

VIA EMAIL

June 1, 2012

Andrew Taylor
Southern Company Transmission
Southeastern Regional Transmission Planning

Dear Mr. Taylor:

As described in our April 12 comments, the Southern Environmental Law Center (“SELC”) and Southern Alliance for Clean Energy (“SACE”) are regional nonprofit organizations dedicated to protecting the health and environment of the Southeast, and promoting smart energy policy for our region. The Southern Environmental Law Center represents more than 100 partner groups on issues of climate change and energy, air and water quality, forests, the coast and wetlands, transportation, and land use across its six-state Southeastern region. Southern Alliance for Clean Energy promotes responsible energy choices that create global warming solutions and ensure clean, safe and healthy communities throughout the Southeast. The Sustainable FERC Project is an education and advocacy initiative that supports the work of a coalition of state, regional and national environmental and energy policy organizations across the country, including SELC and SACE, on electric regulatory policy issues. The Sierra Club is America’s oldest and largest grassroots environmental organization with 1.4 million members and activists throughout the United States, including chapters and tens of thousands of members in the Southeast states. Our groups have a direct interest in the outcome of the Southeastern Regional Transmission Planning (“SERTP”) process currently underway to comply with the recent Order No. 1000¹ from the Federal Energy Regulatory Commission (“FERC”).

SELC attorney Keith Johnston attended the first quarter SERTP meeting on March 14, 2012, and SELC attorney Jill Tauber and Sustainable FERC Project attorney Allison Clements attended the SERTP interim conference call on May 17, 2012. We have reviewed the May 17th proposed Order 1000 Strawman (the “SERTP May Proposal” or “Proposal”) discussed on the call, and offer comments on several aspects of the SERTP May Proposal. We greatly appreciate the opportunity to provide feedback and look forward to further collaboration through the SERTP process.

1. Identification of Grid Needs Driven by Public Policy Requirements

a. Order 1000 Requirements

Paragraphs ¶¶ 203 and 206 of Order 1000 require transmission provider (“TP”) tariffs to describe: (i) procedures for identifying local and regional PPR-driven needs, including a process for selecting PPR-driven needs for which potential solutions will be evaluated; and (ii) procedures for conducting solution evaluations of PPR-driven needs in the planning processes.

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 (July 21, 2011) (“Order 1000”).

First, in consultation with their stakeholders, TPs *must establish procedures* for identifying PPR-driven system needs, including a just and reasonable process for selecting PPR-driven needs *for which potential solutions will be evaluated*, allowing all stakeholders to provide input and offer proposals on PPR needs. (§§ 206, 207, 209 & 212). The procedures must allow stakeholders to suggest grid needs driven by any PPR, including EPA regulations or any other state or federal regulation or law that drives transmission needs. (§ 215). Further, TPs should also account for utility energy efficiency and demand response initiatives, even if they are not statutes or regulations, because it is prudent to consider any material factors affecting load growth forecasts, and, therefore, future transmission needs.

Second, while TPs have flexibility in determining how to evaluate alternative solutions for PPR-driven needs, they *must establish a process* that evaluates the alternative solutions (for PPR-driven needs, as well as for reliability and efficiency needs) on a comparable basis. (§§ 148, 149 & 155). This process must include both (i) procedures for identifying transmission and non-transmission alternative (“NTA”) solutions available to address identified PPR-driven (as well as other) grid needs; and (ii) just & reasonable procedures and metrics for evaluating and selecting solutions on a comparable basis. (§155)

b. Concern/Recommendation

Based on these requirements of Order 1000, we have the following four concerns and recommendations regarding the SERTP May Proposal.

- i. First, section III.A.i of the Proposal states that Sponsors address transmission needs driven by PPRs in their “routine planning” and specifically that Sponsors consider PPR-driven needs through the planning necessary to meet native load firm transmission needs and wholesale customer obligations. It is not clear that the Sponsors’ routine local planning processes include procedures for stakeholders to identify PPRs that they believe drive grid needs, as required by Order 1000. We believe that Order 1000 requires TPs to devise an explicit process by which the TPs, in consultation with their stakeholders, will consider existing and future PPR-driven needs. To comply with the Order, SERTP TPs, in conjunction with stakeholders, should agree to a consistent regional process by which TPs will consider system needs driven by public policies.
- ii. Second, Order 1000 requires that stakeholders be consulted on the choice of PPR needs for which solutions will be evaluated. Such consultation requires a process that is just and reasonable and not unduly discriminatory for determining which needs will be addressed with solution evaluations. Section III.C of the Proposal appears to provide that Sponsors alone will decide which needs should be evaluated, and subpart iii states that the opportunity for input during the needs identification stage “may be directed to the governing OATT process as appropriate.” The Proposal, however, should include a separate, explicit regional stakeholder input process to be established in the Sponsors’ OATTs. The input process should be available to stakeholders for

recommending PPR-driven transmission system needs to be evaluated for solutions, regardless of whether, for example, stakeholders also have a network interconnection request proposed or pending before one or more Sponsors.

- iii. Third, the Proposal also lacks procedures for stakeholder input regarding the solutions that are evaluated to address PPR-driven needs. We recommend the Proposal make the processes for stakeholder input explicit in Section III.C.
- iv. Fourth, Section III.C.ii states that if stakeholders identify a transmission need “that is not already addressed in the expansion planning process,” the Sponsors will identify a transmission solution to address the identified need. Although the issue should also be considered in Section VI, it is worth noting that with regards to PPR-driven needs, even if a need is addressed in a Sponsor’s expansion planning process, there may be a stakeholder-proposed solution that could address the need more efficiently and/or cost-effectively.

2. Identification of Other System Needs

a. Order 1000 Requirement

Order 1000 requires that stakeholders have an opportunity for meaningful input into the development of regional plans. (§ 11).

b. Concern/Recommendation

It is not evident in the SERTP May Proposal that stakeholders have timely and meaningful opportunity to comment on regional transmission system needs. The Proposal states that the Sponsors will determine necessary regional projects, and stakeholders will have an opportunity to propose alternatives. As noted above, the Proposal also makes clear that stakeholders have the opportunity for input on regional needs driven by PPRs. However, in order to comply with Order 1000’s stakeholder participation requirements, as well as Order 890’s planning principles as affirmed by Order 1000, stakeholders should have the opportunity to comment on the regional needs identified by the Sponsors and on the regional solutions Sponsors propose to address system needs attributable to reliability, economic and public policy drivers. We recommend that Sponsors make explicit in the Proposal the opportunity for stakeholder input on determined transmission system needs and Sponsor solutions.

3. Evaluation of Proposals (Consideration of NTAs)

a. Order 1000 Requirement

Order 1000 requires regional planning processes to: (i) provide the opportunity for stakeholders to recommend transmission and NTA solutions to meet grid needs; and (ii) evaluate proposed alternative transmission and NTA solutions comparably. TPs must also identify how they will evaluate and select among competing solutions and resources on a comparable basis, and the process proposed must involve stakeholder consultation.

b. Concerns/Recommendation

The SERTP Proposal contemplates consideration of alternative transmission proposals by non-incumbent transmission developers, but it does not clearly propose that the evaluation process will provide comparable consideration of non-incumbent proposals or that it will include the consideration of proposed NTA solutions. In our April comments, we suggested a process that would ensure just and reasonable and non-discriminatory consideration of alternatives to proposals put forth by Sponsors to address grid needs. Since the SERTP May Proposal contains more details about Sponsors' proposal for the evaluation of solutions and the consideration of alternatives, we want to provide feedback on the specific provisions of Sponsors' proposal. However, we hope that Sponsors continue to consider our proposed process and look forward to your view on the proposal.

- i. The SERTP May Proposal does not address stakeholder access to the data and analytics used by the Sponsors in a manner that ensures SERTP Stakeholders have a real opportunity to propose alternative transmission or NTAs to Sponsor projects. Order 1000 requires comparable consideration of alternatives, including NTAs. Comparable consideration is not possible if the would-be sponsors of alternative proposals do not have access to information (e.g., forecasting assumptions including those about the impact of planned demand response and energy efficiency initiatives) about regional needs that is necessary to formulate solution alternatives. Under such circumstances it appears that Sponsors could have an unjust and unreasonable advantage in proposing solutions. Order 1000 requires that the Order 890 planning principles apply to the newly established regional planning process, such that "stakeholders have an opportunity to express their needs, have access to information and an opportunity to provide information, and thus participate in the identification and evaluation of regional solutions." (§ 150). The Order emphasizes that "[e]nsuring access to the models and data used in the regional transmission planning process will allow stakeholders to determine if their needs are being addressed in a more efficient or cost-effective manner." (§ 150). We recommend that Sponsors add procedures to the regional planning process by which other stakeholders can access the information used by Sponsors to propose solutions. The process should also provide for an adequate window of time for stakeholders to develop solutions based on the information Sponsors provide.
- ii. Further, the Proposal does not provide a venue for consideration of NTAs at the regional level. Local planning processes may incorporate NTAs (generation, demand response, energy efficiency, etc.) that exist or that have been proposed to address local needs, but the Proposal does not contemplate a process by which stakeholders may propose NTAs to address regional system needs more cost effectively than Sponsor-proposed transmission projects. Without provisions for the regional consideration of proposed NTAs, compliance with Order 1000's comparable consideration of alternatives requirement seems impossible. Thus, we recommend that the Proposal delineate such a process.

- iii. Section VI.A describes the methods Sponsors will use to evaluate solutions proposed as alternatives to the Sponsors' own solutions for identified transmission grid needs. The proposal states that Sponsors "will apply their respective planning guidelines and criteria to evaluate submittals" and determine the answer to three questions that would comprise the parameters of the evaluation. It is not clear how Sponsors can ensure just and reasonable and non-discriminatory treatment of proposed alternatives while utilizing up to six different sets of guidelines and criteria to evaluate answers to the three questions. It may be the case that a proposed alternative represents the most cost-effective solution to an identified system need under one Sponsor's evaluation, but it is not a cost-effective solution under another Sponsor's evaluation. Further, the Proposal does not suggest the course of action if Sponsors disagree about the merits of a potential solution due to differing evaluation criteria. Section VI.C.iii requires approval of proposed alternatives by all of the Sponsors whose transmission plans will be altered by selection of a proposal, but again, without a consistent set of guidelines and criteria in use across the affected Sponsors, it is not clear that alternative proposals can receive comparable, just and reasonable treatment. We recommend that the Sponsors agree to common guidelines and criteria for evaluating proposed regional alternatives in order to help ensure the alternatives are treated fairly.
- iv. Section VI.B.i states that proposed alternative transmission projects should have a cost-benefit ratio of at least 1.25 and "not adversely impact an individual Sponsor." Without further definition of "adversely impact," it is not clear how any proposed alternative could satisfy a generic 'no adverse impact' standard. If a Sponsor-proposed transmission project is displaced by a more cost-effective or efficient solution to a transmission system need, the Sponsor will lose some amount of revenue from the lost project. Assuming the potential revenue loss outweighs costs of developing and constructing a transmission project (which will almost always prove to be the case with rate-based recovery), a Sponsor would be adversely impacted if an alternative were chosen, even though the system and consumers would be better served. We recommend that Sponsors delete the no adverse impact standard from its proposal.
- v. Section VI.B.i also states that the benefit to be used to determine a project's benefit-to-cost ratio will be the avoided transmission costs. Limiting the benefits of an alternative solution to the avoided transmission costs of the displaced project may not be just and reasonable and non-discriminatory, especially if there are other identifiable benefits to the alternative solution. The Sponsors' proposal seems to contemplate only one-for-one replacement of Sponsor-proposed projects, when in practice alternative proposals may offer different combinations of facilities that provide different (maybe superior) benefits and, thus, should not be evaluated one-for-one. A strict avoided transmission cost analysis will fail to capture and compare fairly benefits between Sponsor projects and proposed alternatives, or combinations thereof. Stakeholders may also propose PPR-driven projects that do not replace any Sponsor-identified project but that address likely future system needs based on existing laws or regulations, providing benefits that do not include the costs avoided

by a project's displacement; such projects should have an opportunity to be considered fairly in the regional planning review process.

- vi. Section VI fails to provide for consultation with stakeholders in the evaluation of alternative proposals and, thus, does not comply with Order 1000 requirements. (§ 148). The rule not only requires that stakeholders be allowed to propose alternative solutions but that stakeholders be consulted in the evaluation of all the proposals submitted by others. We recommend that the Proposal explicitly describe the process for required stakeholder consultation.

- vii. Finally, we are concerned that the proposed role of Sponsors in evaluating and selecting the solutions for meeting regional system needs cannot be assumed to be just and reasonable in light of the Sponsors' own competitive and financial interests. The Sponsors' for-profit interests logically lead to favoring their own transmission projects over proposed NTAs or non-incumbent transmission projects in almost all instances, and so prudence in plan development may require that these interests be mitigated to ensure just and reasonable treatment of non-Sponsor solution alternatives. Although Order 1000 declined to require an independent third party's involvement in evaluating solutions (§ 330), in this case it is likely that prudence requires reliance on an independent third party evaluator to assist with the determination of regional needs and the selection of solution alternatives. As a less desirable alternative (that ultimately may or may not prove prudent), we recommend that the Sponsors require functional separation of employees responsible for proposing the Sponsors' transmission solutions and employees responsible for evaluating all proposed solutions.

Best regards,

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