sup> LS Power Supp. Protest at 23.

<sup>251</sup> Duke-American Protest at 12.

<sup>252</sup> *Id.* at 12 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 7, 285), 14.

<sup>253</sup> *Id.* at 12 (citing *Morgan Stanley*, 554 U.S. at 529; *Texaco Inc. v. FERC*, 148 F.3d at 1097; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 287).

<sup>254</sup> *Id.* at 13-14 (citing *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057 (2012); *Xcel Energy Serv. Inc. v. Am. Transmission Co.*, 140 FERC ¶ 61,058 (2012); Statement of Chairman Jon Wellinghoff on Right of First Refusal (ROFR) Orders, Docket Nos. EL12-24-000 and EL12-69-000 (July 19, 2012); Statement of Commissioner John R. Norris on Right of First Refusal (ROFR) Orders, Docket Nos. EL12-24-000 and EL12-69-000 (July 19, 2012)).

<sup>255</sup> *Id.* at 15-16 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 41; *TAPS*, 225 F.3d at 688; *Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831; *Associated Gas Distrib. v. FERC*, 824 F.2d 981, 1008 (D.C. Cir. 1987)).

these concerns were thoroughly discussed and documented in Order No. 1000.<sup>256</sup> Duke-American contends that, as in Order No. 888, the Commission has thoroughly documented the reasons for its actions in Order No. 1000 and the reasons for eliminating the right of first refusal are reasonable.<sup>257</sup>

114. The Missouri PSC argues that expanding the *Mobile-Sierra* doctrine to apply to any terms and conditions in any type of Commission-jurisdictional agreement goes far beyond the doctrine's underpinning: preserving contractual rate bargains negotiated by willing sellers and buyers to remove uncertainties and promote stability in the electricity market.<sup>258</sup> The Missouri PSC contends that expanding the *Mobile-Sierra* doctrine to non-rate agreements and buyers who are not a party could have severe consequences for the Commission's ability to protect consumers from the exercise of market power and set policies that promote the public interest.<sup>259</sup> The Missouri PSC adds that applying *Mobile-Sierra* so broadly could significantly impact the value an RTO provides in exerting its independence from market participants in management of the transmission grid and wholesale energy markets.<sup>260</sup>

(c) Answers

115. In its response, SPP contends that it is incorrect to claim that the *Mobile-Sierra* doctrine does not protect contracts such as the Membership Agreement because the *Mobile-Sierra* standard applies to non-rate terms and conditions such as those in RTO membership agreements and rate provisions.<sup>261</sup> SPP also argues that the Membership

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<sup>256</sup> *Id.* at 15-16.

<sup>257</sup> *Id.* at 15-16 (citing *TAPS*, 225 F.3d at 688; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 7, 270-293).

<sup>258</sup> Missouri PSC Protest at 11 (citing *NRG*, 130 S. Ct. at 699-700; *Morgan Stanley*, 554 U.S. at 545 (citing *Verizon Commc'ns Inc. v. FCC*, 535 U.S. 467, 479 (2002))).

<sup>259</sup> *Id.* at 12.

<sup>260</sup> *Id.* at 12 (citing *Regional Transmission Orgs.*, 89 FERC ¶ 61,285, at PP 99, 152 (1999)).

<sup>261</sup> SPP Answer at 5-6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,090, at P 47 n.41 (2008) (quoting *Sierra*, 350 U.S. at 355), *reh'g denied*, 136 FERC ¶ 61,099 (2011)); *ISO New England, Inc.*, 109 FERC ¶ 61,147 at PP 77-78; *Pub. Utils. with Existing Contracts in the Cal. Indep. Sys. Operator Corp. Region*, 125 FERC ¶ 61,228, at PP 6, 15 (2008); *Vt. Transco LLC*, 118 FERC ¶ 61,244, at P 50 (2007), *order on clarification and reh'g sub nom. Lamoille Cnty. Sys. v. Vt. Transco LLC*, 120 FERC ¶ 61,010 (2007); *Sw. Power Pool, Inc.*, 117 FERC ¶ 61,207, at PP 27-28

Agreement is similar to agreements among “sophisticated entities” that are entitled to *Mobile-Sierra* protection.<sup>262</sup> SPP states that the Membership Agreement is the result of a compromise among the various interests that led SPP to provide open access service under a regional OATT and then to become an RTO, and it was part of the bargained-for exchange and consideration that led the transmission owners to agree voluntarily to participate in SPP.<sup>263</sup>

116. SPP disagrees with Duke-American, LS Power and the Missouri PSC’s assertions that the Membership Agreement is not entitled to *Mobile-Sierra* protection because it is not an arms-length agreement between a seller and buyer or because SPP transmission owners have a commonality of interests.<sup>264</sup> SPP counters that there is no requirement that an agreement must be bilateral in order for *Mobile-Sierra* to apply and that the precedent cited by protestors does not expressly limit the doctrine in this manner.<sup>265</sup> SPP notes that the Commission has granted *Mobile-Sierra* protection to agreements among transmission-owning RTO members, relating to transmission planning and expansion, and agreements between an RTO and its transmission owners, such as balancing authority agreements.<sup>266</sup>

117. SPP states that the *Mobile-Sierra* doctrine limits the Commission’s authority to compel modification of an agreement protected by *Mobile-Sierra* to instances when such agreement “seriously harms the public interest.”<sup>267</sup> SPP argues that not only is there no

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(2006), *order on reh’g*, 119 FERC ¶ 61,021, at P 11 (2007); *New England Power Generators Ass’n v. FERC*, No. 11-1422, slip op. at 10-12 (D.C. Cir. Feb. 15, 2013)).

<sup>262</sup> *Id.* at 6.

<sup>263</sup> *Id.* at 6.

<sup>264</sup> *Id.* at 6-7 (citing Duke-American Protest at 8-9; LS Power Supp. Protest at 19-20; Missouri PSC Protest at 4-7).

<sup>265</sup> *Id.* at 6-7 & n.15.

<sup>266</sup> *Id.* at 7 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,090, at P 47 n.41 (2008) (quoting *Sierra*, 350 U.S. at 355), *reh’g denied*, 136 FERC ¶ 61,099 (2011)); *ISO New England, Inc.*, 109 FERC ¶ 61,147 at PP 77-78; *Pub. Utils. with Existing Contracts in the Cal. Indep. Sys. Operator Corp. Region*, 125 FERC ¶ 61,228 at PP 6, 15; *Vt. Transco LLC*, 118 FERC ¶ 61,244 at P 50; *Sw. Power Pool, Inc.*, 117 FERC ¶ 61,207 at PP 27-28, *order on reh’g*, 119 FERC ¶ 61,021 at P 11; *New England Power Generators Ass’n, Inc. v. FERC*, No. 11-1422, slip op. at 10-12).

<sup>267</sup> *Id.* at 7-8 (citing *NRG*, 130 S. Ct. at 700 (citing *Morgan Stanley*, 554 U.S. at 530); SPP Transmittal at 39).



showing that the Membership Agreement seriously harms the public interest<sup>268</sup> but SPP has also demonstrated that the Membership Agreement benefits the public interest.<sup>269</sup> SPP claims that, contrary to Duke-American's assertion, in Order No. 1000, the Commission expressly held that it lacked a sufficient record to determine whether any individual agreement was protected by *Mobile-Sierra*, and, if so, whether the standard had been satisfied.<sup>270</sup> SPP also disagrees with Duke-American's contention that the Commission does not have to provide specific evidence of harm to require the elimination of rights of first refusal that exist in jurisdictional agreements.<sup>271</sup> SPP adds that Duke-American's reliance on the statements of Chairman Wellinghoff and Commissioner Norris after the Commission issued orders in the *Pioneer* and *Xcel* complaint proceedings is misplaced because the issues addressed therein were different and such statements do not constitute precedent.<sup>272</sup>

118. SPP claims that, contrary to the Missouri PSC's assertion, a finding that the Membership Agreement is entitled to *Mobile-Sierra* protection is consistent with existing policy and is not an extension of that policy.<sup>273</sup> SPP requests that, consistent with the *Mobile-Sierra* doctrine's interest in preserving the sanctity of contracts, the Commission declare that the existing, previously-approved Membership Agreement, including section 3.3, is protected by the *Mobile-Sierra* doctrine.<sup>274</sup>

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<sup>268</sup> *Id.* at 10-14.

<sup>269</sup> *Id.* at 8 (citing SPP Transmittal at 44-49); *see also id.* at 10-11 (citing SPP Transmittal at 46-49; SPP Transmittal, Ex. SPP-1 at 23-26).

<sup>270</sup> *Id.* at 11 (citing Duke-American Protest at 10-13; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 292, 388).

<sup>271</sup> *Id.* at 12 (citing Duke-American Protest at 15-16; *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d at 844; *Atl. City Elec. Co. v. FERC*, 295 F.3d at 14).

<sup>272</sup> *Id.* at 12-13 (citing Duke-American Protest at 13-14; *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057 at PP 95-96; *Xcel Energy Servs. Inc. v. Am. Transmission Co.*, 140 FERC ¶ 61,058 at PP 58-59; LS Power Supp. Protest at 17; *Entergy Serv. Inc.*, 119 FERC ¶ 61,187, at P 52 n.44 (2007) (quoting *Indianapolis Power & Light Co.*, 48 FERC ¶ 61,040, at 61, 203, *order on reh'g*, 49 FERC ¶ 61,328 (1989)); *Gregory Swecker v. Midland Power Coop.*, 115 FERC ¶ 61,242, at P 4 (2006); *MidAmerican Energy Holdings Co.*, 118 FERC ¶ 61,003, at P 18, n.45 (2007); *Indianapolis Power & Light Co.*, 48 FERC ¶ 61,040 at 61,202).

<sup>273</sup> *Id.* 8 (citing SPP Answer at 5 n.13 and accompanying text).

<sup>274</sup> *Id.* (citing *NRG*, 130 S. Ct. at 700 (citing *Morgan Stanley*, 554 U.S. at 530)).

119. SPP argues that Duke-American's reliance on *Sw. Power Pool, Inc.*<sup>275</sup> is misplaced because the Commission's general directive therein that SPP clarify its proposal, either in the Membership Agreement or elsewhere does not constitute a finding that the Membership Agreement is not entitled to protection under the *Mobile-Sierra* doctrine.<sup>276</sup> SPP also disagrees with Duke-American's assertion that *Mobile-Sierra* does not apply because the Membership Agreement does not specifically delineate the *Mobile-Sierra* public interest standard of review for unilateral changes to the agreement.<sup>277</sup> SPP argues that, absent specific language to the contrary, the *Mobile-Sierra* public interest standard is the default rule.<sup>278</sup>

120. SPP states that, contrary to LS Power's assertion, it has not posited that the Membership Agreement provides an entity with a *Mobile-Sierra* protected right to regional cost allocation.<sup>279</sup> SPP claims that, instead, it has accurately characterized the *Mobile-Sierra* doctrine as protecting freely-negotiated contracts like the Membership Agreement from modification by the Commission absent serious harm to the public interest and that SPP has demonstrated that the standard has not been met.<sup>280</sup>

121. SPP argues that LS Power's suggestion that SPP's decision to assert a *Mobile-Sierra* defense demonstrates lack of independence is without merit.<sup>281</sup> SPP questions LS Power's reliance on a pleading filed in another Order No. 1000 proceeding by an entity that is not a party to this proceeding without an explanation of the relevance to this proceeding.<sup>282</sup> SPP disagrees with LS Power's assertion that SPP's compliance filing includes the arguments of the SPP transmission owners because no SPP transmission owner is a signatory to the compliance filing.<sup>283</sup> SPP adds that, as a party to the

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<sup>275</sup> 114 FERC ¶ 61,289.

<sup>276</sup> SPP Answer at 9 (citing Duke-American Protest at 9 n.20 (citing *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,289 at PP 19, 89-90)).

<sup>277</sup> *Id.* (citing Duke-American Protest at 9).

<sup>278</sup> *Id.* (citing *Texaco, Inc. v. FERC*, 148 F.3d at 1096; *Wis. Pub. Serv. Corp.*, 120 FERC ¶ 61,177 at P 22; *Morgan Stanley*, 554 U.S. at 534).

<sup>279</sup> *Id.* at 14 (citing LS Power Supp. Protest at 5-10, 18-19).

<sup>280</sup> *Id.* (citing SPP Transmittal at 38-49).

<sup>281</sup> *Id.*

<sup>282</sup> *Id.* (citing LS Power Protest at 34-35 (citing ICC, Comments, Docket No. ER13-187-000 (filed Dec. 10, 2012))).

<sup>283</sup> *Id.* at 14-15 (citing LS Power Protest at 35).

Membership Agreement, SPP has an independent interest in preserving the sanctity of its governing contract and raising a *Mobile-Sierra* defense does not suggest lack of independence.<sup>284</sup>

122. Duke-American reiterates its argument that the *Mobile-Sierra* public interest standard does not apply to non-rate terms and conditions by default. Duke-American holds that the *Mobile-Sierra* doctrine applies by default (i.e. in the absence of express inclusion of the doctrine in the language of the agreement) only to a particular type of contract: a bilateral agreement that contains a fixed rate or a rate formula for the purchase of gas or electricity at wholesale.<sup>285</sup> Duke-American adds that the Commission has broad discretion to grant *Mobile-Sierra* protection outside the context of rate contracts but not the obligation to do so.

**(d) Commission Determination**

123. We disagree with SPP's claims that the right of first refusal provision in the section 3.3 of the Membership Agreement is subject to a *Mobile-Sierra* presumption.

124. In Order No. 1000, the Commission declined to address as part of the rulemaking process arguments that transmission owners agreements, such as the Membership Agreement, were protected under *Mobile-Sierra*. The Commission concluded that the record was not sufficient to evaluate such arguments and that they could be better addressed at the compliance stage.<sup>286</sup> The Commission stated in Order No. 1000-A that "a public utility transmission provider that considers its contract to be protected by a *Mobile-Sierra* provision may present its arguments as part of its compliance filing."<sup>287</sup>

125. Drawing on this Commission statement, SPP argues that its Membership Agreement is protected by the *Mobile-Sierra* doctrine because the agreement is silent on the standard of review. The remainder of SPP's discussion focuses on reasons why it contends that the Commission has not satisfied the *Mobile-Sierra* public interest standard here.

126. As a threshold matter, the fact that a federal right of first refusal is contained in a contract does not establish that the contract is entitled to a *Mobile-Sierra* presumption. The *Mobile-Sierra* presumption applies to a contract only if the contract has certain characteristics that justify the presumption. SPP has not made such a showing with

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<sup>284</sup> *Id.* at 15.

<sup>285</sup> Duke-American Response at 4-5.

<sup>286</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 292.

<sup>287</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 389.

respect to section 3.3 of the Membership Agreement, which includes a federal right of first refusal, and we find that this provision lacks the characteristics necessary to justify a *Mobile-Sierra* presumption.

127. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the instrument at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. The former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption; the latter constitute tariff rates, terms, or conditions to which the *Mobile-Sierra* presumption does not apply, although the Commission may exercise its discretion to apply the heightened *Mobile-Sierra* standard.<sup>288</sup>

128. In some instances, the jurisdictional provisions of a contract may be classified in their entirety as including either contract rates, terms, and conditions that are subject to a *Mobile-Sierra* presumption or tariff rates, terms, and conditions to which the *Mobile-Sierra* presumption does not apply. On the one hand, all such provisions in bilateral power sales contracts freely negotiated at arm's length between sophisticated parties generally would establish contract rates and would come within the presumption.<sup>289</sup> On the other hand, where the terms of an agreement would, if approved, be incorporated into the service agreements of all present and future customers, those terms are properly classified as tariff rates and the *Mobile-Sierra* presumption would not apply.<sup>290</sup>

129. By contrast, the Membership Agreement cannot be classified in its entirety as containing contract rates or tariff rates. As discussed further below, we find that for two separate but reinforcing reasons, section 3.3 of the Membership Agreement, which includes a federal right of first refusal, lacks the characteristics that justify the *Mobile-*

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<sup>288</sup> See *New England Power Generators Ass'n v. FERC*, No. 11-1422, at 10-12.

<sup>289</sup> See generally *Morgan Stanley*, 554 U.S. 527.

<sup>290</sup> *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014, at P 17 (2011) (holding that the *Mobile-Sierra* presumption does not apply to a settlement agreement “[b]ecause the terms of the Settlement, if approved, will be incorporated into the service agreements of all present and future shippers . . . .”); see also *High Island Offshore Sys., LLC*, 135 FERC ¶ 61,105, at P 19 (2011); *Petal Gas Storage, L.L.C.*, 135 FERC ¶ 61,152, at P 12 (2011); *Southern LNG Co., LLC*, 135 FERC ¶ 61,153, at P 19 (2011) (each finding that *Mobile-Sierra* presumption does not apply to offer of settlement which incorporates into each shipper's service agreement rates, terms, and conditions that are generally applicable “to all present and future customers”).

*Sierra* presumption.<sup>291</sup> Other provisions of the Membership Agreement not at issue in this proceeding may have those characteristics. Given the breadth and complexity of the Membership Agreement, we find that it is neither practical nor necessary to evaluate whether the preponderance of the Membership Agreement's provisions include tariff rates or contract rates. Rather, we find that determining the standard of review that should apply to specific provisions of the Membership Agreement is an appropriate way to recognize the distinctions among its provisions.

130. We agree with Missouri PSC that the construction rights and obligations contained in section 3.3 of the Membership Agreement are prescriptions of general applicability rather than negotiated rate provisions that are necessarily entitled to a *Mobile-Sierra* presumption.<sup>292</sup> We note that, in its most recent statement on the *Mobile-Sierra* doctrine, the U.S. Supreme Court acknowledged the potential distinction between "prescriptions of generally applicability" and "contractually negotiated rates."<sup>293</sup> Where the language of an agreement establishes rules that delimit, qualify, or restrict the ability of any other potential competitor to engage in the subject activity, that language creates generally applicable requirements.

131. This conclusion is bolstered by the fact that any new SPP Transmission Owner would have to accept these provisions as-is, with limited room for negotiation. Amending the Membership Agreement requires an affirmative vote of at least five of the seven directors of the Board of Directors,<sup>294</sup> substantially inhibiting the ability of a new

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<sup>291</sup> The Commission has not previously addressed the standard of review applicable to this provision of the Membership Agreement. Where arguments are presented in Order No. 1000 compliance filing proceedings with respect to previous Commission statements as to the standard of review applicable to provisions in another RTO's or ISO's transmission owners agreement, the Commission will address those arguments on a case-by-case basis.

For example, while SPP maintains that the Commission has found that "a similar RTO agreement," that of the MISO, "impose[s] a *Mobile-Sierra* standard of review," SPP Transmittal at 42-43, the Commission has determined in an order on Order No. 1000 compliance that the statement that SPP cites "does not demonstrate that the right of first refusal provision of the [MISO] Transmission Owners Agreement is protected by *Mobile-Sierra*." *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 191 (2013).

<sup>292</sup> See Missouri PSC Protest at 8-9.

<sup>293</sup> *NRG*, 130 S. Ct. at 701. The Court made this statement even as it held that the *Mobile-Sierra* presumption "is not limited to challenges to contract rates brought by contracting parties. It applies, as well, to challenges initiated by third parties." *Id.*

<sup>294</sup> See Membership Agreement, § 8.12 (Amendment); see also Bylaws, § 4.2.1

SPP Transmission Owner to negotiate a change to this provision. As a result, new SPP Transmission Owners are placed in a position that differs fundamentally from that of parties who are able to negotiate freely like buyers and sellers entering into a typical power sales contract that would be entitled to a *Mobile-Sierra* presumption.

132. We also find that the *Mobile-Sierra* presumption does not apply to the federal right of first refusal in section 3.3 of the Membership Agreement because that provision arose in circumstances that do not provide the assurance of justness and reasonableness on which the *Mobile-Sierra* presumption rests.<sup>295</sup>

133. Specifically, that provision arose in a negotiation aimed at protecting a common interest among competing transmission owners. Unlike circumstances in which the Commission can presume that the resulting rate is the product of negotiations between parties with competing interests, the negotiation that led to the provision at issue here were among parties with the same interest, namely, protecting themselves from competition in transmission development. Thus, while the SPP Transmission Owners may have engaged in extensive negotiations, because of the common interests here, the negotiations do not bear the hallmarks necessary for the *Mobile-Sierra* presumption.<sup>296</sup>

134. The Commission has recognized a similar point in other contexts that are relevant here. For instance, the Commission has observed that “the self-interest of two merger partners converge sufficiently, even before they complete the merger, to compromise the market discipline inherent in arm’s-length bargaining that serves as the primary protection against reciprocal dealing.”<sup>297</sup> The Commission’s policy on market-based rates incorporates similar principles.<sup>298</sup>

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(Composition).

<sup>295</sup> *Morgan Stanley*, 554 U.S. at 554 (stating that “the premise on which the *Mobile-Sierra* presumption rests” is “that the contracts are the product of fair, arms-length negotiations.”). Arm’s-length bargaining serves an important role in confirming that the transaction price reflects fair market value.

<sup>296</sup> We also note that in reaching these conclusions we do not imply that the parties have acted in bad faith. Rather, for purposes of *Mobile-Sierra* analysis, the courts have found that it is relevant whether, in seeking to advance their interests, the parties are situated in relation to each other in a way that allows one to make a specific assumption about the results of their negotiations. We reach our conclusions here based in part on that analysis.

<sup>297</sup> *Delmarva Power & Light Co.*, 76 FERC ¶ 61,331, at 62,583 (1996) (quoting *Cenergy, Inc.*, 74 FERC ¶ 61,281, at 61,900 (1996)).

<sup>298</sup> *See, e.g.*, 18 C.F.R. § 35.36(a)(9)(iii) (making possible absence of arm’s-length

135. Thus, for these two separate but reinforcing reasons, we find that the federal right of first refusal in section 3.3 of the Membership Agreement lacks the characteristics that justify the *Mobile-Sierra* presumption. Based on that finding, we also disagree with SPP's argument that its Membership Agreement is protected by the *Mobile-Sierra* doctrine because the agreement is silent on the standard of review. A necessary premise of SPP's argument is that Membership Agreement is covered by the *Mobile-Sierra* presumption. Because we find that the *Mobile-Sierra* presumption is not applicable here, as discussed above, the precedent that SPP cites on *Mobile-Sierra* implications of an agreement's silence is not on point.

**ii. Competitive Upgrades Definition**

136. Because we deny SPP's *Mobile-Sierra* arguments, we address SPP's proposal to remove a federal right of first refusal for certain transmission facilities SPP calls Competitive Upgrades. In its transmittal, SPP defines Competitive Upgrades as new transmission facilities that are allocated under the "Highway" portion of SPP's Highway/Byway cost allocation method (i.e., ITP upgrades and high priority upgrades with a nominal operative voltage of 300 kV or above) that do not fall within one of the exceptions to the nonincumbent transmission developer requirements to eliminate a federal right of first refusal articulated in Order No. 1000.<sup>299</sup> SPP's OATT specifically defines Competitive Upgrades as transmission facilities that meet the following criteria:

- a) Transmission facilities that are ITP Upgrades or high priority upgrades;
- b) Transmission facilities with a nominal operating voltage of 300 kV or greater;
- c) Transmission facilities that are not a rebuild of an existing facility and do not use rights-of-way where facilities exist; and
- d) Transmission facilities located where the selection of a Transmission Owner pursuant to Section III of this Attachment Y does not violate relevant law where the transmission facility is to be built.<sup>[300]</sup>

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bargaining a potential ground for finding that it is necessary or appropriate in the public interest to treat entities as affiliates for purposes of the Commission's market-based rate regulations); *see also Cent. Me. Power Co.*, 85 FERC ¶ 61,272 (1998) (accepting implementing agreements as just and reasonable where the rates, terms and conditions in the agreements were determined through a competitive bidding process and subsequent arm's-length negotiations where neither party could exercise market power).

<sup>299</sup> SPP Transmittal at 52-53 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 427).

<sup>300</sup> SPP OATT, Attachment Y, § I.1.

137. We begin the discussion below by first addressing transmission facilities that retain a federal right of first refusal under SPP's proposal because SPP excludes them from the definition of Competitive Upgrades. The transmission facilities SPP excludes are: (1) byway transmission facilities; (2) transmission facilities whose costs are allocated entirely to a single multi-transmission owner pricing zone; (3) new transmission facilities built on a right-of-way with existing transmission facilities; (4) transmission facilities where the selection of a transmission owner does not violate relevant law where the transmission facility is to be built; (5) transmission facilities that are not a rebuild of an existing facility; (6) transmission facilities needed to address reliability needs in a shortened time frame; and (7) transmission facilities needed to accommodate transmission service requests. We then address transmission facilities that SPP did not exclude from the definition of Competitive Upgrades.

(a) **Byway Facilities**

(1) **SPP Filing**

138. SPP proposes to retain a federal right of first refusal for Byway transmission facilities, which are transmission facilities that operate between 100 and 300 kV and one-third of the costs of which are allocated regionally on a postage stamp basis.

139. SPP asserts that the Commission determined in the Highway/Byway Order that SPP's Highway/Byway cost allocation method properly distinguishes between transmission facilities that provide *regional* benefits and facilities that provide primarily *local* benefits and allocates costs on a roughly commensurate basis consistent with judicial and Commission precedent.<sup>301</sup> SPP states that the Commission expressly found that SPP presented "significant evidence" that extra-high voltage facilities "tend to support *regional* power flows among SPP zones" while lower voltage facilities (e.g., 115-138 kV and 69 kV) "tend to support *local* power flows within a single SPP zone" and "are used more locally." Therefore, SPP maintains that the Commission determined in the Highway/Byway Order that Highway facilities are "regional" and that Byway and low voltage facilities are "local."<sup>302</sup>

140. SPP also insists that its definition of Competitive Upgrades is consistent with or superior to the Order No. 1000 definition of "transmission facilities selected in a regional transmission plan for purposes of cost allocation," as modified by Order No. 1000-A.<sup>303</sup>

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<sup>301</sup> SPP Transmittal at 56-57 (citing Highway/Byway Order, 131 FERC ¶ 61,252 at P 66 (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009))).

<sup>302</sup> *Id.* at 57.

<sup>303</sup> *Id.* at 57-58.



SPP contends that, in Order No. 1000, the Commission drew a clear distinction between transmission facilities selected in the regional transmission plan for purposes of cost allocation as a more efficient or cost-effective solution to regional needs (for which public utility transmission providers must eliminate federal right of first refusal provisions) and local transmission facilities (for which public utility transmission providers may retain existing federal rights of first refusal).<sup>304</sup>

141. SPP argues that, notwithstanding the language in Order No. 1000-A explaining that, “[i]n general, any regional allocation of the cost of a new transmission facility outside a single transmission provider’s retail distribution service territory or footprint . . . is an application of the regional cost allocation method and that new transmission facility is not a local transmission facility,”<sup>305</sup> the Commission already determined in the Highway/Byway Order that facilities allocated 100 percent to a single SPP zone or Byway facilities are local and provide local benefits. Thus, SPP argues that its definition of Competitive Upgrade, which treats such Byway and low voltage facilities as local for purposes of Order No. 1000 compliance, is consistent with the Commission’s findings in the Highway/Byway Order.<sup>306</sup>

142. SPP claims that its proposal will provide significant opportunity for participation in investment in SPP by diverse entities even without including Byway projects in the definition of Competitive Upgrades.<sup>307</sup> SPP states that, based on data from prior transmission plans, of the nearly \$4.1 billion in transmission investment approved for construction and subject to the Highway/Byway and Balanced Portfolio regional cost allocation methods, \$3.2 billion, or nearly 80 percent of the total investment dollars, is for new, 345 kV and above facilities.<sup>308</sup>

143. SPP claims that the Commission’s rejection of its proposed approach based on a fundamental policy shift in the definition of regional funding would cause SPP transmission owners to lose their federal right of first refusal to construct projects that have previously been defined as local by SPP. In turn, this would require the Regional State Committee and SPP stakeholders to reconsider the existing Commission-approved Highway/Byway method.<sup>309</sup> SPP states that such a review would require consideration of

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<sup>304</sup> *Id.* at 58 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 63, 318).

<sup>305</sup> *Id.* (citing Order No. 1000-A, FERC Stats. & Regs. ¶ 31,323 at P 424 (emphasis added)).

<sup>306</sup> *Id.*

<sup>307</sup> *Id.* at 59.

<sup>308</sup> *Id.* (citing SPP Transmittal, Ex. SPP-1 at 10-11).

<sup>309</sup> *Id.* at 60-61.

redesigning cost allocation in SPP, which could include eliminating the modest cost sharing of Byway facilities. SPP asserts that the process to establish a new cost allocation paradigm in SPP would be unnecessarily disruptive given the unique collaboration that resulted in adoption of the Highway/Byway.<sup>310</sup>

144. If the Commission does not find that SPP's proposed definition of Competitive Upgrade is consistent with or superior to the definition of "transmission facility selected in a regional transmission plan for purposes of cost allocation" in Order Nos. 1000 and 1000-A, SPP requests a waiver of the requirements of Order Nos. 1000 and 1000-A to permit SPP to adopt its proposed definition of Competitive Upgrades.<sup>311</sup>

## (2) Protests/Comments

145. AEP, Clean Line, ITC Great Plains, and the Missouri PSC generally support SPP's proposal to retain a federal right of first refusal for Byway facilities.<sup>312</sup>

146. LS Power argues that SPP's proposal to retain a federal right of first refusal for Byway facilities is inconsistent with Order No. 1000.<sup>313</sup> LS Power asserts that SPP should define Competitive Upgrade as facilities whose costs are allocated regionally or extend beyond the retail distribution service territory or footprint of a single utility, rather than by the voltage level of a line.<sup>314</sup> LS Power contends that, consistent with Order No. 1000-A, because one-third of the cost of Byway transmission facilities is allocated regionally, those facilities cannot retain a federal right of first refusal.<sup>315</sup>

147. LS Power also states that only 14.6 percent of the SPP system is above 300 kV.<sup>316</sup> LS Power argues that accepting SPP's proposal would exclude, from the definition of Competitive Upgrade, Byway projects that comprise 75 percent of the current SPP system.

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<sup>310</sup> *Id.* at 61.

<sup>311</sup> *Id.* at 61-62.

<sup>312</sup> AEP Comments at 5-7; Clean Line Comments at 10-11; ITC Great Plains Comments at 7-9; Missouri PSC Protest at 13.

<sup>313</sup> LS Power Protest at 5-8.

<sup>314</sup> *Id.* at 6-7 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 64).

<sup>315</sup> *Id.* at 6 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 430).

<sup>316</sup> *Id.*

**(3) SPP Answer**

148. In response to LS Power's contention that SPP's definition of Competitive Upgrades is inconsistent with Order No. 1000, SPP reiterates that the proposed definition of Competitive Upgrade is consistent with both the Commission's findings in the Highway/Byway Order and Order No. 1000 because it treats Byway and low voltage facilities as local for purposes of Order No. 1000 compliance.<sup>317</sup>

149. SPP claims that although LS Power points out that 75 percent of SPP's current system would not be Competitive Upgrades, LS Power provides no evidence to suggest that future development of the SPP system will match past trends.<sup>318</sup> Indeed, SPP asserts that the future trends likely will be just the opposite. SPP states that as a result of the Commission's acceptance of the ITP process and the Highway/Byway method, SPP's transmission planning now focuses on developing regional solutions. SPP points to the fact that nearly 80 percent of transmission investment approved for construction subject to the Highway/Byway and Balanced Portfolio regional cost allocation methods is for new 345 kV and above facilities that would be eligible to be Competitive Upgrades as evidence that the trend is towards regional, not local, solutions.<sup>319</sup>

**(4) Commission Determination**

150. On an initial note, we accept SPP's proposal to eliminate federal rights of first refusal for Highway facilities as consistent with the requirements of Order No. 1000. However, we find that SPP's proposal to maintain a federal right of first refusal for Byway facilities does not comply with the requirement in Order No. 1000 to eliminate from Commission-jurisdictional tariffs and agreements provisions that establish a federal right of first refusal for an incumbent transmission owner with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation. The Commission stated in Order No. 1000-A that, "[in] general, any regional allocation of the cost of a new transmission facility outside a single transmission provider's retail distribution service territory or footprint . . . is an application of the regional cost allocation method and that new transmission facility is not a local transmission facility."<sup>320</sup> The Commission also clarified in Order No. 1000-A that "if any of the costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be

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<sup>317</sup> SPP Answer at 17-20.

<sup>318</sup> *Id.* at 16-17.

<sup>319</sup> *Id.* at 17.

<sup>320</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 424.

no federal right of first refusal associated with such transmission facility.”<sup>321</sup> Therefore, a new transmission facility that is selected in the regional transmission plan for purposes of cost allocation is no longer a local transmission facility that is exempt from the requirements of Order Nos. 1000 and 1000-A regarding the removal of federal rights of first refusal.<sup>322</sup> The Commission upheld these findings in Order No. 1000-B.<sup>323</sup> Byway facilities are selected as part of SPP’s regional transmission planning process and a portion of the cost of Byway facilities is allocated regionally. Therefore, in order to comply with Order No. 1000, SPP must eliminate any federal right of first refusal for Byway facilities.<sup>324</sup>

151. We acknowledge that, in the Highway/Byway Order, the Commission distinguished between Highway facilities, for which 100 percent of the costs are allocated on a regional basis, and Byway facilities, for which only 1/3 of the costs are allocated regionally. However, the finding in the Highway/Byway Order that extra-high voltage transmission facilities tend to support regional flows and that lower voltage transmission facilities tend to support local flows within a zone does not mean that the Commission must consider Byway facilities to be “local” transmission facilities in the context of Order No. 1000. Order No. 1000 was issued after the Highway/Byway Order and placed new requirements on SPP. One of those requirements is that SPP remove federal rights of first refusal for transmission facilities selected in the regional transmission plan for purposes of cost allocation that receive regional cost sharing. Accordingly, the Commission’s finding in the Highway/Byway Order is not determinative of whether SPP has complied with the Order No. 1000 requirement to eliminate a federal right of first refusal with respect to the Byway transmission facilities.<sup>325</sup>

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<sup>321</sup> *Id.* P 430.

<sup>322</sup> *Id.*

<sup>323</sup> Order No. 1000-B, 141 FERC ¶ 61,044 at P 52.

<sup>324</sup> In addition, we note that, because the issue here is the cost allocation method and not just terms and conditions of service, SPP is incorrect to assert that “consistent with or superior to” rather than “just and reasonable” is the standard of review applicable to SPP’s proposal.

<sup>325</sup> Moreover, the Commission found in the Highway/Byway Order that SPP’s study demonstrated that lower voltage facilities of 115-138 kV, which are categorized as Byway facilities under the Highway/Byway method, experience inter-zonal power flow changes in excess of the impact threshold for 38 percent of the study hours, suggesting that they support a degree of regional power flows commensurate with the Highway/Byway cost allocation method’s allocation of 1/3 of their costs on a regional basis. Highway/Byway Order, 131 FERC ¶ 61,252 at PP 23, 73.

152. Finally, SPP requests waiver (if the Commission find that SPP's definition of Competitive Upgrades is inconsistent with Order No. 1000) to allow it to maintain its proposed definition of Competitive Upgrades. SPP states that good cause exists to grant it waiver due to the SPP Regional State Committee's unanimous support of its proposal and in order to permit SPP's stakeholders to maintain the cooperation that resulted in the Highway/Byway method. We do not find these reasons sufficient to grant waiver of the requirements of Order No. 1000. As discussed throughout the nonincumbent transmission developer reform section of this order, SPP's proposed definition of Competitive Upgrades in several instances does not comply with the requirements of Order No. 1000. The Commission's final rules apply equally to all jurisdictional entities unless those entities can make a case that they deserve disparate treatment. SPP has not made that case here.

153. Because we find that SPP's proposal to retain a federal right of first refusal for Byway facilities does not comply with Order No. 1000, we direct SPP to submit a compliance filing, within 120 days of the date of this order, revising the definition of Competitive Upgrades to include Byway facilities.<sup>326</sup>

**(b) Multi-Transmission Owner Zones**

**(1) SPP Filing**

154. SPP states that five of its seventeen pricing zones contain the transmission facilities of more than one transmission owner. SPP asserts that it should be permitted to retain a federal right of first refusal for facilities whose costs are allocated within one of its multi-transmission owner zones.

155. First, SPP argues that, given the relatively small geographic size of each zone in comparison to the entire SPP footprint, any cost allocation limited to one zone is local, regardless of the number of transmission owners within the zone.<sup>327</sup> Moreover, SPP asserts that it has not divided its region into large sub-regional zones in order to

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<sup>326</sup> In section IV.B.2.a.ii.(f)(4), the Commission discusses SPP's proposal to exempt from the requirement to eliminate a federal right of first refusal Competitive Upgrades that are needed to address reliability needs in a shortened time frame and the applicability of this exception to Competitive Upgrades, including both Highway and Byway facilities.

<sup>327</sup> SPP Transmittal at 64 (citing SPP Transmittal, Ex. SPP-1 at 21; Ex. SPP-5).

circumvent Order No. 1000.<sup>328</sup> SPP states that the zones were established before Order No. 1000 and are based on historical transmission owner service territory boundaries.<sup>329</sup>

156. Second, SPP contends that each multi-transmission owner zone is local because each zone has one transmission owner who owns more than 90 percent of the transmission plant within the zone based on the annual transmission revenue requirement.<sup>330</sup> SPP argues, therefore, that a small transmission owner in a multi-transmission owner zone depends in large part upon the transmission assets of the transmission owner with the bulk of the assets.<sup>331</sup> SPP claims that these zones are precisely the types of zones that the Commission indicated in Order No. 1000-A would not likely qualify as a zone consisting of more than one transmission provider.<sup>332</sup>

157. Finally, SPP argues that it would be unduly discriminatory to allow transmission owners who happen to be located in a single-transmission owner zone to retain a federal right of first refusal for transmission facilities allocated to their zones, while requiring similarly-situated transmission owners located in multi-transmission owner zones to lose those rights.<sup>333</sup> SPP contends that this unjustified distinction would be arbitrary given the Commission's finding that the SPP zones are similarly situated in the context of transmission planning and cost allocation.<sup>334</sup>

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<sup>328</sup> *Id.*

<sup>329</sup> *Id.* (citing SPP Transmittal, Ex. SPP-1 at 20-21).

<sup>330</sup> *Id.* at 65. The portion of the annual transmission revenue requirement attributable to the majority transmission owner in the five multi-transmission owner zones is as follows: (1) AEP has 95.6 percent of the annual transmission revenue requirement in the American Electric Power West Zone; (2) Oklahoma Gas and Electric Company has 99.6 percent of the annual transmission revenue requirement for Oklahoma Gas and Electric Company Zone; (3) SPS has 98.2 percent of the annual transmission revenue requirement for Southwestern Public Service Company Zone; (4) Westar Energy, Inc. has 99.8 percent of the annual transmission revenue requirement for the Westar Energy, Inc. Zone; and (5) Mid-Kansas Electric Company has 90.1 percent of the annual transmission revenue requirement for Mid-Kansas Electric Company Zone. *Id.* (citing Ex. SPP-4).

<sup>331</sup> *Id.* (citing Ex. SPP-4).

<sup>332</sup> *Id.* 65 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 424).

<sup>333</sup> *Id.* at 66-67.

<sup>334</sup> *Id.* at 67 (citing Highway/Byway Order, 131 FERC ¶ 61,252 at P 82).

**(2) Protests/Comments**

158. ITC Great Plains, AEP, East Texas Cooperatives, Missouri PSC, and Municipal Intervenor support SPP's proposal to retain a right of first refusal for transmission projects whose cost are allocated to existing zones with multiple transmission owners.<sup>335</sup> Missouri PSC is concerned that the multi-transmission owner zone right of first refusal would extend to zones that become multi-transmission owner zones after the Commission acts on SPP's Order No. 1000 compliance filing.<sup>336</sup> In contrast, Municipal Intervenor request that the Commission's acceptance of SPP's proposed treatment of multi-transmission owner zones not be so narrowly drawn that it applies only to the five existing multi-transmission owner zones.<sup>337</sup> Municipal Intervenor ask the Commission to allow SPP to convert existing single-owner zones to multi-transmission owner zones in the future without the affected transmission owners losing the federal right of first refusal.<sup>338</sup>

159. LS Power argues that SPP has not provided adequate justification for its proposal to retain a right of first refusal for multi-transmission owner zones.<sup>339</sup> LS Power asserts that SPP's argument that the geographic scope of each of the zones in SPP, compared to the total SPP regional footprint, makes each transmission zone by definition local in nature is the wrong analysis, which instead should be based on the characteristics of the individual zones requesting the exemption. LS Power also disagrees with SPP that differentiating between single owner zones and multi-transmission owner zones results in undue discrimination.<sup>340</sup>

**(3) SPP Answer**

160. SPP contends that LS Power overlooks the specific evidence and legal argument that SPP presented to demonstrate that cost allocation to the five multi-transmission owner zones is local.<sup>341</sup> SPP states that LS Power ignores a chart provided by SPP that

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<sup>335</sup> ITC Great Plains Comments at 9-10; AEP Comments at 8-11; East Texas Cooperatives Comments at 3-7; Missouri PSC Protest at 13-14; Municipal Intervenor Comments at 5-9.

<sup>336</sup> Missouri PSC Protest at 14.

<sup>337</sup> Municipal Intervenor Comments at 8-9.

<sup>338</sup> *Id.* at 8-9.

<sup>339</sup> LS Power Protest at 8-12.

<sup>340</sup> *Id.* at 11-12.

<sup>341</sup> SPP Answer at 29-35.

demonstrates that, in each of the five multi-transmission owner zones, one transmission owner owns the vast majority of facilities (i.e., 90 percent or more), but has within its borders one or more smaller utilities that largely depend on its transmission system but own few transmission facilities of their own. SPP argues that the chart demonstrates that the five multi-transmission owner zones are precisely the type of zone that the Commission envisioned in Order No. 1000-A would qualify as local for purposes of cost allocation.<sup>342</sup>

161. SPP adds that LS Power misconstrues SPP's undue discrimination argument.<sup>343</sup> SPP reiterates that treating similarly-situated transmission owners (i.e. owners in single transmission owner zones and those in multi-transmission owner zones) differently by allowing one group, but not the other, to retain a federal right of first refusal for local transmission facilities without justification would be unduly discriminatory. SPP notes that LS Power does not offer support for its contention that transmission owners located in multi-transmission owner zones are differently situated from transmission owners in single-owner zones.

#### (4) Commission Determination

162. We find that SPP's proposal to treat a new transmission facility whose costs are allocated entirely to a single multi-transmission owner pricing zone within SPP as if its costs were allocated to a pricing zone with a single transmission owner complies with the requirements of Order No. 1000. Therefore, with respect to the five existing multi-transmission owner pricing zones within SPP, a new transmission facility whose costs are allocated entirely to a single such pricing zone within SPP are not subject to the requirement to eliminate any federal right of first refusal. We note that if SPP establishes new multi-transmission owner zones in the future, the Commission will review the proposed multi-transmission owner zones on a case-by-case basis to determine whether the allocation of all of the costs of a transmission facility located within a proposed multi-transmission owner zone to that zone will qualify as a local cost allocation, consistent with Order No. 1000-A.<sup>344</sup>

163. We find that SPP's five existing multi-transmission owner pricing zones are consistent with the exception the Commission stated it would consider in Order No. 1000-A. Specifically, recognizing that special consideration is needed when a small transmission provider is located within the footprint of another transmission provider, the Commission stated that it would address on a case-by-case basis whether a cost allocation to a multi-transmission provider zone is regional based on the specific facts presented on

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<sup>342</sup> *Id.* at 32.

<sup>343</sup> *Id.* at 34-35.

<sup>344</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 424.



compliance. For example, the Commission explained that a zone consisting of one transmission provider that has within its borders one or more smaller utilities that largely depend on its transmission system but nevertheless own a little transmission of their own, so that they too are transmission providers, is not necessarily a “zone consisting of more than one transmission provider” as the term is used in the order. The Commission stated that if the costs of a new transmission facility were allocated entirely to such a zone, this might qualify as local cost allocation rather than regional cost allocation.<sup>345</sup>

164. We disagree with LS Power’s argument that SPP has not provided adequate justification to support treating a transmission facility whose costs are allocated entirely to a single multi-transmission owner pricing zone within SPP as a local transmission facility. SPP provided relevant background information about the creation of multi-transmission owner pricing zones in its compliance filing.<sup>346</sup> We find this information demonstrates that the SPP multi-transmission owner pricing zones are based on the traditional service territories for the transmission owners before they joined SPP and were not created for the purpose or effect of undermining the requirements of Order No. 1000 with respect to elimination of federal rights of first refusal. In addition, SPP provided information that shows that a single transmission owner owns between 90.1 percent and 99.6 percent of the transmission plant in each of its five multi-transmission pricing zones.<sup>347</sup> We find that this demonstrates that each of SPP’s existing multi-transmission owner pricing zones consists of one transmission provider with the vast majority of transmission assets and one or more smaller transmission owners that largely depend on the transmission owner with the majority of transmission assets in each multi-transmission owner pricing zone.

165. SPP also shows that the geographic scope of each of the existing pricing zones, including the five multi-transmission owner pricing zones, are small in comparison to total SPP regional footprint.<sup>348</sup> Thus we find that SPP is not attempting to circumvent the requirement to eliminate the federal right of first refusal by dividing into large multi-utility joint pricing zones. For these reasons, we agree with SPP that when the cost of a transmission facility is allocated by SPP solely to one of these existing multi-transmission owner pricing zones, the cost allocation is local, just as it would be for the cost of an identical transmission facility that is allocated to one of the 12 SPP pricing zones consisting of only one transmission owner’s facilities. For the reasons discussed above and based on the evidence before us, we conclude that classifying a transmission facility whose costs are allocated entirely to one of SPP’s existing multi-transmission owner

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<sup>345</sup> *Id.*

<sup>346</sup> SPP Transmittal at 63, Ex. SPP-1 at 20-21.

<sup>347</sup> *Id.* at 65, Ex. SPP-4.

<sup>348</sup> *Id.* at 64, Ex. SPP-5.

pricing zones as a local transmission facility is not unduly discriminatory or preferential but instead reflects the historic local nature of SPP's existing multi-transmission owner pricing zones. We, therefore, dismiss LS Power's argument.

166. We deny Municipal Intervenors' request that our finding regarding SPP's multi-transmission owner pricing zones not be limited to the SPP's existing five multi-transmission owner zones. In accepting SPP's proposal, we are not making any determination about whether a new transmission facility whose costs are allocated entirely to any future multi-transmission owner pricing zone within SPP, including one formed as a result of a change to one of the 12 existing SPP pricing zones currently with only one transmission owner, qualifies as a local transmission facility for purposes of retaining a federal right of first refusal. If SPP establishes new multi-transmission owner zones in the future, the Commission will review the proposed multi-transmission owner zones on a case-by-case basis to determine whether the allocation of all of the costs of a transmission facility located within a proposed multi-transmission owner zone to that zone will qualify as a local cost allocation, consistent with Order No. 1000-A.<sup>349</sup>

(c) **Rights-of-Way**

(1) **SPP Filing**

167. As noted above, SPP proposes to eliminate the federal right of first refusal for Competitive Upgrades. Transmission facilities qualify as Competitive Upgrades, if, among other things, they "do not use rights-of-way where facilities exist."<sup>350</sup> Under SPP's proposal, incumbent transmission owners will retain a federal right of first refusal for a transmission facility that uses a right-of-way where facilities already exist, and SPP will assign the incumbent transmission owner to develop these transmission facilities.<sup>351</sup>

(2) **Protests/Comments**

168. Duke-American argues that the proposed definition of Competitive Upgrade is contrary to Order No. 1000 and should be revised to exclude the phrase "and do not use rights of way where facilities exist" because whether an existing right-of-way can be used should be addressed in a state regulatory process based on the options available under state law and should not be a basis for automatic exclusion of nonincumbent transmission developers (i.e., retention of right of first refusal) from the SPP process.<sup>352</sup> LS Power

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<sup>349</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 424.

<sup>350</sup> SPP Transmittal at 71-72; SPP OATT, Attachment Y, § I.1.c.

<sup>351</sup> SPP OATT, Attachment Y, § I.3.

<sup>352</sup> Duke-American Protest at 24-26 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at PP 392, 427).

contends that the proposed rights-of-way exemption could be broadly construed to allow a new transmission facility in existing rights-of-way to be classified as an upgrade, contrary to Order No. 1000.<sup>353</sup>

### (3) Answers

169. SPP asserts that the rights-of-way exclusion is limited to only those rights-of-way where facilities already exist.<sup>354</sup> SPP states that any facility that would be needed in such rights-of-way would be likely upgrades to existing facilities, not entirely new facilities. SPP adds that it is not exceeding its authority and improperly entering the jurisdiction of the state by including the right-of-way provision as Duke-American asserts. SPP claims that, instead, it is respecting state law by not infringing on rights-of-way consistent with Order No. 1000, which provides that its “reforms are not intended to alter an incumbent transmission provider’s use and control of its existing rights-of-way.”<sup>355</sup>

### (4) Commission Determination

170. We find that SPP’s proposal to allow an incumbent transmission owner to maintain a federal right of first refusal for any new transmission facility built on a right-of-way with existing transmission facilities is not permitted by Order No. 1000, and, as such, we direct SPP to remove the proposed language in the compliance filing directed herein. The Commission acknowledged in Order No. 1000 that its reforms “are not intended to alter an incumbent transmission provider’s use and control of its existing rights-of-way[,]” that Order No. 1000 does not “grant or deny transmission developers the ability to use rights-of-way held by other entities, even if transmission facilities associated with such upgrades or uses of existing rights-of-way are selected in the regional transmission plan for purposes of cost allocation[,]” and that the “retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way.”<sup>356</sup> However, the Commission did not find that a public utility transmission provider, as part of its compliance filing, may add a federal right of first refusal for a new transmission facility built on an existing right-of-way. Accordingly, we direct SPP to file, within 120 days of the date of this order, a further compliance filing revising its OATT to remove the proposed language related to rights-of-way in section I.1.c of Attachment Y of its OATT.

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<sup>353</sup> LS Power Protest at 13-15.

<sup>354</sup> SPP Answer at 24-25.

<sup>355</sup> *Id.* at 25 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 392).

<sup>356</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31, 323 at P 319.

171. However, we note that while rights-of-way may not be used to automatically exclude proposals to develop more efficient or cost-effective transmission solutions to regional transmission needs, it is not necessarily impermissible to consider rights-of-way at appropriate points in the regional transmission planning process. It would be appropriate for SPP to consider whether an entity has existing rights-of-way as well as whether the entity has experience or ability to acquire rights-of-way as part of the process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.<sup>357</sup>

(d) **State Law**

(1) **SPP Filing**

172. SPP proposes that, to be Competitive Upgrades, “[t]ransmission facilities [must be] located where the selection of a Transmission Owner pursuant to [the competitive bidding process] does not violate the relevant law where the transmission facility is to be built.”<sup>358</sup>

(2) **Protest/Comments**

173. LS Power argues that the language in proposed section I.(1)(d), which states that “[t]ransmission facilities located where the selection of a Transmission Owner pursuant to [s]ection III of this Attachment Y does not violate relevant law where the transmission facility is to be built” is vague and could be used to improperly limit the projects that can be designated as Competitive Upgrades.<sup>359</sup> According to LS Power, the provision also places SPP in the position of interpreting state or local laws. LS Power proposes revisions that would ensure that the OATT provision only excludes projects in states where there is a clear state right of first refusal and that only the portion of the project which resides in that state would be assigned to the incumbent transmission owner.<sup>360</sup>

174. Duke-American adds that transmission projects are commonly interstate in nature and do not necessarily terminate within, or exactly at, state borders, and that SPP does not address situations where a Competitive Upgrade is located partially in a state with a right of first refusal and partially in a state without a right of first refusal.<sup>361</sup> Duke-American

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<sup>357</sup> *S.C. Elec. & Gas Co.*, 143 FERC ¶ 61,058, at P 131 (2013).

<sup>358</sup> SPP OATT, Attachment Y, § I.1.d.

<sup>359</sup> LS Power Protest at 15-16.

<sup>360</sup> *Id.* at 15-16.

<sup>361</sup> Duke-American Protest at 21-23.

states that failure to address this situation raises a host of unanswered questions regarding how ownership of multi-state facilities will be determined. For example, Duke-American asserts that SPP does not address (1) how developers will be selected for the portion of the project that is located in the state without a right of first refusal or (2) situations in which an incumbent transmission owner is granted ownership of part of the transmission project located in a state with a right of first refusal and another transmission developer is granted ownership of the portion of the transmission project located in the state without a right of first refusal. Duke-American is concerned that SPP's proposal does not specify that the transmission developer of the part of the transmission project located in a state without a right of first refusal would be selected through SPP's Transmission Owner Selection Process. Duke-American also contends that SPP does not address how the development of the transmission project in both types of states will be coordinated with regard to design standards, completion deadlines, and other important aspects of such a project if ownership of the project will be awarded through two totally separate and different processes.<sup>362</sup>

### (3) Answers

175. SPP argues that contrary to LS Power and Duke-American's assertions, revisions to the proposed language providing that Competitive Upgrades can be located only where the selection of the Designated Transmission Owner pursuant to the competitive process does not violate relevant law where the transmission facility is to be built are not required to comply with Order No. 1000.<sup>363</sup> SPP points to the finding in Order No. 1000 "that nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities."<sup>364</sup> SPP asserts that the proposed language reflects this principle and is just and reasonable because it makes plain that the Transmission Owner Selection Process will be used for all transmission facilities located where its use does not violate relevant law.

176. In response to LS Power and Duke-American's concerns about interstate transmission projects, SPP clarifies that if a transmission project included in the regional transmission plan for cost allocation purposes crosses several states, any portion of the project located in a state where the selection of the Designated Transmission Owner pursuant to the Transmission Owner Selection Process does not violate relevant law will qualify as a Competitive Upgrade.<sup>365</sup> SPP states that under Attachment O, SPP currently

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<sup>362</sup> *Id.* at 22.

<sup>363</sup> SPP Answer at 26-27.

<sup>364</sup> *Id.* at 26 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 227).

<sup>365</sup> *Id.* at 27.

divides one transmission project among different transmission owners when appropriate. SPP states that this practice will continue with the implementation of the Transmission Owner Selection Process. SPP argues that nothing in SPP's proposed language prohibits this practice and thus LS Power's suggested revisions are not necessary.<sup>366</sup>

177. In its answer, Duke-American reiterates its argument that SPP's proposed OATT should be revised to exclude the phrase "and do not use rights of way where facilities exist" because, consistent with Order No. 1000, the use or non-use of an existing right-of-way should be addressed in a state regulatory process based on the options available under state law and should not be a basis for automatic exclusion of nonincumbent transmission developers from the SPP process.<sup>367</sup>

#### (4) Commission Determination

178. Regarding LS Power's concerns with the reference to laws in the definition of Competitive Upgrades, Order No. 1000 does not require removal from Commission-jurisdictional tariffs or agreements references to state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.<sup>368</sup> However, SPP's proposal goes beyond mere reference to state or local laws or regulations; it references relevant law and then uses that reference to create a federal right of first refusal.<sup>369</sup> Order No. 1000 does not permit a public utility transmission provider to add a federal right of first refusal for a new transmission facility based on state law. Accordingly, we direct SPP to file, within

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<sup>366</sup> *Id.*

<sup>367</sup> Duke-American Response at 8-10.

<sup>368</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31, 323 at P 253 n.231:

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

See also Order No. 1000-A, FERC Stats. & Regs ¶ 31,132 at P 381.

<sup>369</sup> SPP's OATT specifically excludes from the definition of Competitive Upgrades transmission facilities located where the selection of a transmission owner pursuant to section III of Attachment Y violates relevant law where the transmission facility is to be built. SPP OATT, Attachment Y, § I.1.

120 days of the date of this order, a further compliance filing revising its OATT to remove the proposed language referencing relevant laws in section I.1.d of Attachment Y to its OATT.

179. While state laws and regulations may not be used to automatically exclude bids to develop more efficient or cost-effective transmission solutions to regional transmission needs, it may be permissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process.<sup>370</sup> Indeed, the Commission has identified points at which such consideration might be appropriate. For example, in Order No. 1000-A, the Commission stated that public utility transmission providers in a transmission planning region must adopt a transparent and not unduly discriminatory evaluation process and must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer.<sup>371</sup> This statement does not preclude public utility transmission providers in regional transmission planning processes from taking into consideration the particular strengths of either an incumbent transmission provider or a nonincumbent transmission developer during its evaluation.<sup>372</sup> As the Commission acknowledged, an incumbent public utility transmission provider is free to highlight such strengths to support transmission project(s) in the regional transmission plan, or in bids to undertake transmission projects in regions that choose to use solicitation processes.<sup>373</sup> An incumbent transmission provider may have unique knowledge of its own transmission systems, familiarity with the communities they serve, economies of scale, experience in building and maintaining transmission facilities, and access to funds needed to maintain reliability, and the Commission does not believe removing the federal right of first refusal diminishes the importance of these factors.<sup>374</sup>

180. The Commission has also identified other points at which such consideration might be appropriate. In Order No. 1000-A, the Commission stated that public utility transmission providers are required to describe the circumstances and procedures under which they will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions, including those proposed by the incumbent transmission provider, to ensure the incumbent transmission

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<sup>370</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 232-233 (2013).

<sup>371</sup> Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 454.

<sup>372</sup> *Id.*

<sup>373</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 260.

<sup>374</sup> *Id.*

provider can meet its reliability needs or service obligations.<sup>375</sup> Order No. 1000-A further addresses concerns relating to the progress of a transmission developer for a transmission project selected in the regional transmission plan for purposes of cost allocation toward achieving state approvals to construct that project. With respect to this issue, Order No. 1000-A provides:

As part of the ongoing monitoring of the progress of the transmission project once it is selected [in the regional transmission plan for purposes of cost allocation], the public utility transmission providers in a transmission planning region must establish a date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address. If such critical steps have not been achieved by that date, then the public utility transmission providers in a transmission planning region may remove the transmission project from the selected category and proceed with reevaluating the regional transmission plan to seek an alternative solution.<sup>[376]</sup>

(e) **Rebuilt Transmission Facilities**

(1) **SPP Filing**

181. SPP defines Competitive Upgrades in part as transmission facilities that are not a rebuild of an existing facility.<sup>377</sup>

(2) **Protests/Comments**

182. LS Power argues that limiting Competitive Upgrades to transmission facilities that are not a rebuild of an existing facility is contrary to Order No. 1000.<sup>378</sup> LS Power

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<sup>375</sup> Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 477; *see also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329 (“[A]n incumbent transmission provider must have the ability to propose solutions that it would implement within its retail distribution service territory or footprint that will enable it to meet its reliability needs or service obligations.”).

<sup>376</sup> Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 442.

<sup>377</sup> SPP OATT, Attachment Y, § I.1.c.

<sup>378</sup> LS Power Protest at 13 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).



contends that the proposal could be broadly construed to allow a new transmission facility (classified as a “rebuild”) to be classified as an upgrade, contrary to the definition of upgrade provided in Order No. 1000-A.<sup>379</sup> LS Power argues that Orders No. 1000 and 1000-A are explicit that a right of first refusal remains for upgrades to existing facilities, not completely new facilities.<sup>380</sup> LS Power also argues that SPP should revise its definition of Competitive Upgrades to include Balanced Portfolio Upgrades, Sponsored Upgrades and substations.<sup>381</sup>

### (3) Answers

183. SPP argues that LS Power is incorrect in its assertion that “rebuild” could be construed more broadly than in Order No. 1000-A to include a new transmission facility used to supplant an existing line.<sup>382</sup> SPP clarifies that “rebuild” does not refer to entirely new transmission facilities but instead is used in SPP’s ITP process to distinguish between a change to an existing facility (a rebuild) and a new facility. SPP states that it continues to use the term in proposed Attachment Y to indicate the same distinction.<sup>383</sup> In response to LS Power’s other proposed revisions to the definition of Competitive Upgrades, SPP clarifies that Balanced Portfolio Upgrades are Competitive Upgrades, that Sponsored Upgrades are not Competitive Upgrades because they are participant-funded, and that SPP considers substations to be transmission facilities.<sup>384</sup>

### (4) Commission Determination

184. We find SPP’s proposal to maintain a federal right of first refusal for a rebuild of an existing transmission facility partially complies with Order No. 1000. The requirement to eliminate the federal right of first refusal does not apply to the right of an incumbent transmission owner to build, own, and recover costs for upgrades to its own transmission facilities.<sup>385</sup> In its answer, SPP states that the term “rebuild” is used in

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<sup>379</sup> *Id.* at 13-15.

<sup>380</sup> *Id.* at 13 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

<sup>381</sup> *Id.* at 8.

<sup>382</sup> *Id.* at 23-24.

<sup>383</sup> *Id.* at 24.

<sup>384</sup> *Id.* at 21-22.

<sup>385</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional

SPP's regional transmission planning process to distinguish between a change to an existing facility (a rebuild) and a new facility, and that a rebuild does not refer to entirely new transmission facilities.<sup>386</sup> However, SPP's OATT does not reflect the clarification SPP provides in its answer. Accordingly, we direct SPP to submit, within 120 days of the date of this order, a further compliance filing to revise its OATT to provide a definition of "rebuild" that is consistent with the clarification in SPP's answer. For example, SPP has not explained how it will classify a transmission project that includes both an entirely new section of transmission line and a rebuild of an existing transmission substation to support the new transmission line. Accordingly, we direct SPP to clarify in a compliance filing within 120 days of this order, how it will classify projects that contain both upgrades to existing facilities and new transmission facilities.

185. Also, we find that SPP's clarifications that Balanced Portfolio Upgrades are Competitive Upgrades, that Sponsored Upgrades are not Competitive Upgrades because they are participant funded, and that SPP considers substations to be transmission facilities adequately address LS Power's concerns.

(f) **Exception for Transmission Projects Needed to Address Reliability Needs in a Shortened Time Frame**

(1) **SPP Filing**

186. While SPP intends to use the Transmission Owner Selection Process to establish construction and ownership responsibilities for Competitive Upgrades, SPP proposes to continue designating the incumbent transmission owner as the builder and owner for a transmission facility that would be open to competitive bidding but for the fact that the transmission facility is needed to address reliability issues within an extremely short time frame.<sup>387</sup>

187. SPP asserts that, in some instances, a transmission facility that is needed to maintain the reliability of the transmission system, which would otherwise qualify as a Competitive Upgrade, must be placed into service within a shorter time frame than the Transmission Owner Selection Process would permit. SPP claims that, in these limited

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transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

<sup>386</sup> SPP Answer at 24.

<sup>387</sup> SPP Transmittal at 94.

cases, the transmission facility must be assigned to the incumbent transmission owner so that SPP can fulfill the function of the regional transmission planning process to identify transmission facilities that are needed to meet identified needs on a timely basis and, in turn, enable public utility transmission providers to meet their service obligations.<sup>388</sup>

188. SPP states that revisions to its OATT will strictly govern when it may assign a transmission project to the incumbent transmission owner and that it will do so only as a last resort.<sup>389</sup> The proposed language states that transmission projects needed to address reliability needs in a shortened time frame will be assigned to the incumbent transmission owner without going through the Transmission Owner Selection Process only if the following conditions are met: (1) the transmission facility is needed for the reliability of the grid; (2) the date by which the transmission facility is needed cannot be met if the Transmission Owner Selection Process is followed; and (3) no other reasonable transmission or non-transmission mitigation options are available to relieve the reliability issue to allow sufficient time for the Transmission Owner Selection Process to proceed.<sup>390</sup>

189. SPP adds that it is only permitted to designate the incumbent transmission owner as the builder and owner of transmission projects needed to address reliability needs in a shortened time frame without conducting the Transmission Owner Selection Process with the approval of its independent Board. SPP states that, based on the experience of the past few years, it does not expect to invoke this process frequently. SPP expects that most transmission facilities needed for reliability purposes within a shortened time frame are lower voltage facilities for which incumbent transmission owners are permitted to retain a federal right of first refusal.<sup>391</sup> SPP explains that it is not proposing a specific time limitation (e.g., 3 years) because lead-times vary from project-to-project; state approval and environmental permitting process time frames differ state-to-state; and other issues vary based on the reliability need, location, and solution.<sup>392</sup>

190. SPP states that the Regional State Committee submitted a letter to SPP expressing “unanimous and adamant support” for maintaining a right of first refusal for transmission projects needed to address reliability needs in a shortened time frame.<sup>393</sup>

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<sup>388</sup> *Id.* at 94-95 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 264).

<sup>389</sup> *Id.*, Ex. SPP-1 at 17.

<sup>390</sup> SPP OATT, Attachment Y, § I.2.

<sup>391</sup> SPP Transmittal at 95.

<sup>392</sup> *Id.*, Ex. SPP-1 at 17-18.

<sup>393</sup> *Id.* at 95.

**(2) Protests/Comments**

191. Missouri PSC, AEP, and ITC Great Plains support SPP's proposal for dealing with transmission projects needed to address reliability needs in a shortened time frame.<sup>394</sup> AEP argues that, if the Commission does not accept SPP's definition of Competitive Upgrade, then SPP should adopt the approach proposed by PJM Interconnection, LLC to address transmission projects needed to address reliability needs in a shortened time frame.<sup>395</sup>

**(3) SPP Answer**

192. In response to AEP's suggestion that SPP adopt PJM's proposal regarding transmission projects needed to address reliability needs in a shortened time frame, SPP notes that although it appears that both SPP's and PJM's proposals are designed to achieve similar purposes, the fact that PJM has proposed an alternative approach does not demonstrate that SPP's proposal is unjust and unreasonable.<sup>396</sup>

**(4) Commission Determination**

193. SPP's proposal maintains a federal right of first refusal for transmission projects needed to address reliability needs in a shortened time frame that are selected in the regional transmission plan for purposes of cost allocation and whose costs would be allocated pursuant to the SPP regional cost allocation method.

194. Pursuant to our determination in section IV.B.2.a.ii.a.4 above, SPP must eliminate its federal right of first refusal for Byway facilities (transmission facilities that operate between 100 kV and 300 kV) by revising the definition of Competitive Upgrades to include Byway facilities in addition to Highway facilities (transmission facilities that operate at or above 300 kV). As a result of the expanded definition of Competitive Upgrades required in section IV.B.2.a.ii.a.4, SPP's proposed tariff provisions regarding transmission projects needed to address reliability needs in a shortened time apply to Competitive Upgrades, including both Highway and Byway facilities. Thus, SPP's proposed tariff provisions would allow it to assign Competitive Upgrades, including both Highway and Byway transmission facilities, to an incumbent transmission owner if SPP determines that the transmission facility: (1) "is needed for the reliability of the grid"; (2) "has a need date that cannot be met if the Transmission Owner Selection Process [] is followed"; and (3) "no other transmission or non-transmission mitigation options are

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<sup>394</sup> Missouri PSC Protest at 13; ITC Great Plains Comments at 8; AEP Comments at 7-8.

<sup>395</sup> AEP Comments at 7-8.

<sup>396</sup> SPP Answer at 20 n.60.

available to relieve the reliability issue to allow sufficient time for the Transmission Owner Selection Process to proceed.”<sup>397</sup>

195. We find that SPP’s proposed federal right of first refusal for transmission projects needed to address reliability needs in a shortened time frame partially complies with Order No. 1000. We agree that it may be acceptable, in limited circumstances, for SPP to assign a limited category of projects to an incumbent transmission owner if such projects are needed to address an identified reliability violation and are shown to be time-sensitive. Since SPP does not propose to hold a competitive solicitation for transmission projects needed to address reliability needs in a shortened time frame, we believe that the following five criteria place reasonable bounds on SPP’s discretion to determine whether there is sufficient time to hold a competitive solicitation and, as a result, will ensure that an exception from the requirement to eliminate a federal right of first refusal for reliability projects will be used in limited circumstances.

196. If SPP seeks to maintain such a time-limited federal right of first refusal, the following criteria must be part of any such proposal.<sup>398</sup>

- (1) The category of projects must be needed within 3 years or less to solve reliability criteria violations;
- (2) Before SPP can assign a short-term transmission project to an incumbent transmission developer, SPP must separately identify and then post an explanation on the reliability violations and system conditions for which there is a time-sensitive need. The explanation must be in sufficient detail to allow stakeholders to understand the need and why it is time sensitive;
- (3) The process that SPP uses to decide whether a short-term project is assigned to an incumbent transmission owner must be clearly outlined in SPP’s OATT and must be open, transparent, and not unduly discriminatory. SPP must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered but concluded would not sufficiently address the immediate reliability need; and (2) the circumstances that generated the immediate reliability need and an explanation of why that immediate reliability need was not identified earlier;

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<sup>397</sup> See SPP OATT, Attachment Y, § I.2.

<sup>398</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 248.

- (4) SPP must permit stakeholders sufficient time to provide comments in response to the description in criterion three and such comments must be made publicly available;
- (5) SPP must maintain and post a list of prior year designations of all projects in the limited category of transmission projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. Such list must be filed with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year.

197. Regarding the first criterion, we find that, on balance, three years is just and reasonable. On one side of the balance is our consideration of Order No. 1000's goal of removing barriers that discourage nonincumbent transmission developers from proposing alternative solutions at the regional level and Order No. 1000's recognition that it is not in the economic self-interest of public utility transmission providers to expand the transmission grid to permit access to competing sources of supply.<sup>399</sup> The Commission directed the removal of federal rights of first refusal to increase the potential for the identification and evaluation of more efficient or cost-effective transmission solutions (or bids) because the selection of transmission solutions or bids that are not more-efficient or cost-effective can result in rates that are unjust, unreasonable, or unduly discriminatory.<sup>400</sup> The more transmission facilities covered by the exception for transmission projects needed to address reliability needs in a shortened time frame, the more barriers are maintained against potential competitive bids proposed by nonincumbent transmission developers.

198. On the other side of the balance is the fact that delays in the development of a transmission project needed to address reliability needs in a shortened time frame could adversely affect the ability of incumbent transmission providers, and SPP, to meet their reliability transmission needs.<sup>401</sup> When balancing these goals of Order No. 1000, we find that defining transmission projects needed to address reliability needs in a shortened time frame as projects needed in three years or less to solve a reliability violation strikes a reasonable balance.

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<sup>399</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 254 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,682; Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 524), 256.

<sup>400</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 253, 263.

<sup>401</sup> *Id.* P 263.

199. To retain a federal right of first refusal for Competitive Upgrades, including Highway facilities and Byway facilities,<sup>402</sup> needed to address reliability in a shortened time frame, we direct SPP to submit a compliance filing, within 120 days of the date of this order, revising its provisions consistent with the five criteria stated above.

**(g) Transmission Service Request Upgrades**

**(1) SPP Filing**

200. SPP's proposed definition of Competitive Upgrades only includes transmission facilities identified through the high priority or SPP ITP processes, and excludes facilities resulting from SPP's Aggregate Transmission Service Study process.<sup>403</sup> Each year, SPP holds quarterly open seasons during which customers can submit requests for long-term transmission service. SPP then performs an Aggregate Transmission Service Study to simultaneously evaluate all the transmission service requests submitted during the open season. Transmission upgrades identified in an Aggregate Transmission Service Study are called Service Upgrades. Depending on the circumstance, a Service Upgrade is treated as either: (1) a directly assigned transmission facility, with 100 percent of the costs assigned to the customer(s) whose service request relies on the Service Upgrade; or (2) a base plan upgrade, with the costs assigned pursuant to SPP's Highway/Byway cost allocation method.<sup>404</sup> A Service Upgrade generally qualifies as a base plan upgrade that is subject to Highway/Byway cost allocation if it is associated with a new or changed designated resource or if the Service Upgrade displaces a transmission upgrade already in the SPP transmission expansion plan. SPP's proposal maintains a federal right of first refusal for, and designates incumbent transmission owners to build, transmission service request upgrades using the existing selection process, even when the cost of Service Upgrades are allocated regionally.<sup>405</sup> In SPP's view, Order Nos. 1000 and 1000-A exclude facilities associated with generator interconnection and requests for transmission service.<sup>406</sup>

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<sup>402</sup> SPP Transmittal, Ex. SPP-2 at 2 (“The types of transmission facilities for which the [Regional State Committee] supports maintaining a federal [right of first refusal] are facilities that are primarily local in nature and closely tied to retail distribution systems, or those facilities that are needed urgently to maintain reliability.”).

<sup>403</sup> *Id.* at 72; SPP OATT, Attachment Y, § I.1.a.

<sup>404</sup> SPP OATT, Attachment J, §§ II, III.

<sup>405</sup> For example, the 2010 STEP included a \$200 million, 345 kV “Service Upgrade” that spans multiple zones within SPP, receives 100 percent regional postage-stamp cost allocation, and was assigned to the incumbent, Oklahoma Gas & Electric Company.

<sup>406</sup> SPP Transmittal at 16 n.57, 69 n.329 (citing Order No. 1000, FERC Stats. &

(2) **Commission Determination**

201. Order No. 1000 requires the elimination of a federal right of first refusal for transmission facilities selected in a regional transmission plan for purposes of cost allocation, which are defined as “transmission facilities that have been selected pursuant to a transmission planning region’s Commission-approved regional transmission planning process for inclusion in a regional plan for purposes of cost allocation because they are more efficient or cost-effective transmission solutions to regional transmission needs.”<sup>407</sup> Thus, in order for the Commission to find that the removal of federal rights of first refusal applies to Service Upgrades, we must determine that Service Upgrades: (1) are selected pursuant to a transmission planning region’s Commission-approved regional transmission planning process for inclusion in a regional plan; (2) are selected in the plan for purposes of cost allocation; and (3) are selected in the plan because they are the more efficient and cost-effective transmission solutions to regional transmission needs.

202. First, SPP’s Aggregate Transmission Service Study process is a Commission-approved regional transmission planning process<sup>408</sup> and Service Upgrades are included in SPP’s regional transmission plan, the STEP. Thus, Service Upgrades *are* selected pursuant to a transmission planning region’s Commission-approved regional transmission planning process for selection in a regional transmission plan. Second, Service Upgrades that qualify as base plan upgrades receive Highway/Byway funding. Therefore, Service Upgrades that qualify as base plan upgrades *are* in the transmission plan for purposes of cost allocation. Third, SPP OATT Attachment Z1 specifically provides that, “[u]sing this Aggregate Transmission Service Study process, the Transmission Provider will combine all requests received during an open season to develop a *more efficient* expansion of the transmission system that provides the necessary [available transfer capability] to accommodate all such requests at the *minimum total cost*.”<sup>409</sup> Thus, Service Upgrades are identified in the STEP as the more efficient or cost-effective solution to regional transmission needs.

203. Accordingly, we find that SPP’s exclusion of Service Upgrades that result from requests for transmission service from the proposed definition of Competitive Upgrades does not comply with Order No. 1000. A Service Upgrade that is selected in the STEP and has its costs allocated pursuant to SPP’s regional cost allocation method is subject to the requirement of Order No. 1000 to eliminate federal rights of first refusal for

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Regs. ¶ 31,323 at P 760 and Order No. 1000-A, 139 FERC ¶ 61,132 at P 731 n.853).

<sup>407</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63.

<sup>408</sup> *See Sw. Power Pool, Inc.*, 110 FERC ¶ 61,028 (2005).

<sup>409</sup> SPP OATT, Attachment Z1, § I (emphasis added).



transmission projects selected in the regional transmission plan for purposes of cost allocation.

204. In Order No. 1000 the Commission found that the regional cost allocation requirements were not intended to modify existing *pro forma* OATT transmission service mechanisms for individual transmission service requests. This should not be read broadly to mean that the requirement to eliminate a federal right of first refusal does not apply to a transmission service request upgrade, regardless of how the upgrade is identified and selected or how the cost of an upgrade is allocated. The Commission's finding responded to Entergy Services, Inc.'s (Entergy) concern that Order No. 1000 would forbid participant funding for upgrades related to customer-specific requests for service.<sup>410</sup> This finding in Order No. 1000 should be read to apply only to transmission service upgrades paid for by the transmission service customer(s). As such, it does not address whether the requirement to eliminate the federal right of first refusal applies to transmission service upgrades where the costs have been allocated regionally pursuant to the transmission planning region's Order No. 1000 regional cost allocation method.

205. For these reasons, we direct SPP to submit a further compliance filing within 120 days of the date of this order revising the definition of Competitive Upgrades to include Service Upgrades whose costs are allocated regionally.

**(h) Local Facilities**

**(1) Protests/Comments**

206. LS Power requests that the Commission require SPP to include language in its OATT to clarify that SPP cannot retain a right of first refusal for projects that are not located solely within a public utility transmission provider's retail distribution service territory or footprint.<sup>411</sup> For support, LS Power notes that Order No. 1000 provides that "[a] local transmission facility is a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in a regional transmission plan for purposes of cost allocation."<sup>412</sup> Therefore, LS

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<sup>410</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 719 ("Entergy states that it believes that participant funding is an appropriate pricing method and should not be excluded from consideration in the Final Rule. Entergy requests clarification that any adverse finding against participant funding would not apply to customer-specific requests for service under the *pro forma* OATT."). The same is true for the Commission's statement in Order No. 1000-A in response to Southern Companies' request for clarification about transmission service request upgrades that are participant-funded. *See* Order No. 1000-A, 139 FERC ¶ 61,132 at P 731 n.853.

<sup>411</sup> LS Power Protest at 12-13.

<sup>412</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63).

Power avers that the definition of a local project is two-pronged: (a) it must be located solely within a public utility transmission provider's retail distribution service territory or footprint, and (b) it is not selected in a regional transmission plan for purposes of cost allocation.

(2) **SPP Answer**

207. SPP asks the Commission to reject LS Power's request that the description of Competitive Upgrade include language specifying that such upgrades include any project located in more than one public utility transmission provider's retail distribution service territory or footprint.<sup>413</sup> SPP states that such a change could result in a Byway project being a Competitive Upgrade, which would be contrary to the Commission's finding that Byway projects serve local, not regional, needs. SPP claims that such an outcome would not be a more efficient and cost-effective solution to regional transmission needs, as contemplated by Order No. 1000.<sup>414</sup>

(3) **Commission Determination**

208. We agree with LS Power that SPP's OATT does not establish that a local project is a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint. Accordingly, consistent with our finding in the Byway section above, we direct SPP to revise its definition of Competitive Upgrades to clarify that for a transmission facility to be classified as a local project: (a) it must be located solely within a public utility transmission provider's retail distribution service territory or footprint, and (b) it must not be selected in a regional transmission plan for purposes of cost allocation. Accordingly, we direct SPP to submit, within 120 days of the date of this order, a further compliance filing to revise its OATT to provide a definition of Competitive Upgrade that reflects the definition of local transmission project in Order No. 1000.<sup>415</sup>

b. **Qualification Criteria**

209. Order No. 1000 requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider

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<sup>413</sup> SPP Answer at 23.

<sup>414</sup> *Id.* at 23.

<sup>415</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63.

or a nonincumbent transmission developer.<sup>416</sup> Appropriate qualification criteria must be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developer.<sup>417</sup> These criteria must not be unduly discriminatory or preferential and must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.<sup>418</sup>

210. The qualification criteria should also allow for the possibility that an existing public utility transmission provider already satisfies the criteria.<sup>419</sup> There must be procedures in place for timely notifying transmission developers of whether they satisfy the region's qualification criteria and opportunities to remedy any deficiencies.<sup>420</sup> In addition, the qualification criteria should not be applied to an entity proposing a transmission project for consideration in the regional transmission planning process if that entity does not intend to develop the proposed transmission project.<sup>421</sup>

211. The Commission clarified in Order No. 1000-A that it would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it has, or can obtain, state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.<sup>422</sup>

**i. SPP's Filing**

212. Under SPP's proposal, incumbent and nonincumbent transmission developers must qualify before they may submit a bid in the SPP Transmission Owner Selection Process to develop a transmission facility that has been selected in the SPP regional transmission plan for purposes of cost allocation. SPP's proposed qualification process would apply to both incumbent SPP transmission owners and nonincumbent transmission developers who seek to participate in the Transmission Owner Selection Process. A potential transmission developer must submit an application and application fee by June

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<sup>416</sup> *Id.* at PP 225, 323.

<sup>417</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324.

<sup>418</sup> *Id.* P 323.

<sup>419</sup> *Id.* at P 324.

<sup>420</sup> *Id.*

<sup>421</sup> *Id.* P 324 n.304; Order No. 1000-A, 139 FERC ¶ 61,132 at 439 n.520.

<sup>422</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

30 of the year prior to the year they wish to participate in the Transmission Owner Selection Process.<sup>423</sup> SPP states that the application fee will be used to offset SPP's costs of processing applications.<sup>424</sup> As described further below, an applicant must demonstrate that it meets three categories of qualification criteria: (1) Membership; (2) Financial; and (3) Managerial. SPP contends that these qualification procedures comply with the requirements of Order No. 1000.<sup>425</sup> Once SPP has made a final determination about each applicant, it will post on its website a list of applicants that have qualified to submit bids (Qualified Request for Proposals Participants).<sup>426</sup> SPP proposes that a Qualified Request for Proposals Participant will maintain that status for five years, so long as the Qualified Request for Proposals Participant does not undergo any changes that affect its status and submits an annual recertification.<sup>427</sup> SPP states that this process complies with Order No. 1000 because it applies on a nondiscriminatory basis to incumbent SPP transmission owners and nonincumbent transmission developers.<sup>428</sup>

213. SPP proposes three categories of qualification criteria. The first is the SPP Membership Criterion, which an applicant can meet if it is an existing SPP transmission owner or is willing to sign the SPP Membership Agreement as a transmission owner if the applicant is chosen to develop a transmission facility.<sup>429</sup> Second, are Financial Criteria, which require that the applicant or its parent guarantor (1) has an investment grade rating of at least BBB- or (2) a \$25 million letter of credit from a bank (with at least an A- rating and \$10 billion in assets) or insurer (with at least an A- rating and a minimum financial size category of X from the A.M. Best Company).<sup>430</sup> If the applicant is a municipality, a coop, or other not-for-profit entity, it may satisfy the financial criteria

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<sup>423</sup> The application fee is equal to the amount of the SPP annual membership fee. If the applicant is a member of SPP and is current in payment of its annual membership fee, then no application fee shall be required. The amount of the application fee shall be posted on the SPP website as part of the application form. SPP OATT, Attachment Y, § III.1.a.i.

<sup>424</sup> SPP Transmittal at 73 n.345. The annual membership fee is \$6,000 in 2013.

<sup>425</sup> *Id.* at 74.

<sup>426</sup> SPP OATT, Attachment Y, § III.1.c.iii.

<sup>427</sup> *Id.*, § III.1.a.ii, d.

<sup>428</sup> SPP Transmittal at 73.

<sup>429</sup> SPP OATT, Attachment Y, § III.1.b.i.

<sup>430</sup> *Id.*, § III.1.b.ii.1-3.

requirement by providing evidence of direct rate-setting authority or taxing authority.<sup>431</sup> SPP notes that it has proposed separate financial criteria for the transmission owner selection and project development processes. Third, are Managerial Criteria, which an applicant can meet by demonstrating that it has requisite expertise, capability, experience, and processes in the areas of: transmission project development; internal safety programs; transmission operations; transmission maintenance; and ability to comply with (i) Good Utility Practice, (ii) SPP Criteria, (iii) NERC Reliability Standards, (iv) industry standards, and (v) applicable local, state, and federal requirements. An applicant may also rely on an Alternative Qualifying Entity<sup>432</sup> with which it has a corporate affiliation or contractual relationship to meet the Managerial Criteria, subject to the submission of an executed agreement contractually obligating the Alternative Qualifying Entity to perform the functions for which the applicant is relying on the Alternative Qualifying Entity.<sup>433</sup>

214. Upon receipt of a transmission owner's application to become a Qualified Request for Proposals Participant, SPP will determine whether the applicant has satisfied the qualification criteria.<sup>434</sup> If SPP determines that the applicant has failed to satisfy one or more of the criteria, then SPP proposes to inform the applicant of the deficiencies and provide 30 calendar days to remedy them. SPP proposes to notify the applicant within 45 calendar days of receiving new information whether the deficiencies have been resolved. SPP states that, if they are not resolved, then the applicant will be unable to become a Qualified Request for Proposals Participant for that year's Transmission Owner Selection Process.<sup>435</sup> SPP contends that this process meets the requirement in Order No. 1000 to develop procedures for timely notifying transmission developers of whether they satisfy the region's qualification criteria and opportunities to mitigate any deficiencies.<sup>436</sup>

## ii. Protests/Comments

215. Duke-American is concerned that SPP's proposed financial criteria could discriminate against joint ventures by placing a higher financial obligation on entities

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<sup>431</sup> *Id.*, § III.1.b.ii.4.

<sup>432</sup> Alternative Qualifying Entities is defined in Attachment Y, § III (b)(iii) as "an entity or entities with whom [an applicant] has a corporate affiliation or contractual relationship."

<sup>433</sup> SPP OATT, Attachment Y, § III.1.b.iii.

<sup>434</sup> *Id.*, § III.1.c.i-ii.

<sup>435</sup> *Id.*, § III.1.c.ii.

<sup>436</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324.

investing through a joint venture rather than directly.<sup>437</sup> Duke-American suggests looking through to the parents of joint ventures to establish the financial capability to finance a project without requiring the parent companies to actually guarantee the financing. Duke-American asserts that this approach would filter out transmission developers without financial resources, but would not penalize cooperative financial structures between utilities.<sup>438</sup>

216. LS Power states that it generally finds that SPP's proposed qualification criteria are acceptable but suggests a few specific revisions. LS Power requests that the proposed requirement that a prospective transmission developer must provide information related to transmission project development experience be revised to include what LS Power states is the qualification language currently used by the Commission in licensing gas pipeline and hydroelectric facilities (i.e., that a facility "must show that it has the ability to construct and operate the project, which includes the ability to hire contractors to construct and operate").<sup>439</sup>

217. LS Power also asserts that, when relying on an Alternate Qualifying Entity to meet some of the qualification criteria, it seems unreasonable to require a potential transmission developer to establish all contractual relationships for some of the managerial criteria at the qualification stage, such as contracts for control center operations, construction, and operation of the transmission facilities. Instead, LS Power proposes adding "demonstrated managerial criteria experience can also include the ability to hire contractors to construct and operate"<sup>440</sup> to SPP's proposed definition of Alternative Qualified Entities. LS Power argues that the additional language would clarify that such contractual relationships do not have to be established at the qualification stage.<sup>441</sup>

218. LS Power also protests SPP's proposal to include the ability to register for compliance with applicable NERC Reliability Standards in the qualification criteria.<sup>442</sup> LS Power asserts that this language is inconsistent with Order No. 1000-A, where the

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<sup>437</sup> Duke-American Protest at 30.

<sup>438</sup> *Id.* at 30.

<sup>439</sup> LS Power Protest at 16 (citing 18 C.F.R. § 157, *et seq.*; 18 C.F.R. § 4.30, *et seq.*).

<sup>440</sup> *Id.* at 17.

<sup>441</sup> *Id.*

<sup>442</sup> *Id.* (citing SPP OATT, Attachment Y, § III.1.b.iii.3).

Commission denied New York Transmission Owners' request that NERC registration be a pre-condition for assignment of a reliability project or a qualification criterion.<sup>443</sup>

219. Finally, LS Power contends that SPP's proposal to identify the ability to comply with applicable local, state, and federal requirements as a qualification criterion is also inconsistent with the requirements in Order No. 1000-A. LS Power asserts that, in Order No. 1000-A, the Commission found that it would be an impermissible barrier to entry to require in the qualification criteria that a transmission developer demonstrate that it either has, or can obtain, the state approvals necessary to operate in a state.<sup>444</sup> Therefore, LS Power argues that SPP should remove this proposed criterion because it would impermissibly allow SPP to judge whether an entity can obtain state approvals.<sup>445</sup>

### iii. Answer

220. SPP disagrees with Duke-American's assertion that the financial qualification criteria for the Transmission Owner Selection Process are discriminatory. SPP notes that the financial criteria apply to all entities that wish to participate in the Transmission Owner Selection Process, regardless of the entity's legal structure.<sup>446</sup> SPP further argues that Duke-American's suggestion to look through to the parents of joint venture entities to establish the financial capability to finance the transmission project, but not require them to guarantee the financing, is not prudent. SPP notes that the entity that applies to participate in the Transmission Owner Selection Process will be the entity that ultimately is responsible for the project, including financing, and that SPP lacks the ability to look through to the parent or affiliate to enforce the construction obligations of the applicant.<sup>447</sup> SPP adds that because it is the applicant that would ultimately execute the necessary agreements to construct a Competitive Upgrade if selected, it is the applicant, and not its parent companies, with whom SPP will have a legal relationship and against whom SPP can enforce the legal obligations arising under the Membership Agreement. SPP argues that, if it cannot look through to the parent company to satisfy the legal obligations of the applicant, then SPP should not be forced to look through to the parent company to ascertain financial merit.<sup>448</sup>

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<sup>443</sup> *Id.* at 17-18 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 444).

<sup>444</sup> *Id.* at 18 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 441).

<sup>445</sup> *Id.* at 18.

<sup>446</sup> SPP Answer at 39.

<sup>447</sup> *Id.* at 40.

<sup>448</sup> *Id.* at 40 n.127.

221. SPP argues that it is unnecessary to include LS Power's proposed edit to indicate that an entity "must show that it has the ability to construct and operate the project, which includes the ability to hire contractors to construct and operate."<sup>449</sup> SPP states that this concept is already included in the managerial qualification criteria, which requires an entity to demonstrate its managerial ability, including transmission project development either on its own or by relying on an entity or entities with whom it has a corporate affiliation or contractual relationship.<sup>450</sup> SPP argues that there is no basis to apply qualification criteria that are appropriate for other industries (e.g., natural gas pipeline and hydro-electric) that may consider factors that are not relevant to the SPP transmission planning region.<sup>451</sup>

222. SPP argues that LS Power's suggestion that the transmission operations criterion is somehow discriminatory to new entrants because contracts such as those for control center operations or construction are premature is misplaced. SPP notes that all entities, not only new entrants, who seek to be Qualified Request for Proposals Participants must meet the same requirements.<sup>452</sup> SPP notes that the option to rely on an Alternative Qualifying Entity gives the potential Qualified Request for Proposals Participant flexibility in demonstrating its qualifications. SPP contends that requiring demonstration of contractual relationships at the qualification stage ensures that an entity has the requisite expertise at the time it seeks to qualify for participation. SPP claims that it cannot fully evaluate an applicant's qualifications unless it is able to determine how an applicant plans to comply with each of the qualification criteria.<sup>453</sup>

223. SPP asserts that LS Power's contention that the requirement that entities demonstrate their NERC compliance process, compliance history, and registration, or the ability to register, for compliance with applicable NERC Reliability Standards is inconsistent with Order No. 1000 is without merit.<sup>454</sup> SPP notes that, although, in Order No. 1000-A, the Commission clarified that a public utility transmission provider would not be permitted to require a transmission developer to demonstrate that it has registered with NERC as a precondition to being assigned a reliability project,<sup>455</sup> the Commission

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<sup>449</sup> *Id.* at 35-36 (citing LS Power Protest at 16).

<sup>450</sup> *Id.* at 36-37.

<sup>451</sup> *Id.* at 37.

<sup>452</sup> *Id.* at 36.

<sup>453</sup> *Id.*

<sup>454</sup> *Id.* at 37.

<sup>455</sup> *Id.* (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 444).



did not prohibit transmission providers from considering an entity's ability to register with NERC or an entity's past NERC compliance history in determining whether an entity is qualified to be assigned a project. SPP adds that nothing in the proposed transmission operation criterion requires NERC registration to become a Qualified Request for Proposals Participant. SPP states that it merely requires an entity to demonstrate how it plans to be able to comply with NERC standards.<sup>456</sup>

224. SPP also disagrees with LS Power's argument that the demonstration of an entity's ability to comply with applicable local, state, and federal requirements should be struck from the qualification criteria.<sup>457</sup> SPP argues that this criterion simply requires a demonstration of an entity's plan as to how it would comply with general state and local requirements, not that it has or currently can obtain state approvals. According to SPP, this criterion provides the flexibility for an entity to make the demonstration either on its own or by relying on an entity or entities with which it has a corporate affiliation or contractual relationship. SPP further argues that deleting this requirement would remove an important means to determine which entities will be able to construct, operate, and maintain a Competitive Upgrade.<sup>458</sup>

#### iv. Commission Determination

225. We find that SPP's proposed qualification criteria provisions partially comply with the requirements of Order No. 1000, subject to the compliance directives discussed herein. SPP's proposed qualification criteria for the Transmission Owner Selection Process will apply to both incumbent SPP transmission owners and nonincumbent transmission developers who seek to participate in the Transmission Owner Selection Process. SPP's proposed qualification criteria, as revised below, provide each incumbent transmission developer or nonincumbent transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities. Additionally, SPP's proposed 30-day cure period for applicants that do not satisfy the qualification criteria complies with the requirements of Order No. 1000.

226. We disagree with Duke-American that SPP's proposed financial qualification criteria is unduly discriminatory toward joint ventures because it places a higher financial obligation on entities investing through a joint venture rather than directly. As SPP points out, the entity that applies to participate in the Transmission Owner Selection Process will be the entity that is ultimately responsible for the transmission project, including financing, and SPP is unable to "look through" to the parent or affiliate to

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<sup>456</sup> *Id.* at 38.

<sup>457</sup> *Id.*

<sup>458</sup> *Id.* at 39.

enforce any obligations.<sup>459</sup> In addition, SPP provides several ways for a potential transmission developer to meet the financial qualification criteria.<sup>460</sup>

227. We agree with LS Power, however, that it is premature at the qualification stage to require a potential transmission developer to enter into executed contracts with any entity the transmission developer may rely on to meet the managerial qualification criteria. Under the proposal, before a potential transmission developer can qualify to even *submit* a bid to develop a transmission facility selected in the regional transmission plan for purposes of cost allocation, it must enter into executed contracts with any entity the developer may rely on to construct,<sup>461</sup> operate,<sup>462</sup> and maintain<sup>463</sup> any potential future transmission facility or to perform functions such as control center operations and crew training.<sup>464</sup> Requiring executed contracts to qualify to submit a bid creates an impermissible barrier to entry and does not comply with the requirement that qualification criteria be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developers.<sup>465</sup> In response to this concern, SPP states that it cannot fully evaluate a potential transmission developer's qualifications unless it is able to determine how a potential transmission developer plans to comply with each of the qualification criteria.<sup>466</sup> We agree. However, it does not follow that for SPP to fully evaluate how a potential transmission developer plans to comply with the qualification criteria, the potential transmission developer must have executed contracts in place with any entity the developer plans to rely on to meet the criteria. SPP's proposed qualification criteria already require that a potential transmission developer provide a statement of which entity will be performing various functions,<sup>467</sup> and we find that SPP has not sufficiently justified the requirement to enter into executed contracts with those entities at the qualification stage. Accordingly, we direct SPP to file, within 120 days of the date of this order, a further compliance filing

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<sup>459</sup> *Id.* at 40.

<sup>460</sup> *See* SPP OATT, Attachment Y, § III.1.b.ii.1-4.

<sup>461</sup> *Id.*, § III.1.b.iii.1.a.

<sup>462</sup> *Id.*, § III.1.b.iii.3.

<sup>463</sup> *Id.*, § III.1.b.iii.4.

<sup>464</sup> *Id.*, § III.1.b.iii.3.

<sup>465</sup> Order No. 1000 at FERC Stats. & Regs. ¶ 31,323 at P 324.

<sup>466</sup> SPP Answer at 36.

<sup>467</sup> SPP OATT, Attachment Y, § III.1.b.iii.3-4.

that removes the requirement for a prospective transmission developer to enter into executed contracts to meet the managerial qualification criteria in order to be eligible to submit a bid.<sup>468</sup>

228. In response to LS Power's assertion that the qualification criterion requiring a potential transmission developer to demonstrate the "ability to comply with . . . NERC Reliability Standards"<sup>469</sup> is inconsistent with Order No. 1000-A,<sup>470</sup> SPP clarified that this requirement merely requires an entity to demonstrate "how it plans to be able to comply" with NERC Standards. With this clarification, we find that SPP's proposal is consistent with the Commission's finding in Order No. 1000-A. However, SPP has not included this clarification in its OATT. Accordingly, we direct SPP to submit, within 120 days of the date of this order, a further compliance filing that revises its OATT to state that the requirement is for a potential transmission developer to demonstrate "how it plans to be able to comply" with NERC requirements.

229. Also in response to concerns raised by LS Power, SPP clarified that the requirement to demonstrate the "ability to comply with . . . applicable, local, state, and federal requirements"<sup>471</sup> simply requires a demonstration of an entity's "plan as to how it would comply with general state and local requirements" and not that it has or currently can obtain state approvals.<sup>472</sup> However, we find that SPP's proposal requiring an entity to demonstrate its ability to comply with applicable local, state, and federal requirements must be removed from the qualification criteria. The Commission clarified in Order No.

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<sup>468</sup> We note that LS Power suggests that, instead of an executed contract, the qualification criteria could include a requirement for a potential transmission developer to demonstrate that it has the ability to hire contractors to construct and operate a transmission facility. LS Power Protest at 17. If it so chooses, SPP may revise its tariff to include this requirement and submit this revision in the further compliance filing.

<sup>469</sup> SPP OATT, Attachment Y, § III.1.b.iii.5.

<sup>470</sup> In Order No. 1000-A, the Commission stated that the "procedures for registering as a Functional Entity are set by NERC and approved-by the Commission under section 215, and it is not appropriate for the Commission to amend or interpret those procedures here under a section 206 action by requiring all public utility transmission providers to revise their tariffs to provide that a potential transmission developer must register with NERC if not otherwise required under the NERC procedures, merely to be eligible to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation." Order No. 1000-A, 139 FERC ¶ 61,132 at P 444 (footnote omitted).

<sup>471</sup> SPP OATT, Attachment Y, § III.1.b.iii.5.

<sup>472</sup> SPP Answer at 38.

1000-A that it would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain, state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.<sup>473</sup> Accordingly, we direct SPP to file, within 120 days of the date of this order, a further compliance filing that removes this requirement from the qualification criteria.<sup>474</sup> We note, however, that it would be appropriate for SPP to consider whether an entity has the ability to comply with applicable local, state, and federal requirements as part of its process for evaluating bids.<sup>475</sup>

230. Finally, according to section III.1.a.i of SPP's OATT, a nonincumbent transmission developer must submit an application fee, which SPP states will be used to offset the cost of the application process to become qualified to submit a bid. However, both nonincumbent transmission developers and incumbent transmission owners must submit an application to become qualified to submit a bid. Because SPP must process applications submitted by both nonincumbent transmission developers and incumbent transmission owners to determine if they qualify to submit a bid, we find that it may be unduly discriminatory to require only nonincumbent transmission developers to pay the application fee. Accordingly, we direct SPP to submit, within 120 days of the date of this order, a further compliance filing that revises its OATT to state that the application fee for the qualification process must be paid by both nonincumbent transmission developers and incumbent transmission owners. Alternatively, SPP may further explain in its next compliance filing why it is not unduly discriminatory to require nonincumbent transmission developers to pay the application fee, which will be used to offset the costs of processing the application to become qualified to submit a bid, while incumbent transmission developers are not required to pay such fee.

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<sup>473</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

<sup>474</sup> However, as we explain above in PP 179-180, it is not necessarily impermissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process.

<sup>475</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 232 (2013) (explaining that “it is not necessarily impermissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process” and that public utility transmission providers may “[take] into consideration the particular strengths of either an incumbent transmission provider or a nonincumbent transmission developer during its evaluation.”); *see also N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059, at P 196 (2013).

**c. Information Requirements**

231. Order No. 1000 requires that each public utility transmission provider revise its OATT to identify the information that a prospective transmission developer must submit in support of a transmission project the developer proposes in the regional transmission planning process.<sup>476</sup> The public utility transmission provider must identify this information in sufficient detail to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects that are proposed in this process.<sup>477</sup> The information requirements must not be so cumbersome that they effectively prohibit transmission developers from proposing transmission projects, yet not be so relaxed that they allow for relatively unsupported proposals.<sup>478</sup> They may require, for example, relevant engineering studies and cost analyses and may request other reports or information from the transmission developer that are needed to facilitate evaluation of the transmission project in the regional transmission planning process.<sup>479</sup>

232. Each public utility transmission provider must also revise its OATT to identify the date by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle.<sup>480</sup> Each transmission planning region may determine for itself what deadline is appropriate and may use rolling or flexible dates to reflect the iterative nature of their regional transmission planning process.<sup>481</sup>

**i. SPP's Filing**

233. The information requirements under SPP's proposal are related to the information a potential transmission developer must submit in a bid. SPP proposes that, once the SPP Board approves a Competitive Upgrade for selection in the regional transmission plan for purposes of cost allocation, SPP will issue a Request for Proposals for the Competitive Upgrade. SPP states that this Request for Proposals will be issued on or before the later of: (a) seven calendar days after Board approval of the Competitive Upgrade or (b) eighteen months prior to the date anticipated financial expenditure is needed for the

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<sup>476</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

<sup>477</sup> *Id.* at P 326.

<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

<sup>480</sup> *Id.* at P 325.

<sup>481</sup> *Id.* at P 327.

Competitive Upgrade.<sup>482</sup> According to SPP, each Request for Proposals will contain information specific to the Competitive Upgrade. SPP proposes that each Request for Proposals will provide (1) an overview of its purpose including the need for the Competitive Upgrade; (2) a deadline to submit bids; (3) minimum design specifications for the Competitive Upgrade; (4) the date regulatory approvals are required to be completed, as determined by SPP; (5) the data required to be provided to SPP in accordance with NERC reliability standards and CEII requirements; and (6) a description of the proposal evaluation procedure.<sup>483</sup>

234. A Qualified Request for Proposals Participant that wants to respond to a Request for Proposals must include the following information in its bid: (1) financing information and cost estimates; (2) engineering information; (3) construction information; (4) operations and maintenance information; (5) safety information; (6) the identification of confidential information;<sup>484</sup> (7) a commitment to pay the Request for Proposals fee, including the initial deposit; and (8) any credit rating changes, bankruptcies, dissolutions, mergers, or acquisitions within the past five years of the Qualified Request for Proposals Participant or its parent, controlling shareholder, or entity providing a guaranty.<sup>485</sup>

235. A Qualified Request for Proposals Participant must also demonstrate its financial strength by providing one of the following in its bid: (1) a demonstration that the Qualified Request for Proposals Participant continues to satisfy the financial criteria it met to become a Qualified Request for Proposals Participant and that the Competitive Upgrade does not exceed 30 percent of the total capitalization of the Qualified Request for Proposals Participant or its parent guarantor; or (2) a performance bond from an insurance/surety company acceptable to the SPP in an amount equal to the total cost of the Competitive Upgrade, including financing costs, and a 30 percent contingency; or (3) a letter of credit from a financial institution acceptable to the SPP in an amount equal to the total cost of the Competitive Upgrade, including financing costs, and a 30 percent contingency; or (4) a demonstration that the Qualified Request for Proposals Participant would otherwise be designated by SPP to build the Competitive Upgrade (i.e., that the Qualified Request for Proposals Participant is the incumbent transmission owner that

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<sup>482</sup> SPP OATT, Attachment Y, § III.2.d.i.

<sup>483</sup> *Id.*, § III.2.c.i-iv, vii-viii. Although it is unclear, we understand the description of the proposal evaluation procedures that SPP will include in each Request for Proposals to be a copy of the OATT language describing the proposal evaluation procedures. *Id.*, § III.2.d-f.

<sup>484</sup> *Id.*, § III.2.c.v.1-6.

<sup>485</sup> *Id.*, § III.2.c.ix-x.

would otherwise be obligated to build the Competitive Upgrade pursuant to Attachment Y, section IV of the SPP OATT).<sup>486</sup>

236. SPP also proposes to require each Request for Proposals respondent<sup>487</sup> to submit a deposit with each proposal, which will be equal to SPP's estimate of the fee for participation in the Request for Proposals process. SPP states that the purpose of this fee is to compensate SPP for the cost of administering the Request for Proposals process. SPP explains that the Request for Proposals costs will be determined at the completion of the Transmission Owner Selection Process and each Request for Proposals respondent will need to make additional payments or receive refunds based on the reconciliation of the deposits collected and the actual Request for Proposals costs. SPP states that the costs will be allocated to each proposal on a *pro rata* share basis.<sup>488</sup>

237. SPP proposes that Qualified Request for Proposals Participants have 90 days to submit bids once a Request for Proposals is issued. SPP states that it will immediately review each bid and promptly notify the Request for Proposals respondent if the bid is incomplete. The Request for Proposals respondent will have an opportunity to submit additional information to complete an incomplete bid, but must submit the necessary information before the end of the original 90-day deadline for bids SPP states that, if a Request for Proposals respondent fails to complete a bid within the 90-day window, the Request for Proposals respondent will have been deemed to have waived its right to bid. SPP further states that, if SPP does not receive any complete bids, it will inform the Board and SPP will choose the relevant incumbent transmission owner to develop the Competitive Upgrade pursuant to the existing Incumbent Transmission Owner Designation Process set forth in section IV of Attachment Y.<sup>489</sup>

238. SPP believes that its proposed Request for Proposals information requirements satisfy Order No. 1000's requirements to identify (a) the information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process; and (b) the date by which such information must be submitted to be considered in a given transmission planning cycle.<sup>490</sup>

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<sup>486</sup> *Id.*, § III.2.c.vi.1-4.

<sup>487</sup> A Request for Proposals respondent is a Qualified Request for Proposals Participant that has submitted a bid to a particular Request for Proposals.

<sup>488</sup> See SPP Transmittal at 77 n.365; SPP OATT, Attachment Y, § III.2.e.

<sup>489</sup> SPP OATT, Attachment Y, § III.2.d.

<sup>490</sup> SPP Transmittal at 78 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325).

SPP claims that the information required in a bid will allow each bid to be evaluated on a comparable basis to other bids while not being overly cumbersome.<sup>491</sup>

**ii. Protests/Comments**

239. ITC Great Plains objects to SPP charging a fee for each bid submitted to compensate SPP for administering the Request for Proposals process.<sup>492</sup> ITC Great Plains asserts that Request for Proposals respondents will incur significant expenses in the process of developing and submitting a proposal in the Request for Proposals process, which are non-recoverable for an entity that submits a bid but is not awarded a transmission project.<sup>493</sup> ITC Great Plains argues that such an entity should not also have to fund the Order No. 1000-mandated SPP selection process that SPP conducts as part of its obligations as the transmission provider.<sup>494</sup> ITC Great Plains suggests that SPP should recover the costs of administering the Transmission Owner Selection Process through administrative charges on SPP load that SPP uses to recover the cost of other similar administrative functions.<sup>495</sup>

**iii. Answer**

240. SPP notes that Order No. 1000 specifically permits stakeholders in a transmission planning region to consider using deposit procedures in their Order No. 1000 compliance proposals, if they believe such procedures have merit, which SPP and its stakeholders have done here.<sup>496</sup> SPP claims that the Request for Proposals fee, like deposits required for generation interconnections and delivery point additions, will defray the costs of the Request for Proposals process. SPP argues that the fee will discourage Request for Proposals respondents from flooding the process with duplicative and meritless proposals that will waste SPP resources and burden the Request for Proposals process. SPP contends that, because participants in the Request for Proposals process will be its

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<sup>491</sup> *Id.*

<sup>492</sup> ITC Great Plains Comments at 10.

<sup>493</sup> *Id.*

<sup>494</sup> *Id.*

<sup>495</sup> *Id.*

<sup>496</sup> SPP Answer at 43 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 327).



primary beneficiaries, they, rather than all market participants, should bear the costs of administering the process, consistent with the Commission's cost causation principle.<sup>497</sup>

#### iv. Commission Determination

241. We find that SPP's proposed OATT language regarding the information requirements for submitting bids partially complies with the requirements of Order No. 1000. SPP's proposed information requirements for the Transmission Owner Selection Process provide for prospective transmission developers to include information in their bids in sufficient detail to allow a proposed bid to be evaluated in the regional transmission planning process on a basis comparable to other bids, consistent with Order No. 1000.<sup>498</sup> For the most part, SPP's proposed information requirements are not so cumbersome that they effectively prohibit transmission developers from submitting bids, yet not so relaxed that they allow for relatively unsupported bids. Additionally, SPP provides a clear date by which a Request for Proposals will be issued and the specific information that it will contain, as required by Order No. 1000.<sup>499</sup>

242. We find SPP's requirement to include a fee for each bid submitted partially complies with the requirements of Order No. 1000. As proposed, each Request for Proposals respondent, whether an incumbent transmission owner or nonincumbent transmission developer, must submit a deposit with its bid equal to SPP's estimate of the fee for participation in the Request for Proposals process to compensate SPP for the cost of administering that process. SPP will determine the Request for Proposals costs at the completion of the Transmission Owner Selection Process and will allocate these costs to each bid on a *pro rata* share basis. Each Request for Proposals respondent must make additional payments or will receive refunds based on the reconciliation of the deposits collected and the actual Request for Proposals costs.

243. In Order No. 1000, the Commission specifically permitted stakeholders in a transmission planning region to "require additional procedural protections such as the posting of deposits."<sup>500</sup> As SPP points out, the fee could discourage Request for Proposals respondents from flooding the process with duplicative proposals that could create an undue burden on the Request for Proposals process. However, we find that SPP has not provided adequate information in its OATT about the proposed fee. First, SPP has not specified the precise dollar amount, or a formula for establishing that dollar amount, of the initial fee that a prospective transmission developer must submit with its

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<sup>497</sup> *Id.* at 44.

<sup>498</sup> *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 326.

<sup>499</sup> *See id.* PP 325, 326.

<sup>500</sup> *Id.* P 327.

bid, information that is necessary for a transmission developer to determine whether to submit such a bid. Moreover, SPP must provide more clarity with regard to how it will calculate the actual costs associated with the Request for Proposals process to determine whether each Request for Proposals respondent must make additional payments or will receive refunds based on the initial fee collected. Finally, consistent with the Commission's policy to require payment of interest on deposits or study costs that are refunded to a generator interconnection customer, we direct SPP to revise its OATT so that interest will be paid on any refunded portion of the fee that a transmission developer submitted with its bid.<sup>501</sup>

244. Accordingly, we direct SPP to file, within 120 days of the date of this order, a further compliance filing with OATT revisions that: (1) establish a precise dollar amount, or a formula for establishing that dollar amount, of the initial fee that a prospective transmission developer must submit with its bid; (2) clarify how it will calculate the actual costs associated with the Request for Proposals process for purposes of determining whether each Request for Proposals respondent must make additional payments or will receive refunds; and (3) provide interest on any bid fees that are refunded to a transmission developer.

245. We also find that SPP's proposal to allow a Qualified Request for Proposals Participant to demonstrate its financial strength in its bid by showing that it is the incumbent transmission owner that would otherwise be obligated to build the Competitive Upgrade pursuant to Attachment Y, section IV of the SPP OATT is unduly discriminatory and thus does not comply with Order No. 1000. Under SPP's proposal, while a nonincumbent transmission developer must demonstrate its financial strength through its total capitalization, a performance bond from an insurance/surety company, or a letter of credit from a financial institution, an incumbent transmission owner must demonstrate only that it is the incumbent transmission owner that would otherwise be designated by the transmission provider as the transmission owner for the Competitive Upgrade. We conclude that it is unduly discriminatory to require a demonstration of financial strength from nonincumbent transmission developers as part of the Transmission Owner Selection Process without requiring a similar showing on the part of

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<sup>501</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 123 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008); see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at PP 166-168 (2012) (rejecting MISO's proposal to eliminate the payment of interest on refunded portions of generator interconnection study deposits).

an incumbent transmission owner.<sup>502</sup> Accordingly, we direct SPP to submit, within 120 days of the date of this order, a further compliance filing revising its OATT to remove the unduly discriminatory financial strength provision that applies only to incumbent transmission developers and allows them to demonstrate their financial strength simply by being the incumbent utility.<sup>503</sup>

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

246. Order No. 1000 requires each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.<sup>504</sup> Public utility transmission providers should both explain and justify the nondiscriminatory evaluation process proposed in their compliance filings.<sup>505</sup>

247. The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.<sup>506</sup> The public utility transmission providers in a transmission planning region must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer.<sup>507</sup> When cost estimates are part of the selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or nonincumbent transmission developer.<sup>508</sup> The evaluation process must culminate in a

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<sup>502</sup> While Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324 provides that the qualification criteria should allow for the possibility that an existing public utility transmission provider already satisfies the criteria, this does not mean that SPP can exempt incumbent transmission owners from having to meet the qualification criteria.

<sup>503</sup> SPP OATT, Attachment Y, § III.2.c.vi.4.

<sup>504</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

<sup>505</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 268.

<sup>506</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

<sup>507</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

<sup>508</sup> *Id.* P 455.

determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.<sup>509</sup>

**i. SPP's Filing**

248. SPP's filing establishes evaluation criteria used to select a Request for Proposals respondent to build a transmission project selected in the regional transmission plan for purposes of cost allocation, which, as noted earlier, SPP calls a Competitive Upgrade. SPP states that, once the bidding window closes, all completed bids to build a Competitive Upgrade will be reviewed by an industry expert panel to ensure the nondiscriminatory selection from among these bids. If SPP receives no complete bids, it will inform the Board and will assign the Competitive Upgrade to the incumbent transmission owner.<sup>510</sup>

249. SPP explains that each industry expert panel will consist of three to five independent industry experts drawn from a pool of candidates identified by the SPP Oversight Committee annually and approved by the Board.<sup>511</sup> SPP states that industry expert candidates will be required to have expertise in one or more of the following electric transmission fields: (a) engineering design; (b) project management and construction; (c) operations; (d) rate design and analysis; and (e) finance. SPP adds that each industry expert will be required to disclose any affiliation with an SPP stakeholder or bidding entity so that SPP will be able to identify any conflicts of interest. SPP contends that Order Nos. 1000 and 1000-A permit the use of such industry expert panels to evaluate bids.<sup>512</sup>

250. SPP states that, once an industry expert panel receives the completed bids, it will review, score, and rank them. SPP proposes that, within 60 days of commencing such a review, the industry expert panel will submit a recommended bid and an alternate bid from the Request for Proposals process to the Board for each Competitive Upgrade.<sup>513</sup>

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<sup>509</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

<sup>510</sup> SPP OATT, Attachment Y, §§ III.2.d.v, IV.

<sup>511</sup> *Id.*, § III.2.b.iii.

<sup>512</sup> SPP Transmittal at 79 n.377 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 330; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452).

<sup>513</sup> SPP OATT, Attachment Y, § III.2.b.vi.

SPP states that, to develop the recommendations, an industry expert panel will rank each proposal based on the following 1000 point scoring system:<sup>514</sup>

- a) up to 200 base points for Reliability/Quality/General Design;
- b) up to 200 base points for Construction Project Management;
- c) up to 250 base points for Operations/Maintenance/Safety;
- d) up to 225 points for Rate Analysis (i.e., cost to customers); and
- e) up to 125 base points for Financial Viability and Creditworthiness.<sup>515</sup>

251. SPP contends that it is necessary to weigh each category to ensure the selection of the most efficient and cost-effective solutions across the useful life of each Competitive Upgrade, rather than placing undue focus on a single category. SPP states that, during the stakeholder process, a minority of stakeholders argued for different weightings for different categories; however the distribution of points across these categories represents the relative importance of each category in evaluating whether a bid will result in the most efficient or cost-effective Competitive Upgrade. SPP states that, for example, an undue focus on the Rate Analysis, while possibly resulting in selection of the bid with the lowest construction cost, would ignore whether the entity that submitted that bid has the ability to operate, maintain, and, if necessary, restore the Competitive Upgrade over its 40-year useful life.<sup>516</sup>

252. In addition to the 1000 possible base points, SPP proposes to award 100 incentive points to the Request for Proposals respondent whose detailed project proposal was approved by the Board as a Competitive Upgrade when that Request for Proposals respondent places a bid for that particular Competitive Upgrade.<sup>517</sup> The OATT states that the additional 100 points provide an incentive for stakeholders to share their ideas and expertise to promote innovation and creativity in the transmission planning process.<sup>518</sup>

253. SPP's proposal permits an industry expert panel to recommend bids that did not receive the highest overall score. SPP states that an industry expert panel may also

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<sup>514</sup> SPP proposes that an industry expert panel may initiate communications with Request for Proposals respondents during the industry expert panel's review to obtain additional information. Any such communication will be documented and lobbying of the industry expert panel by or on behalf of any Request for Proposals respondent is prohibited and may result in disqualification of the bid. *See id.*, § III.2.d.vi.1.

<sup>515</sup> *Id.*, § III.2.f.

<sup>516</sup> SPP Transmittal at 80 n.382.

<sup>517</sup> SPP OATT, Attachment Y, § III.2.f.iv.

<sup>518</sup> *Id.*, § III.2.f.ii.

recommend that any bid be eliminated from consideration due to a low score in any individual evaluation category.<sup>519</sup> SPP explains that, regardless of a high score in some categories, a sufficiently low score in another category may result in the bid not being considered the more efficient or cost-effective bid over the useful life of the Competitive Upgrade. SPP contends that the proposed scoring system provides transparency by allowing Request for Proposals respondents to know what criteria will be used in evaluating their bids.<sup>520</sup> SPP states that, once an industry expert panel completes its review of the bids, the industry expert panel will prepare an internal report to SPP regarding its deliberations detailing its review process and recommendations. SPP explains that, based on the industry expert panel's report of the reviewed bids, SPP will provide two additional reports. First, SPP will provide to the Board a redacted version that excludes the names of the Request for Proposals respondents. Second, SPP will provide a version that will exclude the names of the respondents and any confidential information, which SPP will make available to the public at least 14 days prior to the Board meeting at which the industry expert panel recommendations will be considered. SPP states that the publicly-available report will provide sufficient detail for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.<sup>521</sup>

254. SPP states that, using the industry expert panel report as a basis, the Board will select a bid and an alternate for each Competitive Upgrade and will issue a notification to construct to the transmission developer that submitted the selected bid. SPP explains that it will notify the respondent whose bid was selected that it has been designated as the Designated Transmission Owner, and that respondent has seven calendar days to: (1) sign any necessary agreements to assume responsibilities as a transmission owner related to the Competitive Upgrade; (2) submit a deposit equal to two percent of the estimated project cost along with a firm commitment of capital sufficient to complete the project;<sup>522</sup>

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<sup>519</sup> *Id.*, § III.2.f.i.

<sup>520</sup> SPP Transmittal at 81 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328).

<sup>521</sup> *Id.*

<sup>522</sup> SPP states that this deposit will be held in escrow by SPP and returned to the Designated Transmission Owner, with interest, once 50 percent of the project has been completed. SPP further states that, if the Designated Transmission Owner fails to complete the project, the Designated Transmission Owner will forfeit the deposit and interest, and SPP will apply that amount toward the final cost of the Competitive Upgrade that is completed by a replacement Designated Transmission Owner. SPP notes that, if SPP cancels the Competitive Upgrade through no fault of the Designated Transmission Owner, the deposit and interest will be refunded to the Designated Transmission Owner. *See* SPP OATT, Attachment Y, § III.d.xii.

and (3) provide written notice that it accepts the notification to construct.<sup>523</sup> SPP states that, if the selected respondent fails to respond, fails to comply with the acceptance requirements, or elects not to become the Designated Transmission Owner, SPP will notify the alternate respondent that its bid has been selected, and SPP will issue a new notification to construct. SPP notes that it will then require the alternate Request for Proposals respondent to follow the same acceptance procedures required of the originally-selected Request for Proposals respondent. SPP states that, if the alternate Request for Proposals respondent fails to respond, fails to comply with the acceptance requirements, or elects not to become the Designated Transmission Owner, then SPP proposes to select a Designated Transmission Owner pursuant to the incumbent transmission owner designation process.<sup>524</sup>

255. SPP states that it may issue a notification to construct that requires the Designated Transmission Owner to provide a refined cost estimate within a stated timeframe.<sup>525</sup> This cost estimate will be the result of detailed engineering and cost studies conducted by the Designated Transmission Owner and eligible for cost recovery. SPP will then compare this refined cost estimate to the “project cost estimate approved by the SPP Board of Directors.”<sup>526</sup> The Board will then choose to either: (1) accept the refined cost estimate because it falls within the bandwidth of the approved cost estimate; (2) accept the refined cost estimate though it is outside the bandwidth of the approved cost estimate; (3) modify the project; (4) replace the project with an alternative solution; or (5) cancel the project. The Board will inform the Designated Transmission Owner of its decision and, if the Board has decided to proceed with the project, the Designated Transmission Owner will proceed with the development and the refined project cost estimate will be set as the new baseline project cost.<sup>527</sup>

## ii. Protests/Comments

256. ITC Great Plains generally supports SPP’s proposed Transmission Owner Selection Process.<sup>528</sup> However, ITC Great Plains is concerned that the rate analysis component of the Request for Proposals process, which relies on estimated revenue requirements over a 40-year period, lacks a consistent formulaic approach for calculating

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<sup>523</sup> *Id.*, § III.2.d.vii.

<sup>524</sup> *Id.*, § III.2.d.viii, ix, x.

<sup>525</sup> *Id.*, § V.3.a.

<sup>526</sup> *Id.*, § V.3.b.

<sup>527</sup> *Id.*, § V.3.b-c.

<sup>528</sup> ITC Great Plains Comments at 10.

project-specific revenue requirements to ensure the proper evaluation of competing proposals.<sup>529</sup> Therefore, ITC Great Plains suggests that SPP provide common rules that Request for Proposals participants would follow for developing accurate projected revenue requirements.<sup>530</sup>

257. LS Power protests that SPP includes “[m]aterial on hand, rights-of-way approval, assets on hand” in the proposed selection criteria for the rate analysis assessment. LS Power claims that this language is ambiguous and gives SPP the ability to improperly value ownership of existing rights-of-way.<sup>531</sup> LS Power argues that, to the extent that a transmission developer believes that its existing rights-of-way or other assets on hand add value to its bid, the value should be reflected in a transmission developer’s estimated total cost of the project.<sup>532</sup>

258. Duke-American asks the Commission to direct SPP to revise its proposed OATT to give Request for Proposals participants at least ten days to cure deficiencies in their bids, even if such a period extends beyond the end of the bidding window.<sup>533</sup> Duke-American argues that this revision will increase the flexibility and fairness of the Request for Proposals process.<sup>534</sup> Duke-American claims that a cure period that extends beyond the end of the bidding window, particularly when there are no complete bids and a project would otherwise be assigned to an incumbent transmission developer, would encourage robust participation in, and increase the competitiveness of, the Request for Proposals process.<sup>535</sup>

259. Missouri PSC expresses concern over the ability of affiliates of the same holding company to bid on the same Competitive Upgrade in the Transmission Owner Selection Process. Missouri PSC contends that permitting such bidding may taint the bidding process and even lead to gaming between affiliates.<sup>536</sup> Additionally, Missouri PSC is concerned that the best possible company to construct a Competitive Upgrade could be a

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<sup>529</sup> *Id.* at 11.

<sup>530</sup> *Id.*

<sup>531</sup> LS Power Protest at 29.

<sup>532</sup> *Id.* at 29-30.

<sup>533</sup> Duke-American Protest at 26-27.

<sup>534</sup> *Id.* at 27.

<sup>535</sup> *Id.* at 26-27.

<sup>536</sup> Missouri PSC Protest at 14.



partnership between affiliates; but, if one affiliate could earn a higher return for a project, the combined company would be unlikely to bid. Missouri PSC claims that the bidding process would not be competitive if only affiliated companies are bidding against one another. Missouri PSC requests that the Commission direct SPP to restrict or prohibit bidding by affiliates of the same holding company on the same Competitive Upgrade and instead use a single-bidder policy (i.e., one bid per holding company per Competitive Upgrade). Missouri PSC supports an exception to this single-bidder policy when a holding company is willing to submit one fixed cost bid (i.e., only able to recover the cost as bid) and one non-fixed cost bid (i.e., able to recover prudent costs above the cost as bid).<sup>537</sup>

260. LS Power protests SPP's proposal regarding deposits and financing in the process of accepting a notification to construct at the end of the Request for Proposals process. First, LS Power requests that SPP revise the OATT to clarify that: (1) any deposit requirements apply to both incumbent transmission developers and nonincumbent transmission developers that are selected as the Designated Transmission Owner in the competitive bidding process; and (2) the same deposit requirements apply to incumbent transmission owners that are chosen to build a transmission project outside the competitive bidding process (e.g., for a transmission facility that is not selected in the regional transmission plan for purposes of cost allocation or for which no completed bid was submitted) under proposed OATT section IV.<sup>538</sup>

261. Second, LS Power argues that SPP's proposed requirement that a Designated Transmission Owner provide "a firm capital commitment acceptable to SPP sufficient to complete the Competitive Upgrade" is vague and could be read to require such commitment within seven days of being provided a notification to construct.<sup>539</sup> LS Power claims that, while letters could likely be obtained quickly, any capital commitments would generally be conditional prior to the completion of permitting. In addition, LS Power asserts that there is no similar requirement for projects assigned to incumbent transmission owners outside the competitive bidding process.<sup>540</sup> LS Power contends that letters from financing institutions should not be required within seven days and the cash deposit should be sufficient.<sup>541</sup>

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<sup>537</sup> *Id.* at 14-15.

<sup>538</sup> LS Power Protest at 30-31.

<sup>539</sup> *Id.* at 31.

<sup>540</sup> *Id.*

<sup>541</sup> *Id.*

262. Third, LS Power protests the proposal to prohibit a Designated Transmission Owner that is chosen as a result of the competitive bidding process from assigning a Competitive Upgrade to another entity.<sup>542</sup> LS Power argues that the proposal is discriminatory because an incumbent transmission owner can reassign a transmission facility to another entity under a number of conditions if the incumbent transmission owner is selected as the Designated Transmission Owner outside the competitive bidding process (e.g., for a transmission facility that is not selected in the regional transmission plan for purposes of cost allocation or for which no completed bid was submitted).<sup>543</sup>

263. Finally, LS Power notes that section III requires a Request for Proposals participant to respond to the notification to construct and satisfy the necessary requirements within seven days, but section IV, which provides the process for assigning the incumbent transmission owner as the Designated Transmission Owner outside the competitive bidding process (e.g., for a transmission facility that is not selected in the regional transmission plan for purposes of cost allocation or for which no completed bid was submitted), gives an incumbent transmission owner 90 days after receipt of a notification to construct to provide a written commitment to construct.<sup>544</sup> LS Power contends that the time requirement to accept designation as a Designated Transmission Owner should be similar under both section III and section IV.<sup>545</sup>

264. LS Power protests SPP's proposed competitive bidding criteria and scoring system.<sup>546</sup> LS Power states that SPP has not offered any support in its filing for its selection of categories or their respective weights. LS Power contends, therefore, that SPP has failed to justify how its proposed scoring system: (1) results in selection of more efficient or cost-effective projects, and (2) is non-discriminatory.<sup>547</sup> LS Power argues that the proposal will be unduly discriminatory unless it can be shown that a qualified nonincumbent transmission developer can receive the maximum achievable points available in the non-cost categories. LS Power states that, while it is possible that SPP's proposal is not unduly discriminatory, SPP's filing does not provide any information upon which to make such a determination.<sup>548</sup>

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<sup>542</sup> *Id.* at 32 (citing SPP OATT, Attachment Y, § III.2.d.xi).

<sup>543</sup> *Id.* at 30-32.

<sup>544</sup> *Id.* at 32.

<sup>545</sup> *Id.* at 31-32 (citing SPP OATT, § III.2.d.xiii).

<sup>546</sup> *Id.* at 20-22.

<sup>547</sup> *Id.* at 21-22.

<sup>548</sup> *Id.* at 22.

265. LS Power argues that SPP's proposed Transmission Owner Selection Process does not result in the selection of the most efficient or cost-effective project due to the low relative weight given to the cost category.<sup>549</sup> LS Power states that, if cost is not the most important selection factor, it does not agree the process will result in just and reasonable rates, which LS Power contends are created when markets work effectively. Thus, LS Power claims that the Transmission Owner Selection Process should focus at least 75 percent on cost to ensure that just and reasonable rates are produced and that the more efficient or cost-effective project is selected.<sup>550</sup> LS Power avers that, because SPP has not provided specific support for the point allocation, or the elements in each category, the Commission has no legal basis upon which to determine whether the proposed process complies with Order No. 1000.<sup>551</sup>

266. LS Power argues that the process ensuring that potential transmission developers are technically and financially capable should be included in, or moved to, the qualification process.<sup>552</sup> LS Power argues that certain criteria are appropriate for the qualification process but should not be included in the project selection process because they do not support the selection of the more efficient or cost-effective project.<sup>553</sup> LS Power claims that certain criteria are duplicated in the qualification and selection criteria, particularly in the operations and finance categories.<sup>554</sup> Where repetition exists, LS Power recommends requiring SPP to move the criteria entirely to the qualification process and shifting the associated points to the rate analysis category in the selection criteria.<sup>555</sup>

267. Several protestors contend that the Commission should not accept SPP's proposed Transmission Owner Selection Process criteria and scoring methodology unless SPP increases the clarity and objectivity for situations in which the industry expert panel or SPP does not select the bid with the highest total score.<sup>556</sup> Duke-American contends that the certainty of an objective scoring process is denied if the transmission developer with

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<sup>549</sup> *Id.*

<sup>550</sup> *Id.* at 23-24.

<sup>551</sup> *Id.* at 22.

<sup>552</sup> *Id.* at 23.

<sup>553</sup> *Id.* at 27.

<sup>554</sup> *Id.* at 26-28.

<sup>555</sup> *Id.*

<sup>556</sup> Duke-American Protest at 27-28; LS Power Protest at 29.

the highest score is not guaranteed to be selected for the project and if SPP does not provide guidance as to the conditions or circumstances under which such developer would not be chosen.<sup>557</sup> Duke-American asserts that such a process could dampen robust participation in the selection process, thus stifling competition.<sup>558</sup> LS Power argues that the subjectivity in this element of the selection process could be a barrier to entry for entities participating in the Request for Proposals process that have already passed through the qualification process.<sup>559</sup> LS Power further contends that the subjectivity of SPP's proposal has the potential to create a "black box" selection process.<sup>560</sup> LS Power suggests that the Commission direct SPP to add language that does not allow the point system to be disregarded unless there is a nondiscriminatory and non-preferential explanation.<sup>561</sup>

268. LS Power generally supports SPP's proposal to use industry expert panels to establish a selection process that is not unduly discriminatory.<sup>562</sup> However, LS Power suggests that, when the industry expert panel delivers its report, it should certify to SPP that it conducted its review in a nondiscriminatory manner.<sup>563</sup> LS Power protests that SPP does not mandate the disqualification of an industry expert panel member with an affiliation that may compromise that expert's independence.<sup>564</sup> LS Power argues that any such affiliation would represent an unacceptable conflict of interest.<sup>565</sup> LS Power proposes language to disqualify any potential industry expert panel member with relationships that could adversely impact an expert's ability to independently evaluate bids.<sup>566</sup>

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<sup>557</sup> Duke-American Protest at 27-28.

<sup>558</sup> *Id.* at 28.

<sup>559</sup> LS Power Protest at 29.

<sup>560</sup> *Id.*

<sup>561</sup> *Id.*

<sup>562</sup> *Id.* at 19.

<sup>563</sup> *Id.*

<sup>564</sup> *Id.*

<sup>565</sup> *Id.*

<sup>566</sup> *Id.* at 20.

**iii. Answers**

269. SPP objects to LS Power's argument that inclusion of the "material on hand, rights-of-way approval, assets on hand" component in the rate analysis criteria improperly values ownership of existing rights-of-way. SPP argues that there are sufficient safeguards in place to prevent an improper valuation of existing rights-of-way.<sup>567</sup> SPP adds that ownership of existing rights-of-way is a factor in analyzing the rate impact of a proposal because right-of-way acquisition is a component of the cost of the project that will be included in rates.<sup>568</sup>

270. SPP claims that Missouri PSC has not provided details to support its assertion that affiliated entities bidding on the same project could lead to tainting the process or gaming, and contends that its proposed process is not unduly discriminatory or preferential, as required by Order No. 1000.<sup>569</sup> SPP reiterates that the Transmission Owner Selection Process will independently review the merits of each individual bid and the nature of the entity that submitted a bid is irrelevant to the industry expert panel's independent review of each bid. In SPP's view, absent any demonstrable opportunity for gaming or harm, SPP should not be required to limit the input into the Transmission Owner Selection Process. Additionally, SPP states that it is not empowered to dictate the corporate structure of any entity that participates in the Transmission Owner Selection Process.

271. SPP argues that Order No. 1000 does not require a cure period for Request for Proposals respondents to cure deficiencies in their bids, which Duke-American requests.<sup>570</sup> SPP contends that providing a 10-day cure period, potentially beyond the response window, is infeasible due to the tight time frame for selecting the Designated Transmission Owner for a Competitive Upgrade and the delay that could be caused by extending the response window. Furthermore, the current process already provides sufficient time for participants to develop and, if necessary, refine their bids. Finally, SPP also states that it and its stakeholders considered and rejected the concept of a cure period beyond the bidding window because they felt that the bidding window was already sufficient and that it created an incentive for Request for Proposals respondents to submit complete bids without requiring SPP to address numerous deficient submissions.

272. SPP disagrees with LS Power's assertions that nonincumbent transmission developers and incumbent transmission owners awarded projects under both sections III

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<sup>567</sup> SPP Answer at 53.

<sup>568</sup> *Id.* at 53-54.

<sup>569</sup> *Id.* at 66.

<sup>570</sup> *Id.* at 54 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324).

and IV of Attachment Y should have the same terms and conditions.<sup>571</sup> SPP notes that section III sets forth the process for determining the Designated Transmission Owner through a voluntary competitive bidding process, whereas section IV describes the process for designating incumbent transmission owners to have an obligation to build.<sup>572</sup> SPP relies on these provisions to conclude that the entities designated to construct, own, and maintain transmission facilities pursuant to these sections are not similarly situated and thus differences are warranted.

273. SPP asserts that the fact that the bid with the highest score may not always be recommended by the industry expert panel does not create a “black box” selection process, as LS Power alleges.<sup>573</sup> SPP states that, while the proposed OATT provisions do provide that the industry expert panel “may recommend that any bid be eliminated from consideration due to a low score in any individual evaluation category,” SPP will not do so in secret; a description of the reasoning for any such decisions will be included in the report prepared by the industry expert panel.<sup>574</sup> SPP states that the industry expert panel will include in this report, a version of which will be available to the public, the reasons it eliminated a bid from consideration because of a low score.<sup>575</sup>

274. SPP contends that LS Power’s assertion that the point-based, competitive process cannot be nondiscriminatory unless the transmission provider can establish that a qualified nonincumbent transmission developer can achieve the maximum points available in the non-cost categories is misplaced.<sup>576</sup> SPP notes that, while there may be instances where a nonincumbent transmission developer cannot achieve the maximum point total in a certain category, this circumstance does not place it at a disadvantage because the point system does not prejudge whether an incumbent transmission developer or nonincumbent transmission developer can achieve the highest level of points in a certain category. In SPP’s view, Order No. 1000 made clear that incumbent transmission developers and nonincumbent transmission developers alike are free to highlight their strengths in their transmission project bids. SPP claims that its proposed point system facilitates such a demonstration.<sup>577</sup> Further, SPP asserts that, if an entity believes that it is

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<sup>571</sup> *Id.* at 58.

<sup>572</sup> *Id.* at 59.

<sup>573</sup> *Id.* at 47.

<sup>574</sup> *Id.* (citing SPP OATT, Attachment Y, § III.2.d.vi.2).

<sup>575</sup> *Id.*

<sup>576</sup> *Id.* at 46-47.

<sup>577</sup> *Id.* at 46 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 260).

deficient in one area, nothing in the proposed OATT language would prevent that entity from contracting with a more experienced third-party to strengthen its position and including this fact in its bid.<sup>578</sup>

275. SPP disagrees with LS Power that cost should be the primary driver of transmission selection in a regional planning process.<sup>579</sup> SPP states that Order No. 1000-A rejected LS Power's suggestion that selection among multiple sponsors of identical projects should be based on the entity that is willing to guarantee the lowest net present value of its annual revenue requirement. SPP notes that, instead, the Commission found that selection criteria will vary by region, and this flexibility allows the establishment of processes in accordance with each region's needs.<sup>580</sup>

276. Moreover, SPP states that the proposed weight given to factors other than cost is appropriate because it protects against additional costs to customers that could arise if a facility is inadequately maintained or operated. SPP asserts that the use of factors other than cost is not only consistent with the flexibility allowed in Order No. 1000, but also with other Commission precedent, which supports the position that cost considerations are no more critical than non-cost factors and that efficient or cost-effective does not always mean "least cost."<sup>581</sup>

277. SPP objects to LS Power's assertion that the operations and finance categories are duplicated in the qualification and selection criteria. SPP argues that LS Power's objection fails to recognize that the qualification criteria and the Transmission Owner Selection Process criteria serve different purposes. SPP explains that the qualification

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<sup>578</sup> *Id.* at 46-47.

<sup>579</sup> *Id.* at 48-50.

<sup>580</sup> *Id.* at 48 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at PP 451, 455).

<sup>581</sup> *Id.* at 49 (citing *Cal. Indep. Sys. Operator, Inc.*, 137 FERC ¶ 61,062, at P 27 (2011) ("Although we support cost containment efforts, we find that it is inappropriate to give cost containment, regardless of the form in which it is provided, more weight than non-cost project sponsor selection factors (such as capabilities and financial resources of project sponsor and team)."); *Transmission Tech. v. Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,077 (2011) (where SPP states that the Commission denied a complaint on the basis that, "consistent with the guidance in [Business Practice Manual] section 4.2.1, we find that [California Independent System Operator Corporation (CAISO)] accounted for additional project benefits in its cost analysis for the competing solutions. This is supported by the fact that CAISO chose several projects, which on their face appear to be more expensive, but that provide additional benefits or services beyond those required to satisfy the immediate reliability issue that make those projects the most prudent and most cost-effective solutions in the long-run").

criteria determine an entity's eligibility to respond to a Request for Proposals to build a Competitive Upgrade, regardless of whether it is an incumbent transmission developer or nonincumbent transmission developer, while the Transmission Owner Selection Process criteria are used in a process to determine whether to select a bid.<sup>582</sup> Thus, SPP argues that the qualification process focuses on the entity that wishes to be able to bid in the Request for Proposals process, while the Transmission Owner Selection Process is geared toward evaluating bids for specific Competitive Upgrades.

278. SPP claims that LS Power's concern that proposed OATT section III.2.b.ii of Attachment Y does not sufficiently protect against the adverse impacts of a member's affiliation with an SPP stakeholder or potential Request for Proposals participant on the decisions of the industry expert panel is unfounded.<sup>583</sup> SPP states that the proposed provision, which states that the Oversight Committee "may," rather than "will," disqualify a member from the industry expert panel, adequately protects against any adverse impact from an industry expert panel member's conflict of interest because: (1) the provision requires disclosure of any affiliations and an evaluation by the independent Oversight Committee of any adverse impacts of such affiliations; and (2) if the Oversight Committee believes there are no adverse impacts and does not remove the industry expert panel member, the Board that ultimately selects the Designated Transmission Owner for the project will be apprised of any relevant affiliations and can take them into consideration when choosing the Designated Transmission Owner.<sup>584</sup>

279. SPP argues that it is unnecessary to state in each industry expert panel report that the industry expert panel conducted its review in a nondiscriminatory manner, as LS Power suggests,<sup>585</sup> because the proposed OATT language requires industry expert panel to review bids in a nondiscriminatory manner.

280. SPP argues that the deposit requirements in sections III.2.d.xii.1 and 2 of Attachment Y are not discriminatory because they apply to both incumbent and nonincumbent Designated Transmission Owners, and that LS Power's protest fails to recognize the different purposes of the two deposit requirements.<sup>586</sup> SPP states that the purpose of the cash deposit is to reduce the final cost of a Competitive Upgrade if an alternative Designated Transmission Owner must be selected. SPP adds that a firm capital commitment is necessary to ensure that the selected Designated Transmission

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<sup>582</sup> *Id.* at 51-52.

<sup>583</sup> *Id.* at 41 (citing LS Power Protest at 20).

<sup>584</sup> *Id.* at 41-42 (citing SPP OATT, Attachment Y, § III.2.b.ii).

<sup>585</sup> *Id.* at 42 (citing LS Power Protest at 19).

<sup>586</sup> *Id.* at 56-57.



Owner has the financial capability to finish the project. SPP argues that the details regarding what is sufficient to meet the firm capital commitment requirement are the type of details that it is permitted to include in its business practices rather than in its OATT.<sup>587</sup> Additionally, SPP claims that it is reasonable to require that the firm capital commitment be provided within seven days of receiving the notification to construct because Request for Proposals participants will have had the term of the planning process and the response window to arrange to meet financial obligations in the case they are selected.<sup>588</sup>

281. In its response, Duke-American asserts that the detailed project proposal incentive points will not provide sufficient incentive for developers to invest in planning the most cost-effective and efficient projects.<sup>589</sup> Duke-American adds that, despite SPP's answer, SPP's point system is unclear and lacks objectivity because industry expert panels can eliminate bids with low scores in one category and can recommend a bid that did not receive the highest point total without providing sufficient explanation.

#### iv. Commission Determination

282. We find that SPP has not provided sufficient justification for the point system in its proposed Transmission Owner Selection Process, and has not described how it will result in a regional transmission plan that selects the more efficient or cost-effective transmission solutions to regional transmission needs. Accordingly, we direct SPP to make a further compliance filing, as discussed below, to revise its evaluation process to reflect greater weighting of costs in evaluating transmission developer bids in order to reflect "the relative efficiency and cost-effectiveness of [any proposed transmission] solution,"<sup>590</sup> or to further explain and justify why its proposed weighting of costs in the evaluation process complies with the requirements of Order No. 1000.

283. Furthermore, we find that certain elements of the Transmission Owner Selection Process, as described below, are not sufficiently transparent and do not culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular bid was selected or not selected. Accordingly, we also direct SPP, in its further compliance filing, to revise its OATT so that the selection process complies with the transparency requirements of Order No. 1000.

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<sup>587</sup> *Id.* at 57 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,164, at P 43 (2008); ITP Order, 132 FERC ¶ 61,042 at PP 54-57).

<sup>588</sup> *Id.* at 58.

<sup>589</sup> Duke-American Response at 12-14.

<sup>590</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307.

284. As a general matter, we find that it is appropriate for SPP to consider several factors in evaluating transmission developer bids submitted. However, SPP did not provide adequate support to demonstrate that the proposed point distribution for its evaluation criteria is not unduly discriminatory and that it will result in a regional transmission planning process that selects more efficient or cost-effective transmission solutions, as required by Order No. 1000. SPP proposes the following 5 evaluation criteria and maximum points for each criteria: (1) Engineering/ Reliability/ Quality/ General Design (up to 200 points); (2) Construction Project Management (up to 200 points); (3) Operations/ Maintenance/ Safety (up to 250 points); (4) Rate Analysis (Cost to Customers) (up to 225 points); and (5) Financial Viability and Creditworthiness (up to 125 points).<sup>591</sup> We find that SPP does not justify or explain why it assigned a significantly higher percentage to non-cost-based criteria relative to the cost-based criterion, nor does SPP explain how that assignment results in a not unduly discriminatory evaluation process. While the Commission recognized in Order No. 1000 that the process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation will likely vary from region to region,<sup>592</sup> such evaluation must consider “the relative efficiency and cost-effectiveness of [any proposed transmission] solution.”<sup>593</sup> An evaluation process that weighs costs at only 22.5 percent of an overall bid does not properly measure the relative efficiency and cost-effectiveness of a proposed bid.

285. As support for its proposal, SPP states that, for example, the Operations (Operations/Maintenance/Safety) evaluation criterion measures the capability of a Request for Proposals respondent to operate, maintain, and restore a transmission facility. SPP argues that weighting this criterion slightly higher (at 250 points) than the Rate Analysis criterion (at 225 points) is appropriate because it protects against additional costs to customers that could arise if a transmission facility is inadequately maintained or restored after an outage or storm, resulting in the need for new transmission facilities or repairs to existing transmission facilities due to the owner’s failure to maintain or restore.<sup>594</sup> We agree that, if a transmission developer cannot demonstrate that a transmission facility it develops will be operated, maintained, and restored in a reliable manner, then it should not be chosen to develop that transmission facility. However, SPP does not attempt to quantify, or provide other evidence that actually demonstrates, how concerns related to potential future costs justify assigning a significantly higher percentage to non-cost-based criteria relative to the cost-based criterion.

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<sup>591</sup> SPP OATT, Attachment Y, § III.2.f.iii.1-5.

<sup>592</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331.

<sup>593</sup> *Id.* P 331 n.307.

<sup>594</sup> SPP Answer at 49.

286. As LS Power notes,<sup>595</sup> many of the factors in the qualitative evaluation criteria (including, for example, storm outage response and restoration plans, restoration experience, and maintenance staffing, training, planning, and performance) are also part of the qualification criteria that a potential transmission developer must meet before it can qualify to submit a bid. We understand SPP's argument that repetition in the qualification and evaluation criteria is necessary because the qualification process allows a potential transmission developer to demonstrate in general that it has the financial and technical expertise to construct, own, and operate transmission facilities while the evaluation process is geared toward a specific transmission facility that has been selected in the regional transmission plan for purposes of cost allocation.<sup>596</sup> However, SPP has not provided sufficient evidence that its proposed weighing of cost and non-cost criteria will result in a regional transmission plan that selects the more efficient or cost-effective transmission solutions to regional transmission needs.

287. We also find that SPP has not provided a sufficiently clear and objective description of what basis the industry expert panel would use if it were to not recommend to the Board the bid with the highest score or if it were to eliminate from consideration a bid due to a low score in any individual evaluation category. Accordingly, we direct SPP, as discussed below, to either explain what basis the industry expert panel would use if it were to not to recommend to the Board a bid with the highest score, including how such a decision will be made in a transparent manner, or to remove any OATT language that allows the point system to be disregarded by the industry expert panel when it makes its recommendation.<sup>597</sup>

288. LS Power also contends that the OATT requirement to provide a "firm capital commitment acceptable to the Transmission Provider that is sufficient to complete the Competitive Upgrade" when accepting the responsibilities of being a Designated Transmission Owner is not sufficiently clear or well justified. We will not require SPP to remove this requirement because we agree with SPP that the firm capital commitment is necessary to ensure that the selected Designated Transmission Owner has the financial capability to finish the project, which is particularly important given that other transmission owners may be relying on the Designated Transmission Owner's successful completion of the project to satisfy their obligations under reliability standards and state-imposed retail service obligations. However, contrary to SPP's position, we find that the details regarding what is sufficient to meet the firm capital commitment requirement are

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<sup>595</sup> LS Power Protest at 28 (citing SPP OATT, Attachment Y, § III.1.b.iii.1-5).

<sup>596</sup> SPP Answer at 52.

<sup>597</sup> Additionally, if SPP allows for the industry expert panel to not recommend the bid with the highest score, SPP will need to describe which entity will build the project in case all of the bids for a Competitive Upgrade are eliminated from consideration due to a low score in the evaluation criteria.

properly included in the OATT, not the business practice manuals. Accordingly, we direct SPP to clarify in its OATT what is expected, in terms of demonstration of access to capital, when a transmission developer is accepting responsibilities as a Designated Transmission Owner, and to further describe why such requirements are just and reasonable and not unduly discriminatory.

289. As discussed above, we direct SPP to file, within 120 days of the date of this order, a further compliance filing that revises its OATT to (1) revise its evaluation process to reflect greater weighting of costs in evaluating transmission developer bids in order to better reflect “the relative efficiency or cost-effectiveness of [any proposed transmission] solution,”<sup>598</sup> or explain and justify why its proposed weighting of costs in the evaluation process complies with the requirements of Order No. 1000; (2) either explain what basis the industry expert panel would use if it were to not to recommend to the Board a bid with the highest score, including how such a decision will be made in a transparent manner, or to remove any OATT language that allows the point system to be disregarded by the industry expert panel when it makes its recommendation; and (3) clarify what is expected, in terms of demonstration of access to capital, when a transmission developer is accepting responsibilities as a Designated Transmission Owner, and to further describe why such requirements are appropriate and not unduly discriminatory.

290. Although we find that SPP has not provided sufficient justification to supports its filing dealing with the evaluation of proposed transmission projects, we do not agree with all of the parties that protested elements of SPP’s proposed Transmission Owner Selection Process. With regard to LS Power’s protest that potential industry expert panel members with affiliations that may compromise an expert’s independence should be disqualified from being selected, we find that no revision is necessary to address LS Power’s concern. First, as SPP clarifies, the Oversight Committee *will* remove an industry expert panel member if it determines that the member’s affiliations create an adverse impact. Also, the Oversight Committee’s recommended pool of industry expert panel candidates will be posted on the SPP website prior to the Board meeting at which it votes to approve the candidates, and stakeholders will have an opportunity to raise any concern about a candidate’s affiliations before the Board vote. Finally, the independent Board, and not the industry expert panel, will ultimately decide which bid to choose. Thus, we find that the process proposed by SPP provides sufficient protection against possible adverse impacts caused by affiliations between industry expert panel members and Request for Proposals respondents.

291. Similarly, we disagree with LS Power that the industry expert panel, when delivering its report to the Board, should be required to certify that it conducted its review in a nondiscriminatory manner. SPP’s proposed OATT states that each independent

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<sup>598</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 n.307.

expert should be able to independently evaluate bids in the Request for Proposals process.<sup>599</sup> As such, there is no need to require the industry expert panel to further certify that its review was conducted in line with the approved nondiscriminatory process.

292. We also do not agree with ITC Great Plains' suggestion that SPP provide common rules for Request for Proposals participants to follow in developing accurate projected revenue requirements. We find that the information requirements, complemented by the cure period, should allow SPP to gather sufficiently consistent cost data for different transmission projects to allow the industry expert panels to effectively assess the comparative rate impact of different bids.

293. We also disagree that SPP should remove reference to "material on hand, rights-of-way approval, and assets on hand" from the rate analysis section of the selection criteria. We find that the evaluation process, facilitated by the use of industry expert panels, is structured such that the value of a transmission developer's resources will be appropriately and consistently considered. Furthermore, we agree with SPP's answer that ownership of existing rights-of-way is a factor in analyzing the rate impact of a bid, as the costs associated with acquiring such rights in the process of developing a transmission project will affect the rate impact of said project.

294. We agree that SPP's proposed 90-day bidding window is sufficient for respondents to submit proposals, receive notification of receipt from SPP, and, if necessary, cure any deficiencies in their proposal. As a threshold matter, Order No. 1000 does not require a public utility transmission provider to provide an opportunity to potential transmission developers to remedy deficiencies in project proposals.<sup>600</sup> Thus, there is no requirement that a cure period, if included in a proposed regional transmission planning process, must extend beyond the bidding window for the submittal of bid. Furthermore, we agree with SPP that extending the cure period beyond the bidding window could significantly delay the Transmission Owner Selection Process.

295. Additionally, we do not agree with Missouri PSC that SPP should restrict or prohibit bidding by affiliates of the same holding company in the Request for Proposals process for a particular Competitive Upgrade as Missouri PSC's requests. We are not convinced by Missouri PSC's suggestions that SPP's proposal lends itself to bidding behavior by affiliates that will taint the Request for Proposals process or lead to gaming. According to SPP's proposal, bids submitted by certain Request for Proposals respondents' affiliates should not affect the ability of other potential respondents to bid and have their bids evaluated on a not unduly discriminatory basis. Moreover, we agree with SPP that it is not empowered to dictate the corporate structure of a Designated

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<sup>599</sup> SPP OATT, Attachment Y, § III.2.b.ii.

<sup>600</sup> Order No. 1000 only includes such a requirement in the qualification process. *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 324.

Transmission Owner nor should SPP be required to prejudge whether a partnership between affiliates will produce bids that are more efficient or cost-effective. Furthermore, the competitive nature of the process should lead affiliates to bid, or create a partnership to bid, in such a manner that affords them the highest possible score. Further, we agree with SPP that Missouri PSC has not demonstrated an opportunity for gaming or harm and thus will not require SPP to change its affiliate bidding policies.

296. We disagree with LS Power that SPP's proposal is unclear about whether deposit requirements apply to both incumbent transmission developer and nonincumbent transmission developers that are selected as Designated Transmission Owners. We find that SPP's proposal is clear and, as further clarified in SPP's answer, that the deposit requirements for Designated Transmission Owners designated under section III of SPP's proposed Attachment Y apply to both incumbent transmission developers and nonincumbent transmission developers.

297. Finally, we disagree that the provisions of section III pertaining to Designated Transmission Owners, including deposit requirements, response requirements, capital commitment requirements, and reassignment provisions, should be extended to Designated Transmission Owners designated under section IV of SPP's proposed OATT. In Order No. 1000, the Commission established requirements relating to the selection of transmission projects in the regional transmission plan for purposes of cost allocation, the transmission developers for which are addressed under section III of SPP's proposed Attachment Y.<sup>601</sup> Therefore, we find that requiring the extension of such requirements to Designated Transmission Owners for transmission facilities that are not selected in the regional transmission plan for purposes of cost allocation under section IV do not need to comply with the requirements of Order No. 1000.

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

298. Each public utility transmission provider must amend its OATT to describe the circumstances and procedures under which public utility transmission providers in the regional transmission planning process will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative transmission solutions, including those that the incumbent transmission provider proposes, to ensure the incumbent transmission provider can meet its reliability needs or service obligations.<sup>602</sup> If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to

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<sup>601</sup> *Id.* at P 328.

<sup>602</sup> *Id.* PP 263, 329; Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.<sup>603</sup>

**i. SPP's Filing**

299. SPP proposes a reevaluation process to determine the status of Competitive Upgrades and to allow it to designate a new transmission developer to construct and own the project if the Designated Transmission Owner for a Competitive Upgrade cannot or is unwilling to complete a Competitive Upgrade after accepting the notification to construct. SPP states that, if it determines that there is sufficient time, it will repeat the proposed Transmission Owner Selection Process to provide the opportunity for other Qualified Request for Proposals Participants to become the Designated Transmission Owner for the Competitive Upgrade that the original Designated Transmission Owner has been unable to construct. However, SPP explains that, if there is insufficient time to complete the Transmission Owner Selection Process, SPP will designate the relevant incumbent transmission owner to develop the Competitive Upgrade, in accordance with the existing Incumbent Transmission Owner Designation Process set forth in section IV of SPP's proposed Attachment Y.<sup>604</sup> SPP states this balancing is consistent with Order No. 1000.<sup>605</sup>

300. Additionally, SPP's proposed OATT revisions include a transmission project tracking process that SPP states will allow it to ensure that cost overruns or scheduling delays in the development of a transmission project do not adversely affect SPP's ability to ensure the reliability of the transmission system or the SPP transmission owners' ability to meet their service obligations. SPP proposes to monitor costs and schedules related to all transmission projects approved for construction. SPP states that it will establish a baseline cost for a transmission project based on an agreement between SPP and the Designated Transmission Owner at the time that the notification to construct is accepted. SPP explains that on a quarterly basis, the Designated Transmission Owner must submit updates of the estimated costs and schedules. SPP proposes that it may then investigate the reason for any cost or schedule changes if, at any time, the cost estimate significantly exceeds the estimated baseline cost or the schedule significantly changes. SPP explains that, pursuant to such an investigation, SPP may report to the Board the reason for any cost or schedule changes. As proposed, the Board may then decide on an

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<sup>603</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

<sup>604</sup> SPP OATT, Attachment Y, § III.2.g.

<sup>605</sup> SPP Transmittal at 83-84 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 264, 329).

appropriate action, which could include cancellation of the transmission project and withdrawal of the notification to construct.<sup>606</sup>

301. SPP's proposed OATT revisions also provide that any transmission owner that has accepted a notification to construct will use its due diligence to meet the terms of the notification to construct. If the transmission owner at any time cannot meet one of the terms of the notification to construct or cannot meet the regulatory approval need date set forth in the Request for Proposals, if applicable, it shall notify SPP in a timely manner. The transmission owner may then suggest and justify changes to the terms of the notification to construct. SPP will review such proposed changes and determine the appropriate course of action to propose to the Board. SPP may recommend to accept the changes or to reject the changes. If the transmission owner's changes are rejected, the notification to construct will be withdrawn and the project may be cancelled, the project may be replaced with an alternative solution, or the notification to construct may be issued to another entity for the same project in accordance with SPP's Attachment Y.<sup>607</sup>

**ii. Protests/Comments**

302. Duke-American argues that the tracking process lacks objective and codified guidelines, which will lead to uncertainty in the competitive bidding process because Request for Proposals respondents will not have a clear understanding of SPP's expectations.<sup>608</sup> Duke-American also states that the lack of objective criteria could lead to arbitrary decisions.<sup>609</sup> Duke-American protests SPP's proposal that action by SPP may be triggered by "significant changes" to either the cost projections or schedule.<sup>610</sup> Duke-American asks the Commission to require SPP to establish clear and objective thresholds for what constitutes a "significant" change in cost projections or schedule.<sup>611</sup> Furthermore, Duke-American requests that the Commission require SPP to clarify the steps through which a Designated Transmission Owner can recover the costs of a transmission project that was cancelled or reassigned as a result of the proposed transmission project tracking process.<sup>612</sup>

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<sup>606</sup> SPP OATT, Attachment Y, § VI.1-4.

<sup>607</sup> *Id.*, § V.4.

<sup>608</sup> Duke-American Protest at 28-29.

<sup>609</sup> *Id.*

<sup>610</sup> *Id.*

<sup>611</sup> *Id.*

<sup>612</sup> *Id.*



**iii. Answer**

303. SPP disagrees that its transmission project cost tracking mechanism does not contain clear and objective thresholds regarding what constitutes a “significant” change in cost projections. SPP explains that the cost bandwidth for projects, currently 20 percent, is established through the stakeholder process and set forth in SPP’s business practices and posted on SPP’s website. SPP further states that deviations outside this bandwidth will trigger further review under proposed Attachment Y.<sup>613</sup> SPP states that, when it investigates a change in cost, it will report to the Board the reason for the change in costs and its recommendation on whether to accept the change and reset the baseline cost or to take other action. SPP explains that the Board will make the final determination as to what action will be taken at an open meeting.<sup>614</sup> Thus, SPP contends that its transmission project cost tracking mechanism provides significant safeguards to ensure that the process is conducted in a clear and objective manner.

304. SPP adds that Duke-American’s concerns regarding the transmission project schedule tracking process are likewise unavailing.<sup>615</sup> SPP explains that a determination of whether a scheduling delay is “significant” is project specific. For example, the factors to consider in determining whether a construction delay is significant (e.g., need date, construction time, necessity for long-lead equipment, and permitting schedules) likely would be different for a large 345 kV line than for a substation. Therefore, in SPP’s view, the determination of what constitutes a significant construction delay does not lend itself to a generic threshold as opposed to the generally-applicable project cost bandwidth. However, as with significant cost overruns, the Board is the final authority with regard to actions taken in response to significant scheduling delays. SPP notes that transmission owners retain the option to work with SPP to revise the construction schedule should they experience difficulty maintaining the original schedule.<sup>616</sup>

305. SPP states that it did not propose, and Order No. 1000 does not require, a process for a transmission developer to recover the costs of a transmission project that was cancelled or reassigned as a result of the proposed transmission project tracking process. Therefore, SPP argues that it is unnecessary for it to clarify the steps through which a transmission developer can recover those costs, as Duke-American suggests.<sup>617</sup>

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<sup>613</sup> SPP Answer at 64.

<sup>614</sup> *Id.* at 65.

<sup>615</sup> *Id.*

<sup>616</sup> *Id.* (citing SPP OATT, Attachment Y, § V.4).

<sup>617</sup> *Id.* at 66.

**iv. Commission Determination**

306. We find that SPP's proposal to reevaluate transmission projects partially complies with the requirements of Order No. 1000. With regard to the evaluation of alternatives, we find that the provisions in SPP's filing reasonably establish the circumstances and procedures under which SPP will designate a new transmission developer for a reevaluated transmission project. We find it reasonable that, time permitting, this reevaluation process allows the incumbent transmission owner to bid to construct the transmission project in a new Transmission Owner Selection Process.

307. However, we find that SPP's filing does not fully comply with the requirements of Order No. 1000 that SPP's OATT list the circumstances and procedures under which reevaluation will take place. With regard to a reevaluation being triggered by significant changes to a transmission project's schedule, we agree with SPP that what constitutes a significant construction delay does not lend itself to a generic threshold. Therefore, we disagree with Duke-American and will not require SPP to specify a time period that would constitute a significant delay. However, SPP lists, in its answer, factors that it will consider in determining what constitutes a significant delay (e.g., need date, construction time, necessity for long-lead equipment, and permitting schedules). We find it reasonable for SPP to include these factors in its OATT to provide transparency. Accordingly, we direct SPP to revise its OATT to include this list (and any other factors SPP may consider) so that stakeholders are aware of the factors SPP will consider in determining whether a transmission project selected in the regional transmission plan for purposes of cost allocation is significantly delayed.

308. SPP also proposes to monitor cost changes during the transmission construction process. Duke-American contends that the proposed tracking process lacks a sufficiently clear description of the circumstances and procedures under which SPP will reevaluate the regional transmission plan to determine if changes in the cost of a Competitive Upgrade warrant action, including cancellation, by the Board. We note that Order No. 1000 does not require public utility transmission providers to reevaluate transmission projects based on cost requirements but allows a public utility transmission provider to include cost containment provisions in its compliance filing.<sup>618</sup> Therefore, we accept SPP's proposal to include consideration of cost in its reevaluation criteria, and reject requests by protestors to require SPP to include more detailed provisions relating to the reevaluation process, in the case of cost changes, given that the Commission in Order No. 1000 explicitly declined to require a cost containment component in compliance filings.<sup>619</sup> However, SPP clarifies that it has established a cost bandwidth for projects and that reevaluation will be triggered if the cost of a transmission project exceeds the bandwidth, but SPP's OATT does not reflect this clarification. Accordingly, we direct

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<sup>618</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 625.

<sup>619</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 704.

SPP to revise its OATT, as discussed below, to reflect its clarification concerning the bandwidth. We note that SPP does not need to include an exact bandwidth number; it may cite to the current bandwidth in its Business Practice Manuals by reference.

309. We will not require SPP to clarify the steps through which a Designated Transmission Owner may recover the costs of a transmission project that is canceled or reassigned as a result of the transmission project tracking process because cost recovery issues are outside the scope of Order No. 1000.<sup>620</sup>

310. As discussed above, we direct SPP to file, within 120 days of the date of this order, a compliance filing that revises its OATT to (1) include a list of factors that it will consider when determining if a transmission project selected in the regional transmission plan for purposes of cost allocation is significantly delayed; and (2) clarify that it has an established cost bandwidth for determining when the reevaluation of a transmission project is necessary.

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

311. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that provides that a nonincumbent transmission developer has an opportunity comparable to that of an incumbent transmission developer to allocate the cost of a transmission facility through a regional cost allocation method or methods.<sup>621</sup> A nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>622</sup> If a transmission project is selected in a regional transmission plan for purposes of cost allocation, Order No. 1000 requires that the transmission developer of that transmission facility (whether incumbent transmission developer or nonincumbent transmission developer) must be able to rely on the relevant cost allocation method or methods within the region should it move forward with its transmission project.<sup>623</sup>

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<sup>620</sup> The Commission appreciates that nonincumbent transmission developers may not have the appropriate rate structures in place with which to recover costs (i.e., Construction Work in Progress). If proposals on this issue are filed under FPA section 205 or FPA section 206, the Commission will consider such proposals on a case-by-case basis.

<sup>621</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

<sup>622</sup> *Id.*

<sup>623</sup> *Id.* P 339.

312. Order No. 1000 specifies that the regional transmission planning process could use a non-discriminatory competitive bidding process as the mechanism to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation.<sup>624</sup> A region may use or retain an existing mechanism that relies on a competitive solicitation to identify preferred solutions to regional transmission needs, and such an existing process may require little or no modification to comply with the framework adopted in Order No. 1000.<sup>625</sup> The regional transmission planning process could allow the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project.<sup>626</sup> If it uses a sponsorship model, the regional transmission planning process would also need to have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission owner or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>627</sup>

**i. SPP's Filing**

313. SPP proposes a competitive bidding model that it terms the Transmission Owner Selection Process. SPP states that, under the Transmission Owner Selection Process, an industry expert panel will evaluate all proposals and select, on a nondiscriminatory basis, a qualified entity to construct and own each Competitive Upgrade and an alternate entity to construct and own the Competitive Upgrade in the event that the selected entity declines to become the Designated Transmission Owner for the Competitive Upgrade.<sup>628</sup> A qualified entity does not need to be an existing SPP transmission owner to be selected as a Designated Transmission Owner but must be willing to sign the SPP Membership Agreement as a transmission owner if selected as the Designated Transmission Owner.<sup>629</sup>

314. SPP contends that the proposed process set forth in a new Attachment Y complies with the nonincumbent transmission developer requirements of Order No. 1000, including eliminating federal rights of first refusal for transmission facilities selected in the regional transmission plan for purposes of cost allocation, establishing just and

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<sup>624</sup> *Id.* P 336.

<sup>625</sup> *Id.* P 321.

<sup>626</sup> *Id.* P 336.

<sup>627</sup> *Id.*

<sup>628</sup> SPP Transmittal at 70-71.

<sup>629</sup> SPP OATT, Attachment Y, § III.1.b.i.

reasonable and not unduly discriminatory qualification criteria, adopting project submission and selection requirements, and granting nondiscriminatory access to the regional cost allocation method to nonincumbent transmission developers for transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>630</sup>

## **ii. Protests/Comments**

315. ITC Great Plains and AWEA/Wind Coalition generally support SPP's cost allocation method.<sup>631</sup> LS Power states that SPP should revise its OATT to make clear that the definition of Designated Transmission Owner permits nonincumbent transmission developers and incumbent transmission owners to use and recover costs through SPP's regional cost allocation methods, as required by Order No. 1000.<sup>632</sup>

316. LS Power asks the Commission to consider the recommendations of the Illinois Commerce Commission (ICC) in its comments in Docket No. ER13-187-000, addressing the issue of state rights of first refusal in the context of Midwest Independent Transmission System Operator, Inc.'s (MISO) regional cost allocation. The ICC argues that projects that retain a state right of first refusal should not be subject to cost allocation outside the state in which the project is physically located to ensure that other states do not bear extra costs due to the host state's preference for an incumbent transmission developer over one selected through a competitive process.<sup>633</sup>

317. Duke-American generally supports a sponsorship model, as opposed to SPP's proposed competitive bid model, and believes adopting the sponsorship model will address the situation where a transmission facility is partially in a state that has a right of first refusal.<sup>634</sup>

## **iii. Answers**

318. SPP argues that LS Power's suggested change to the definition of Designated Transmission Owner is unnecessary. First, SPP contends that under Attachment J, the method for allocating costs of a transmission facility selected in the regional transmission

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<sup>630</sup> SPP Transmittal at 70-71.

<sup>631</sup> ITC Great Plains Comments at 5; AWEA/Wind Coalition Comments at 13-20.

<sup>632</sup> LS Power Protest at 32-33.

<sup>633</sup> *Id.* at 35-36 (citing ICC, Comments, Docket No. ER13-187-000, at 32 (filed Dec. 10, 2012)).

<sup>634</sup> Duke-American Protest at 23-24.

plan is based on the category of the project (e.g., below or above 300 kV), not on the status of the entity, incumbent transmission developer or nonincumbent transmission developer, constructing the project.<sup>635</sup> Second, SPP explains that once a nonincumbent transmission developer is awarded a project, it must sign the Membership Agreement and become a Transmission Owner under both SPP's OATT and Membership Agreement with all of the rights therein. Third, SPP contends that LS Power construes the definition of Designated Transmission Owner too narrowly by only including those transmission owners that are assigned Competitive Upgrades. SPP argues that the definition applies to both entities assigned Competitive Upgrades that receive regional cost allocation, and also to entities that are assigned local transmission projects that are not selected in the regional transmission plan for purposes of cost allocation. Therefore, SPP states that LS Power's recommended addition to the definition would be inaccurate.<sup>636</sup>

319. SPP argues that LS Power's reference to the ICC's comments (in response to MISO's Order No. 1000 compliance filing) in which the ICC asserts that the costs of projects that retain a state right of first refusal should not be allocated to states without a state right of first refusal, are not relevant here because LS Power has not demonstrated how these comments, submitted by a non-party in an unrelated proceeding, are relevant to the instant proceeding and neither SPP nor the Commission has the basis to or context for addressing these comments in relation to SPP's filing.<sup>637</sup>

320. SPP refutes Duke-American's suggestion that SPP should adopt a sponsorship model rather than a competitive bid model.<sup>638</sup> SPP notes that Order No. 1000 expressly states that public utility transmission providers can adopt "a non-discriminatory competitive bidding process."<sup>639</sup> SPP argues that, contrary to Duke-American's assertions, the Commission did not require SPP to explain why its proposed competitive bidding model is superior to a sponsorship model. SPP states that it has made the necessary showing that its proposal complies with Order No. 1000 and is just and reasonable.

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<sup>635</sup> SPP Answer at 61-62.

<sup>636</sup> *Id.* at 62-63.

<sup>637</sup> *Id.* at 26 n.80.

<sup>638</sup> *Id.* at 27.

<sup>639</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336).

321. Duke-American repeats its contention that SPP should adopt a sponsorship model; otherwise, a nonincumbent transmission developer will not have a fair opportunity for success.<sup>640</sup>

**iv. Commission Determination**

322. We find that the proposed OATT provisions addressing cost allocation for nonincumbent transmission developer projects comply with the requirements of Order No. 1000. We are not persuaded by LS Power's argument that SPP must revise its definition of Designated Transmission Owner to insure that nonincumbent transmission developers have access to SPP's regional cost allocation. We agree with SPP's reasoning as to why LS Power's suggested language is unnecessary. We also find that SPP's Transmission Owner Selection Process complies with the Order No. 1000 requirement that any nonincumbent transmission developer of a transmission facility selected in the regional transmission plan have an opportunity comparable to that of an incumbent transmission developer to allocate the cost of such transmission facility through a regional cost allocation method or methods.<sup>641</sup> Accordingly, we accept these proposed OATT provisions.

323. Lastly, we decline to address here LS Power's reference to the ICC's comments that were filed in Docket No. ER13-187-000.<sup>642</sup> We defer to the Commission's finding in that proceeding.<sup>643</sup>

324. With regard to Duke-American's preference for a sponsorship model, we agree with SPP that Order No. 1000 does not require a transmission provider to explain why its proposed competitive bidding model is superior to a sponsorship model. Rather, as SPP notes, a transmission provider need only demonstrate that its proposal complies with Order No. 1000. Furthermore, SPP correctly notes that Order No. 1000 explicitly provided that public utility transmission providers in a transmission planning region could establish a nondiscriminatory competitive bidding process as the mechanism to ensure that all transmission projects are eligible to be considered for selection in the

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<sup>640</sup> Duke-American Response at 14-15.

<sup>641</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

<sup>642</sup> See *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 127 FERC ¶ 61,269, at P 295 (2009); *Duke Energy Guadalupe Pipeline, Inc.*, 116 FERC ¶ 61,080, at P 19 (2006) (stating that "the Commission's standard practice is not to allow parties to incorporate by reference arguments made in prior pleadings"); *City of Santa Clara v. Enron Power Mktg., Inc.*, 112 FERC ¶ 61,280, at P 8 n.4 (2005).

<sup>643</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 at P 402.

regional transmission plan for purposes of cost allocation.<sup>644</sup> With the modifications we direct above, we find that SPP's proposed competitive bidding model is not unduly discriminatory or preferential and complies with the requirements of Order No. 1000. Accordingly, we dismiss Duke-American's contention that SPP should adopt a sponsorship model.

### 3. Cost Allocation

325. Order No. 1000 requires each public utility transmission provider to have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>645</sup> Each public utility transmission provider must show on compliance that its regional cost allocation method or methods are just and reasonable and not unduly discriminatory or preferential by demonstrating that each method satisfies six regional cost allocation principles described in Order No. 1000.<sup>646</sup> The Commission took a principles-based approach because it recognized that regional differences may warrant distinctions in cost allocation methods among transmission planning regions.<sup>647</sup> In addition, Order No. 1000 permits participant funding, but not as a regional or interregional cost allocation method.<sup>648</sup>

326. If a public utility transmission provider is in an RTO or ISO, Order No. 1000 requires that the regional cost allocation method or methods be set forth in the RTO or ISO OATT. In a non-RTO/ISO transmission planning region, each public utility transmission provider located within the region must set forth in its OATT the same language regarding the cost allocation method or methods that is used in its transmission planning region.<sup>649</sup> Each public utility transmission provider must have a regional cost allocation method for any transmission facility selected in a regional transmission plan for purposes of cost allocation.<sup>650</sup>

327. Regional Cost Allocation Principle 1 specifies that the cost of transmission facilities must be allocated to those within the transmission planning region that benefit

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<sup>644</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

<sup>645</sup> *Id.* P 558.

<sup>646</sup> *Id.* P 603.

<sup>647</sup> *Id.* P 604.

<sup>648</sup> *Id.* P 723.

<sup>649</sup> *Id.* P 558.

<sup>650</sup> *Id.* P 690.



from those facilities in a manner that is at least roughly commensurate with estimated benefits. Cost allocation methods must clearly and definitively specify the benefits and the class of beneficiaries.<sup>651</sup> In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.<sup>652</sup> Regional Cost Allocation Principle 1 precludes an allocation where the benefits received are trivial in relation to the costs to be borne.<sup>653</sup>

328. Order No. 1000 does not prescribe a particular definition of “benefits” or “beneficiaries.”<sup>654</sup> The Commission stated in Order No. 1000-A that while Order No. 1000 does not define benefits and beneficiaries, it does require the public utility transmission providers in each transmission planning region to be definite about benefits and beneficiaries for purposes of their cost allocation methods.<sup>655</sup> In addition, for a cost allocation method or methods to be accepted by the Commission as Order No. 1000-compliant, they will have to specify clearly and definitively the benefits and the class of beneficiaries.<sup>656</sup> A benefit used by public utility transmission providers in a regional cost allocation method or methods must be an identifiable benefit, and the transmission facility cost allocated must be roughly commensurate with that benefit.<sup>657</sup> Each regional transmission planning process must provide entities who will receive regional or interregional cost allocation an understanding of the identified benefits on which the cost allocation is based.<sup>658</sup> The public utility transmission providers in a transmission planning region may propose a cost allocation method that considers the benefits and costs of a group of new transmission facilities, although there is no requirement to do so.<sup>659</sup>

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<sup>651</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 678.

<sup>652</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622.

<sup>653</sup> *Id.* P 639.

<sup>654</sup> *Id.* P 624.

<sup>655</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 679.

<sup>656</sup> *Id.* P 678.

<sup>657</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 625.

<sup>658</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 746.

<sup>659</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 627, 641.

329. The regional transmission plan must include a clear cost allocation method or methods that identify beneficiaries for each of the transmission facilities selected in a regional transmission plan for purposes of cost allocation.<sup>660</sup> Order No. 1000-A stated that public utility transmission providers in each transmission planning region, in consultation with their stakeholders, may consider proposals to allocate costs directly to generators as beneficiaries that could be subject to regional or interregional cost allocation, but any such allocation must not be inconsistent with the generator interconnection process under Order No. 2003.<sup>661</sup>

330. Regional Cost Allocation Principle 2 specifies that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities.<sup>662</sup> All cost allocation methods must provide for allocation of the entire prudently incurred cost of a transmission project to prevent stranded costs.<sup>663</sup> To the extent that public utility transmission providers propose a cost allocation method or methods that consider the benefits and costs of a group of new transmission facilities and adequately support their proposal, Regional Cost Allocation Principle 2 would not require a showing that every individual transmission facility in the group of transmission facilities provides benefits to every beneficiary allocated a share of costs of that group of transmission facilities.<sup>664</sup>

331. The Commission clarified in Order No. 1000-A that public utility transmission providers may rely on scenario analyses in the preparation of a regional transmission plan and the selection of new transmission facilities in the regional transmission plan for purposes of cost allocation. Regional Cost Allocation Principle 2 would be satisfied if a project or group of projects is shown to have benefits in one or more of the transmission planning scenarios identified by public utility transmission providers in their Commission-approved Order No. 1000-compliant cost allocation methods.<sup>665</sup> The Commission clarified in Order No. 1000-B that it did not intend to remove the “likely future scenarios” concept from transmission planning and that likely future scenarios can be an important factor in public utility transmission providers’ consideration of

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<sup>660</sup> *Id.* P 11; Order No. 1000-A, 139 FERC ¶ 61,132 at P 585.

<sup>661</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

<sup>662</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 637.

<sup>663</sup> *Id.* P 640.

<sup>664</sup> *Id.* P 641.

<sup>665</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 690.

transmission projects and in the identification of beneficiaries consistent with the cost causation principle.<sup>666</sup>

332. Regional Cost Allocation Principle 3 specifies that if a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, the threshold must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. Public utility transmission providers may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.<sup>667</sup>

333. Regional Cost Allocation Principle 4 specifies that the allocation method for the cost of a transmission facility selected in a regional transmission plan for purposes of cost allocation must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.<sup>668</sup>

334. Regional Cost Allocation Principle 5 specifies that the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.<sup>669</sup>

335. Regional Cost Allocation Principle 6 specifies that a transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief, or to achieve Public Policy Requirements.<sup>670</sup> If the public utility transmission providers choose to have a different cost allocation method for each

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<sup>666</sup> Order No. 1000-B, 141 FERC ¶ 61,044 at P 72.

<sup>667</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

<sup>668</sup> *Id.* P 657.

<sup>669</sup> *Id.* P 668.

<sup>670</sup> *Id.* P 685.

type of transmission facility, there can be only one cost allocation method for each type.<sup>671</sup> In addition, if public utility transmission providers choose to propose a different cost allocation method or methods for different types of transmission facilities, each method would have to be determined in advance for each type of transmission facility.<sup>672</sup> A regional cost allocation method for one type of regional transmission facility or for all regional transmission facilities may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.<sup>673</sup> However, the public utility transmission providers in a region may not designate a type of transmission facility that has no regional cost allocation method applied to it.<sup>674</sup>

**i. SPP's Filing**

336. SPP asserts that its existing Highway/Byway and Balanced Portfolio<sup>675</sup> cost allocation methods are consistent with the Order No. 1000 regional cost allocation requirements and the six cost allocation principles.<sup>676</sup> With respect to Regional Cost Allocation Principle 1, SPP points out that, in accepting the Highway/Byway cost allocation method, the Commission indicated that it “reasonably . . . align[s] the costs associated with transmission expansions with the usage of the system,” that it “fairly

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<sup>671</sup> *Id.* P 686; *see also id.* P 560.

<sup>672</sup> *Id.*

<sup>673</sup> *Id.* P 689.

<sup>674</sup> *Id.* P 690.

<sup>675</sup> Under SPP's Highway/Byway cost allocation method, the cost of Base Plan Upgrades are allocated as follows: (1) projects at or above 300 kV: 100 percent on a regional postage-stamp basis (Highway facilities); (2) projects 100-300 kV: 1/3 on a regional post-stamp basis, 2/3 zonally (Byway facilities); and (3) projects at or below 100 kV: 100 percent to the zone in which the project is located. For Base Plan Upgrades that are associated with designated resources that are wind generation resources where the upgrade is located in a different zone than the point of delivery, the Highway/Byway cost allocation method prescribes: (1) projects at or above 300 kV: 100 percent on a regional postage-stamp basis; and (2) projects operating at less than 300 kV (including those operating at or below 100 kV): 2/3 on a regional post-stamp basis, 1/3 directly to the transmission customer. *See supra* note 10.

<sup>676</sup> A Balanced Portfolio is a group or portfolio of extra-high voltage transmission upgrades that provides economic benefits across the SPP region; the costs of the upgrades included in a Balanced Portfolio are allocated on a 100 percent region-wide postage stamp basis. *See supra* note 11.

assigns costs among SPP members,”<sup>677</sup> and that, “by distinguishing between the types of facilities that are used on a regional and zonal basis, the Highway/Byway [m]ethodology will ensure that allocations of costs are roughly commensurate with associated benefits.”<sup>678</sup> SPP notes that, under the Balanced Portfolio method, SPP evaluates a portfolio of economic upgrades to achieve a balance where the benefits of the portfolio to each zone (as measured by adjusted production costs) equals or exceeds the costs allocated to each zone over a ten-year period.<sup>679</sup> SPP states that the Commission accepted the Balanced Portfolio method as just and reasonable, noting that “SPP’s ten-year horizon for the analysis of costs and benefits under a balanced portfolio [is] consistent with the overall ten-year planning horizon SPP uses in planning its transmission system and reflects a reasonable balance between the horizon for estimating benefits and the accuracy of those benefits.”<sup>680</sup>

337. With respect to Regional Cost Allocation Principle 2, SPP notes that the Highway/Byway method includes “unintended consequences” provisions that require SPP to review the Highway/Byway method and allocation factors on a regular basis for any long-term imbalance in costs and benefits.<sup>681</sup> SPP also notes that the Balanced Portfolio method allows for reallocating (rebalancing) costs to ensure that the portfolio is balanced by either including facilities below 345 kV or transferring part of the zonal revenue requirement from a deficient zone to the region-wide revenue requirement for reliability upgrades.<sup>682</sup> SPP further notes that, under certain conditions, including cancellation of a Balanced Portfolio upgrade or unanticipated decreases in benefits or increases in costs, SPP reviews a previously-approved Balanced Portfolio and may recommend reconfiguring the portfolio.

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<sup>677</sup> SPP Transmittal at 33 (citing Highway/Byway Order, 131 FERC ¶ 61,252 at P 76).

<sup>678</sup> *Id.* (citing Highway/Byway Order, 131 FERC ¶ 61,252 at P 78).

<sup>679</sup> *Id.* (citing SPP OATT, Attachment O, § IV.A).

<sup>680</sup> *Id.* (citing *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,054 at P 36 (noting that “there is a trade-off between the horizon for estimating benefits and the accuracy of those estimates; however, an economic planning process that includes a clear, conservative cost-benefit formula and has a robust stakeholder process can mitigate the uncertainty of system-condition predictions”)).

<sup>681</sup> *Id.* at 34; SPP OATT, Attachment J, § III.D (requiring SPP to review the reasonableness of the regional and zonal allocation factors at least once every five years).

<sup>682</sup> SPP Transmittal at 35; SPP OATT, Attachment J, § IV.A.

338. SPP argues that both methods comply with Regional Cost Allocation Principle 3 because the Highway/Byway method does not use a benefit-to-cost ratio to allocate costs and the Balanced Portfolio method uses a 1.0 benefit-to-cost ratio.<sup>683</sup> In addition, SPP asserts that both methods comply with Regional Cost Allocation Principle 4 because they allocate costs solely to pricing zones that are located within SPP.<sup>684</sup> SPP notes that to the extent that a transmission customer purchases transmission service to deliver power from SPP to load outside of SPP and therefore pays a zonal rate that includes a portion of costs allocated to the zone under the Highway/Byway or Balanced Portfolio cost allocation methods, such a charge does not constitute involuntary allocation of costs outside of the SPP transmission planning region because the transaction is voluntary.<sup>685</sup>

339. SPP contends that the Highway/Byway and Balanced Portfolio methods are fully transparent, as required by Regional Cost Allocation Principle 5. SPP states that any proposed project must be reviewed and vetted through either SPP's Order No. 890-compliant ITP process or the Balanced Portfolio process, which provides for open and fully transparent stakeholder input, including input from state regulators.<sup>686</sup>

340. Finally, with respect to Regional Cost Allocation Principle 6, SPP notes that the Highway/Byway method and ITP process do not generally distinguish among transmission facility "types" (i.e., reliability, economic, or public policy) for purposes of cost allocation. SPP explains that they evaluate transmission projects holistically and allocate costs based on voltage level, which the Commission previously has determined allocates costs roughly commensurate with benefits.<sup>687</sup> SPP notes that it does have special cost allocation provisions for transmission facilities associated with wind generation resources, which allocate the costs in a manner that the Commission has determined is just and reasonable.<sup>688</sup> SPP also asserts that the Balanced Portfolio method applies primarily to facilities identified as economic upgrades; however, SPP notes that

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<sup>683</sup> SPP Transmittal at 35.

<sup>684</sup> *Id.* at 36 & n.191.

<sup>685</sup> *Id.* at 36 n.191 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at P 439 (2010)).

<sup>686</sup> *Id.* at 36-37 & n.193.

<sup>687</sup> *Id.* at 37 (citing Highway/Byway Order, 131 FERC ¶ 61,252 at PP 52, 78, 116).

<sup>688</sup> *Id.* at 37-38 (citing SPP OATT, Attachment J, § III.A.3-4; *Sw. Power Pool, Inc.*, 127 FERC ¶ 61,283 (2009); Highway/Byway Order, 131 FERC ¶ 61,252 at P 12).

upgrades designed primarily to ensure reliability may be included in a Balanced Portfolio to achieve the needed balance.<sup>689</sup>

**ii. Protests/Comments**

341. Public Interest Organizations agree that SPP's cost allocation methods meet the requirements of Order No. 1000.<sup>690</sup> AWEA/Wind Coalition and ITC Great Plains generally agree that, when considered together and with SPP's proposed minor modifications, SPP's Balanced Portfolio and Highway/Byway cost allocation methods meet the requirements of the Commission's six principles and Order No. 1000.<sup>691</sup>

342. Clean Line asks the Commission to require SPP to modify its compliance filing to allow for partial cost allocation instead of treating all transmission facilities as either "cost allocated" or "not cost allocated."<sup>692</sup> According to Clean Line, participant-funded transmission projects provide a number of economic, policy, and reliability benefits that accrue to other parties in addition to the project participants or customers; therefore, it is appropriate to consider allocating portions of the costs of such projects commensurate with identified benefits. Furthermore, Clean Line contends that partial cost allocation conforms to the Order No. 1000 provision requiring "the comparable evaluation of all potential transmission solutions . . . to ensure that the more efficient or cost-effective solutions are in the regional transmission plan."<sup>693</sup> To achieve such an allocation, Clean Line suggests that anchor tenant customers could purchase and utilize the capacity on a transmission line to cover a portion of the project cost, and, if there are appropriate and identified regional, economic, and policy benefits, the remainder of the costs could be recovered through regional cost allocation, subject to benefit-to-cost ratio requirements.<sup>694</sup>

343. Because Order No. 1000 states that "an interregional transmission facility must be selected in both of the relevant regional transmission plans for the purposes of cost allocation in order to be eligible for interregional cost allocation pursuant to an interregional cost allocation method,"<sup>695</sup> Clean Line contends that, regardless of whether

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<sup>689</sup> *Id.* at 38 (citing SPP OATT, Attachment J, § IV).

<sup>690</sup> Public Interest Organizations Comments at 14-16.

<sup>691</sup> AWEA Comments at 13-20; ITC Great Plains Comments at 2, 5.

<sup>692</sup> Clean Line Comments at 7.

<sup>693</sup> *Id.* at 7 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 255).

<sup>694</sup> *Id.* at 6-7.

<sup>695</sup> *Id.* at 11 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 400).

a transmission project located in two or more transmission planning regions actually has its costs allocated at the interregional level, a method must exist for that project's costs to be allocated solely at the regional level. Clean Line argues that, otherwise, SPP's proposal would not comply with the Commission requirement that "a public utility transmission provider must have a regional cost allocation method for any transmission facility selected in a regional transmission plan for purposes of cost allocation."<sup>696</sup>

**iii. Answer**

344. SPP asserts that Order No. 1000 does not require transmission planning regions to provide partial cost allocation for transmission projects that are partially participant-funded, as Clean Line suggests. SPP contends that the only requirement contained in Order No. 1000 regarding merchant transmission and other participant-funded projects to establish a process requiring merchant transmission developers to provide certain information and data to enable the transmission planning region to assess the reliability and operational impacts of a proposed merchant project. SPP notes that Clean Line acknowledges that SPP already has such a process in place, and, thus, SPP has complied with all requirements related to merchant transmission developers. Thus, SPP asserts that there is no basis for the Commission to require SPP to adopt further procedures allowing cost allocation for merchant and participant-funded transmission projects.<sup>697</sup>

345. SPP also argues that Clean Line's assertion that a method must exist to allocate regionally the costs of a transmission project that is located in two or more transmission planning regions is contrary to Order No. 1000.<sup>698</sup> SPP states that Order No. 1000 does not mandate that a single transmission planning region pay for a transmission facility located in another transmission planning region. SPP points out that the Commission rejected a requirement that a transmission planning region involuntarily pay for transmission projects located outside of that region, even if the region benefits from the project. SPP adds that Clean Line's protest is premature because SPP has not yet submitted its filing to comply with the interregional requirements of Order No. 1000.<sup>699</sup>

346. SPP adds that the Commission has distinguished between transmission facilities selected in the regional transmission plan for purposes of cost allocation, to which the requirements of Order No. 1000 apply, and other transmission facilities, such as merchant

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<sup>696</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 690).

<sup>697</sup> SPP Answer at 77 (citing Clean Line Comments at 6 (discussing Clean Line's successful use and endorsement of SPP's merchant transmission coordination procedures)).

<sup>698</sup> *Id.* at 82-83.

<sup>699</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 660).



transmission facilities, to which the requirements of Order No. 1000 do not apply.<sup>700</sup> SPP states that the Commission expressly rejected participant funding as an acceptable cost allocation method for Order No. 1000 compliance, demonstrating that participant-funded transmission projects are outside the scope of Order No. 1000.

#### iv. Commission Determination

347. We find that the SPP's Balanced Portfolio and Highway/Byway regional cost allocation methods, which the Commission has previously approved, partially comply with the six regional cost allocation principles of Order No. 1000. Specifically, we find that these methods: (1) allocate costs in a manner that is at least roughly commensurate with estimated benefits; (2) do not involuntarily allocate costs to those who receive no benefits; (3) include clearly defined benefit-to-cost thresholds that do not exceed 1.25; (4) allocate costs solely within the affected transmission planning region; (5) provide for methods for determining benefits and beneficiaries that are transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility; and (6) represent different cost allocation methods for different types of facilities that are set out clearly and explained in detail. However, SPP's OATT does not provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region, as required by Order No. 1000. Accordingly, SPP must make a further compliance filing to revise its OATT, as discussed below.

348. With respect to Regional Cost Allocation Principle 1, we find that both the Highway/Byway regional cost allocation method and the Balanced Portfolio regional cost allocation method allocate the costs of transmission facilities selected in the regional transmission plan for purposes of cost allocation to those within the transmission planning region that benefit from those transmission facilities in a manner that is at least roughly commensurate with estimated benefits.

349. Under SPP's Highway/Byway regional cost allocation method, all the costs of transmission facilities that provide primarily regional benefits are allocated on a regional postage stamp basis. The costs of transmission facilities that provide both regional and local benefits are allocated partially on a regional basis and partially on a local basis, and all of the costs of transmission facilities that primarily provide local benefits are allocated locally.<sup>701</sup> When accepting the Highway/Byway cost allocation method, the Commission noted that it "reasonably . . . align[s] the costs associated with transmission expansions

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<sup>700</sup> *Id.* at 77-78 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 63-64, 119; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at PP 234, 297).

<sup>701</sup> Highway/Byway Order, 131 FERC ¶ 61,252 at P 10; *see also* SPP OATT, Attachment J, § III.A.

with the usage of the system” and “fairly assigns costs among SPP members.”<sup>702</sup> Moreover, the Commission found that

SPP operates its transmission system and energy market on a single-system regional basis to reliably and efficiently integrate resources to serve loads throughout its entire footprint, and is planning to expand its markets to include day-ahead regional markets for energy and operating reserves. SPP conducts regional planning of its [extra-high voltage] transmission network that reflects its single-system regional operations in order to enhance the reliability and efficiency of its regional market operations. The strong regionally-integrated [extra-high voltage] transmission network that results from this process provides benefits to all that are interconnected to it. The fundamental benefits of the [extra-high voltage] facilities supporting regional power flows is the flexibility they provide to deliver energy and operating reserves more efficiently and reliably within and between balancing areas throughout the SPP footprint.<sup>703</sup>

350. The Commission thus concluded that by allocating the costs of extra-high voltage facilities that are used more regionally on a regional basis and the costs of lower voltage facilities that are used more locally on a local basis, the Highway/Byway method ensures that costs are allocated roughly commensurate with associated benefits.<sup>704</sup> Upon review of SPP’s Highway/Byway regional cost allocation method in the context of Order No. 1000, we find that, for the reasons the Commission outlined in the Highway/Byway Order, SPP’s Highway/Byway cost allocation method allocates costs in a manner that is at least roughly commensurate with benefits and therefore complies with Regional Cost Allocation Principle 1.

351. Under the Balanced Portfolio method, SPP evaluates a portfolio of economic upgrades to achieve a balance where the benefits of the portfolio to each zone (as measured by adjusted production costs) equal or exceed the costs allocated to each zone over a ten-year period. By allocating costs such that the benefits to each zone will equal or exceed those costs, the Balanced Portfolio regional cost allocation method allocates costs in a manner that is least roughly commensurate with benefits by design. In addition, SPP may reallocate costs to ensure that the portfolio is balanced and, under certain conditions, including cancellation of an upgrade or unanticipated decreases in

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<sup>702</sup> Highway/Byway Order, 131 FERC ¶ 61,252 at P 76.

<sup>703</sup> *Id.* P 78 (citation omitted).

<sup>704</sup> *Id.*

benefits or increases in costs, may review a previously-approved Balanced Portfolio and recommend reconfiguring the portfolio.<sup>705</sup> We conclude that these provisions allow SPP to ensure that costs are allocated in a manner that is at least roughly commensurate with estimated benefits. Accordingly, we find that SPP's existing Balanced Portfolio regional cost allocation method complies with Regional Cost Allocation Principle 1.

352. Neither the Highway/Byway cost allocation method nor the Balanced Portfolio cost allocation method involuntarily allocates the costs of transmission facilities to those that receive no benefit from transmission facilities, either at present or in a likely future scenario. The Highway/Byway cost allocation method includes unintended consequences provisions that require SPP to review the Highway/Byway method and allocation factors on a regular basis for any long-term imbalance in costs and benefits, which will ensure that those that receive no benefit from transmission facilities are not involuntarily allocated any of the facilities' costs.<sup>706</sup> The Balanced Portfolio method allocates costs such that the benefits of the portfolio to each zone (as measured by adjusted production costs) equal or exceed the costs allocated to each zone over a ten-year period, thus preventing the allocation of costs to those who do not benefit from a portfolio of transmission facilities. Also, as discussed above, SPP may reallocate costs to ensure that the portfolio is balanced and may recommend reconfiguring a previously-approved Balanced Portfolio to ensure that costs are not allocated to those who do not benefit. For these reasons, we find that SPP's Highway/Byway and Balanced Portfolio regional cost allocation methods comply with Regional Cost Allocation Principle 2.

353. We also find that the Highway/Byway regional cost allocation methods comply with Regional Cost Allocation Principle 3. The Highway/Byway method does not use a benefit-to-cost ratio to allocate costs and the Balanced Portfolio method uses a 1.0 benefit-to-cost ratio, which complies with Order No. 1000's requirement that a benefit-to-cost threshold may not include a ratio of benefits to costs that exceeds 1.25.

354. With respect to Regional Cost Allocation Principle 4, SPP asserts that the Highway/Byway and Balanced Portfolio regional cost allocation methods allocate costs solely to pricing zones that are located within SPP and to export transactions into which customers voluntarily enter. The Commission has explained that an RTO/ISO allocating costs to export and wheel-through transactions is not an involuntary allocation given that such an allocation applies to customers that are taking service under the OATT rather than an external entity taking no service or buying no energy from the RTO/ISO, who will not be charged under the RTO/ISO's regional cost allocation methods.<sup>707</sup> We

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<sup>705</sup> SPP OATT, Attachment J, § III.D.

<sup>706</sup> *Id.*, § III.D (requiring SPP to review the reasonableness of the regional and zonal allocation factors at least once every five years).

<sup>707</sup> *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at P 439 (explaining that there is no involuntary assignment of costs here given

therefore find that SPP's Highway/Byway and Balanced Portfolio methods partially comply with Regional Cost Allocation Principle 4 (i.e., the allocation method for the cost of a transmission facility selected in a regional transmission plan for purposes of cost allocation must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs).

355. However, SPP does not comply with the Regional Cost Allocation Principle 4 requirement that the regional transmission planning process identify the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other transmission planning regions, such as upgrades that may be required in another region. SPP also does not address whether the SPP region has agreed to bear the costs associated with any required upgrades in another transmission planning region or, if so, how such costs will be allocated within the SPP transmission planning region. Accordingly, we direct SPP to file a further compliance filing, within 120 days of the date of this order, revising its OATT to provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation for other planning regions. SPP must also address in the further compliance filing whether the SPP region has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated within the SPP transmission planning region.

356. We find that both methods are sufficiently transparent to satisfy the Regional Cost Allocation Principle 5 (i.e., the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility). With respect to the Highway/Byway cost allocation method, SPP uses bright-line criteria to determine benefits and identify beneficiaries based on the voltage level of a proposed transmission facility. As explained above, SPP has determined that (1) transmission facilities that operate at or above 300 kV primarily provide regional benefits and benefit all SPP zones; (2) transmission facilities that operate below 300 kV and above 100 kV have some regional benefits, but mostly provide local benefits and thus benefit both all SPP zones and the zones in which they are located; and (3) transmission facilities that operate at or below 100 kV primarily provide local benefits to the zone in which they are located. For the Balanced Portfolio cost allocation method, SPP relies on an adjusted production costs metric to determine the benefits of proposed transmission facilities, and identifies as beneficiaries those zones with reduced adjusted production costs when the potential Balanced Portfolio is

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that the Multi-Value Projects usage rate applies to export and wheel-through transactions (i.e., customers that are taking service from MISO), rather than an external entity taking no service or buying no energy from MISO, which would not be charged under this proposal), *order on reh'g*, 137 FERC ¶ 61,074 (2011).

modeled.<sup>708</sup> For each zone, the sum of the benefits of the potential Balanced Portfolio determined in section IV.3.d must equal or exceed the sum of the costs determined.<sup>709</sup> Moreover, any transmission project eligible for regional cost allocation will be reviewed and vetted through either SPP's Order No. 890-compliant ITP process or the Balanced Portfolio process, providing for open and full input from stakeholders and state regulators.

357. Finally, we find that SPP complies with Regional Cost Allocation Principle 6. Regional Cost Allocation Principle 6 allows public utility transmission providers in a transmission planning region to choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief, or to achieve public policy requirements. SPP has described two regional cost allocation methods: (1) the Highway/Byway regional cost allocation method for Base Plan Upgrades and (2) the Balanced Portfolio regional cost allocation method for portfolios of economic upgrades.

358. Clean Line contends that partial cost allocation conforms to the Order No. 1000 provision requiring “the comparable evaluation of all potential transmission solutions . . . to ensure that the more efficient or cost-effective transmission solutions are in the regional transmission plan.”<sup>710</sup> While Order No. 1000 requires each public utility transmission provider to have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation,<sup>711</sup> it does not require a public utility transmission provider to establish a cost allocation method that would apply to any portion of the costs of a merchant transmission project not recovered through negotiated rates. Therefore, we deny Clean Line's request that the Commission require SPP to allow for partial allocation of the costs of a merchant transmission facility through the regional transmission cost allocation method as beyond the scope of Order No. 1000.

359. We also disagree with Clean Line's assertion that, because Order No. 1000 states that an interregional transmission facility must be selected in both of the relevant regional transmission plans for the purposes of cost allocation in order to be eligible for interregional cost allocation pursuant to an interregional cost allocation method, regardless of whether a project located in two or more transmission planning regions actually has its costs allocated at the interregional level, a method must exist for that

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<sup>708</sup> SPP OATT, Attachment O, § IV.3.d.

<sup>709</sup> *Id.*, § IV.3.e.

<sup>710</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 255.

<sup>711</sup> *Id.* P 558.

project's costs to be cost allocated solely at the regional level.<sup>712</sup> We note that Order No. 1000 defines a regional transmission facility as one that is "located solely within a single transmission planning region."<sup>713</sup> Accordingly, Clean Line's arguments are directed at Order No. 1000 and interregional cost allocation, rather than the regional cost allocation methods discussed here, and are outside of the scope of this proceeding. Such concerns should be raised when SPP submits its compliance filing to comply with Order No. 1000's interregional requirements.

The Commission orders:

(A) SPP's compliance filing in Docket Nos. ER13-366-000 and ER13-367-000 is hereby accepted, as modified, effective March 30, 2014, subject to a further compliance filing, as discussed in the body of this order.

(B) Xcel's compliance filing in Docket No. ER13-75-000 related to SPS's local transmission planning process is hereby accepted, as modified, effective March 30, 2014, subject to a further compliance filing, as discussed in the body of this order.

(C) SPP and Xcel are hereby directed to submit further compliance filings, within 120 days of the date of this order, as discussed in the body of this order.

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

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>712</sup> Clean Line Comments at 11 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 400).

<sup>713</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63.

**Appendix A: List of Intervenors, Commenters, and Entities Submitting Answers  
SPP's Compliance Filing: Docket Nos. ER13-366-000 and ER13-367-000**

*Timely motions to intervene were filed by:*

AWEA/Wind Coalition  
Arkansas Electric  
Clean Line  
Duke-American  
E.ON Climate & Renewables North America  
East Texas Cooperative  
Exelon  
Golden Spread  
Iberdrola  
ITC Great Plains  
KCP&L Companies  
LS Power  
Municipal Intervenors  
National Rural Electric Cooperative Association  
NextEra  
Oklahoma Gas and Electric Company  
Public Interest Organizations  
Southwestern  
Western Farmers

*Comments were filed by:*

AEP  
AWEA/Wind Coalition  
East Texas Cooperatives  
ITC Great Plains  
Municipal Intervenors  
Public Interest Organizations  
Western Farmers

*Comments and Protests were filed by:*

Clean Line  
Duke-American  
Missouri PSC

*Protest was filed by:*

LS Power

*Answers were filed by:*

SPP  
Duke-American

**KCP&L Companies' Compliance Filing: Docket Nos. ER13-100-000**

*Timely motion to intervene was filed by:*

AWEA



**Appendix B: Abbreviated Names of Entities**

<b>Abbreviation</b>	<b>Entities Names</b>
AEP	American Electric Power Service Corporation
Arkansas Electric	Arkansas Electric Cooperative Corporation
AWEA/Wind Coalition	American Wind Energy Association and The Wind Coalition
Clean Line	Clean Line Energy Partners LLC
Duke-American	Duke-American Transmission Company, LLC
E.ON Climate & Renewables North America	E.ON Climate & Renewables North America, LLC
East Texas Cooperatives	East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.
Exelon	Exelon Corp.
Golden Spread	Golden Spread Electric Cooperative, Inc.
Iberdrola	Iberdrola Renewables, LLC
ICC	Illinois Commerce Commission
ITC Great Plains	ITC Great Plains, LLC
KCP&L Companies	Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company
LS Power	LS Power Transmission, LLC and LSP Transmission Holdings, LLC
Missouri PSC	Missouri Public Service Commission
Municipal Intervenors	City of Independence, Missouri; Kansas Power Pool; Missouri Joint Municipal Electric Utility Commission; and Oklahoma Municipal Power Authority
NextEra	NextEra Energy Resources, LLC

<b>Abbreviation</b>	<b>Entities Names</b>
Public Interest Organizations	Climate & Energy Project, Natural Resources Defense Council; and Sustainable FERC Project
Southwestern	Southwestern Power Administration
Western Farmers	Western Farmers Electric Cooperative

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.	Docket Nos. ER13-366-000 ER13-367-000
Public Service Company of Colorado	ER13-75-000
Kansas City Power & Light Company	ER13-100-000

(Issued July 18, 2013)

MOELLER, Commissioner, *dissenting in part*:

When Order No. 1000 was first proposed three years ago, I promised “to do my part to ensure that this Commission does not lose sight of the ultimate goal: a final rule that results in needed capital investment.”<sup>1</sup> This ultimate objective is critical, as, “the lack of adequate transmission investments often disproportionately raises consumer rates due to congestion, threatens the reliability of the nation’s bulk power system, and increases reliance on older and dirtier generating resources.”<sup>2</sup> As I observed in my partial dissent on Order No. 1000, “instead of encouraging more regional cooperation, the rule could ultimately discourage such cooperation by encouraging more local transmission projects.”<sup>3</sup>

In particular, this order changes the highway/byway plan in a manner that will discourage the prompt planning and construction of needed transmission assets. In June 2010, this Commission approved the highway/byway plan, issuing a press release which

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<sup>1</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,660 (2010) (Moeller, Comm’r, concurring).

<sup>2</sup> *Id.*

<sup>3</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) (Moeller, Comm’r, dissenting in part), *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).

stated that the plan, “would facilitate investment in new transmission facilities, reduce congestion, efficiently integrate new resources in the region and accommodate growth in demand while providing greater certainty of cost recovery.”<sup>4</sup>

Today’s order removes the federal right of first refusal for byway facilities, but retains that right for reliability needs within three years. Thus, utilities retain their right to build, but only if they start planning their project within three years of its need, which obviously discourages projects that require more than three years to build.

Accordingly, I respectfully dissent in part.

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Philip D. Moeller  
Commissioner

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<sup>4</sup> FERC Press Release issued June 10, 2010. *Also see, Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 at PP 3-4 (2010).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.	Docket Nos. ER13-366-000 ER13-367-000
Public Service Company of Colorado	ER13-75-000
Kansas City Power & Light Company	ER13-100-000

(Issued July 18, 2013)

CLARK, Commissioner, *dissenting in part*:

I dissent in part today because I am concerned that certain changes mandated by the Commission in this order will not actually lead to a more efficient and cost-effective regional transmission planning process, as intended by the Commission when it adopted the Order No. 1000 reforms. Instead, today's order could work counter to these stated goals by requiring SPP to ignore critical inputs to its transmission planning process and requiring it to redefine local transmission projects based on a bright-line test not suitable for the SPP region.

In its compliance filing, SPP proposes to retain much of its Commission-approved Integrated Transmission Plan process, as well as its Highway/Byway and Balanced Portfolio cost allocation methods. The most dramatic reforms submitted by SPP pertain to the designation of transmission project developers. To comply with Order No. 1000's requirements to remove a federal right of first refusal, SPP proposes a competitive solicitation process for transmission facilities, referred to as "Competitive Upgrades." SPP also proposes certain exceptions to allow it to forgo its competitive solicitation process, including an exception to acknowledge relevant laws and an exception for local projects. My concern here is that the Commission's decisions with respect to SPP's proposed exceptions will lead to a plan that looks good on paper, but that fails to consider the realities needed to actually build projects and meet the needs of the region.

In this order, the Commission once again refuses to allow transmission planners to reference the statutory constructs that govern, and sometimes limit, the bounds of transmission planning. As part of its compliance filing, SPP proposes to define a Competitive Upgrade as a transmission facility located where the selection of a transmission owner pursuant to the competitive bidding process does not violate the relevant law where the transmission facility is to be built. However, instead of allowing SPP to incorporate a reference to these laws directly into its planning process, today's order requires SPP to remove its reference and effectively ignore a significant constraint for project development. I disagree with this outcome and believe SPP's proposal should

have been accepted as a necessary precursor to a well-informed and efficient transmission planning process.<sup>1</sup>

In addition, I believe it was premature and overbroad to require as part of Order No. 1000 the elimination of federal rights of first refusal for projects receiving *any* amount of regional funding.<sup>2</sup> Instead of allowing for regional flexibility during the compliance phase, Order No. 1000 found that any local reliability project that receives any amount of regional funding is no longer local for purposes of removing the federal right of first refusal.<sup>3</sup> As a result, projects that are primarily built to resolve local reliability problems now face a potentially lengthy, litigious bidding process. Today's order places SPP's Byway facilities in this position, even though the Commission just recently found that lower voltage facilities – including Byway facilities – tend to support local power flows.<sup>4</sup> Given no evidence that the physical nature of SPP's transmission system has changed since the Commission characterized these facilities as primarily local, I cannot support the decision in today's order to require SPP to remove its federal right of first refusal for Byway facilities. I would have instead found an exception here for SPP in order to avoid the uncertainty now surrounding SPP's Highway/Byway cost allocation mechanism.

When viewed in light of other Commission Order No. 1000 compliance decisions, one can see a particularly perverse set of outcomes developing. Indeed, in order to escape the fate now overshadowing SPP's Byway facilities, MISO simply eliminated regional funding for its Baseline Reliability Projects.<sup>5</sup> MISO, with the Commission's blessing,

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<sup>1</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 (2013) (Clark, Comm'r, dissenting; Moeller, Comm'r, dissenting); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013) (Clark, Comm'r, dissenting; Moeller, Comm'r, dissenting).

<sup>2</sup> I have mentioned previously that I would have preserved in Order No. 1000 a federal right of first refusal for projects selected for cost allocation that are (1) determined by the regional planning coordinator as necessary to satisfy NERC reliability standards and (2) located entirely within the transmission provider's franchised service territory. These exceptions to the requirements of Order No. 1000 would have ensured reliable and efficient transmission planning, while also enabling competitive bidding for projects designed to meet public policy objectives and economic needs. *See id.*

<sup>3</sup> See, e.g., *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000-B, 141 FERC ¶ 61,044 at P 52 (2012).

<sup>4</sup> *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 at P 73 (2010).

<sup>5</sup> Baseline Reliability Projects include projects of 100kV voltage class or above needed to maintain reliability while accommodating the ongoing needs of existing

has now redefined Baseline Reliability Projects as “local,” thereby eliminating a cost allocation methodology that has historically recognized broader regional benefits.<sup>6</sup> The end result: MISO’s Baseline Reliability Projects (*i.e.*, projects with voltage greater than 100 kV) are now classified as local simply to retain a federal right of first refusal, while SPP’s Byway projects (*i.e.*, projects with voltages between 100 kV and 300 kV) are considered regional. I fail to see how this result will produce more efficient and cost-effective transmission planning.<sup>7</sup>

While it remains to be seen how SPP will respond to today’s decision, I believe the Commission is too rigidly enforcing its previous decisions, without fully appreciating the potential real-world consequences of its actions. SPP has indicated the result may be the undoing of certain regional cost allocation plans, or at least the injection of substantial uncertainty into what were fairly settled cost allocation mechanisms.<sup>8</sup> Given the outsized importance of cost allocation issues in the greater scheme of transmission planning and construction, I cannot help but ask if the Commission has missed the proverbial forest for the trees.

For these reasons, I respectfully dissent in part from this order.

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Tony Clark  
Commissioner

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Transmission Customers. [MISO, FERC Electric Tariff, § 1.38 \(Baseline Reliability Projects\)](#).

<sup>6</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 at P 518 (2013).

<sup>7</sup> I also wonder about the unintended consequences of such a decision. For instance, in Order No. 1000-B, several MISO transmission owners expressed a concern that eliminating the ability of a transmission-owning member of an RTO to construct and allocate the costs of a local transmission facility encourages free ridership by providing an incentive for transmission providers to keep cost allocation within their retail distribution service territory to retain a right of first refusal for local transmission facilities, even when entities outside of the retail distribution service territory or footprint may receive some benefit from such facilities despite their primarily local nature. See Order No. 1000-B at P 45.

<sup>8</sup> SPP Transmittal at 60-61.