

January 7, 2013

VIA EMAIL

Andrew Taylor
Doug McLaughlin
Southern Company
Southeastern Regional Transmission Planning

RE: Comments on draft Compliance Filing under Order 1000

Dear Andrew and Doug,

The undersigned public interest organizations want to thank you for this opportunity to comment on the Southeastern Regional Transmission Planning (“SERTP”) proposed amendments to Southern Company’s Open Access Transmission Tariff, Attachment K, addressing Transmission Planning (dated December 5, 2012) (the “Tariff Proposal”). We understand that the SERTP transmission providers (“TPs”) plan to submit a version of the Tariff Proposal as a FERC Order 1000 compliance filing in February. Thanks also for taking the time to describe the changes to Attachment K at the December 12 stakeholder meeting in Tucker, Georgia, and for speaking with us informally after the meeting. We appreciate your helpful and courteous responses to our questions at that meeting, as well as the Annual Transmission Summit Meeting on December 11 in Atlanta.

We offer the following comments on the Tariff Proposal. Generally, we note that with the exception of a new section 10 called “Transmission Needs Driven by Public Policy Requirements,” the Tariff Proposal content remains unchanged from the straw proposal about which a coalition of public interest groups submitted comments in April, June and July of 2012.¹ The groups have not received responses to our specific comments,² and

¹ Copies of our previous comments are attached to this correspondence. On April 12, 2012 and June 1, 2012, a number of public interest groups submitted written comments on the SERTP process currently underway to comply with FERC’s Order 1000. The April 12 comments were submitted on behalf of the Southern Environmental Law Center (“SELC”) and Southern Alliance for Clean Energy (“SACE”), regional nonprofit organizations dedicated to protecting the health and environment of the Southeast and promoting smart energy policy for the region, and the Sustainable FERC Project, 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 June 1 comments were submitted on behalf of these same groups and the Sierra Club, 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. One or more representatives of SACE, SELC, the Sustainable FERC Project and/or the Sierra Club participated in the first two quarterly meetings of 2012 and the May 2012 interim meeting on Order 1000. In July, the groups transmitted a white paper on recommendations for Order 1000 minimum compliance requirements and reiterated the requests made in April and June. Representatives of this group of commenters also attended the December 11th and 12th meetings that addressed transmission planning in the 2013 cycle and draft compliance filing under Order 1000.

² On August 13, 2012, SERTP issued a general high-level “Supplemental Comments” to all stakeholder comments on two issues – access to modeling information and data and consideration of non-transmission

continue to believe that the filing does not meet certain requirements of Order 1000, including the areas of public policy consideration, comparable consideration of non-transmission alternatives, and openness and transparency planning principles. To the extent the TPs in SERTP believe they have addressed the concerns our organizations have raised verbally at the stakeholder meetings and in written comments, we would be happy to sit down and talk through the places where we have a difference of opinion.

As a preliminary matter, one example that we think underscores our comments regarding Order 1000 compliance is planning related to the recent Clean Air Act standards for existing coal-powered and oil-fueled generation facilities. These prominent Public Policy Requirements (“PPRs”) were not expressly addressed in the Annual Transmission Planning Summit on December 11 – the proposed inputs for the 2013 planning process do not appear to identify planned power plant retirements, nor what changes to the transmission system may result from such retirements or from the addition of other forms of generation resulting from plant retirements or curtailment. There does not appear to be any discussion of proposed solutions to transmission system needs that may arise as a result of compliance with new air quality standards.

Under an Order 1000-compliant planning process, any stakeholder should be able to suggest that these PPRs may have transmission system impacts, thereby initiating the SERTP TP consideration process. The same stakeholder should be ensured the opportunity for input throughout the process of identifying PPRs, identifying potential needs driven by those PPRs that merit evaluation, and in the consideration of solutions to needs that are identified through that further evaluation. However, we believe the Tariff Proposal does not amend the current tariff in such a way to establish a workable process by which to address this PPR, one we think is highly relevant to transmission system needs in the Southeast Region.

Further, we believe that there are likely to be combinations of cost-effective energy efficiency, demand response, cogeneration and renewable generation that could, in combination with transmission and other supply-side solutions, reduce the need for more costly transmission system investments needed to ensure system reliability. Under the Tariff Proposal, however, we do not see that the process would allow for real consideration of alternative solutions, including non-transmission alternatives (“NTAs”) to any system needs identified in relation to the potential retirement of specific generating units.

The comments that follow attempt to address what we think are the deficiencies that must be solved to satisfy Order 1000’s regional planning requirements as relate to PPRs, NTAs and stakeholder participation.

alternatives. We do not think the Supplemental Comments sufficiently addressed the issues addressed in our previous comments as discussed further below.

(1) Identification of Public Policy Requirement-Driven Needs

Order 1000 requires transmission providers (“TPs”) to *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. We appreciate that the Tariff Proposal includes section 10.2 to address PPR requirements identified through stakeholder input. Unfortunately, however, we remain concerned that the Tariff Proposal fails to meet the minimum requirements of Order 1000 on the PPR front.

First, Order 1000 requires tariffs to allow for any stakeholder to suggest grid needs driven by any PPR, including EPA regulations or any other state or federal regulation or law that drives transmission needs.³ Section 10.2.1 of the Tariff Proposal contains requirements for a stakeholder submission of PPR-driven needs, including “an explanation of the possible transmission need” and “an explanation and/or demonstration that the current iteration of the transmission expansion plan does not adequately address that need.” We are concerned that this requirement contravenes Order 1000 by making it impossible for certain stakeholders to suggest PPR-driven needs for consideration.

As noted above, the undersigned groups believe that the EPA’s recent Clean Air Act regulations affect transmission system needs. Under SERTP’s proposed Order 1000 planning regime, it is not clear that we could suggest the SERTP TPs consider likely related transmission system needs, because a showing of inadequacy for the current plan would require time-consuming modeling that would likely be outdated by the time that it is completed. Furthermore, it is likely that the assumptions regarding PPR-driven needs in the “explanation” or “demonstration” might be challenged by utilities at some level of detail, with the result being a lack of agreement as to whether the expense and effort taken by the stakeholders is of relevance. This issue is heightened in light of the constraints on resources for some stakeholders as compared to others. Without a process for reaching common agreement on the PPR-driven needs and the time to complete the analysis, it appears that this qualification could exclude non-utility stakeholders from providing input on PPR-driven transmission needs.

Although each step of the PPR-driven system needs consideration process requires stakeholder consultation, it is the obligation of the TPs to engage in the consideration of proposed potential PPR-driven needs and then, with stakeholders, to determine whether to engage in further evaluation of the needs and consider whether solutions are merited. We do not think the TPs can transfer full responsibility for the analytics to “explain” and “demonstrate” onto stakeholders.

In addition, the requirement that stakeholders identify a need that is not already addressed in the current expansion planning process risks missing the most cost-effective solution to an identified need, since there may be a separate stakeholder-proposed solution that could address the identified need in a more efficient and/or cost-effective manner than the current planning process contemplates.

³ Order 1000 at P 215.

Second, as we pointed out in June, the Tariff Proposal appears to provide that the SERTP TPs alone will determine whether stakeholder proposals include an actual transmission need driven by PPRs, whether it is worth considering the need for further evaluation, and whether the TPs will identify a solution. There is no language about how stakeholders can participate in these decisions, except for a vague statement that, “[s]takeholder input regarding potential transmission needs driven by Public Policy Requirements may be directed to the governing Tariff process as appropriate.” A general statement vaguely pointing to outside processes does not create a clear and certain process for stakeholder review of proposed needs, a violation of Order 1000’s requirements.

Third, we remain concerned that the language in Section 10.1 fails to ensure that the SERTP TPs’ local planning processes include Order 1000-sufficient procedures for the consideration of PPRs and meaningful stakeholder input about those procedures. For example, we note that while some of the SERTP TPs do make all of their long-term resource planning documents, namely integrated resource plans (“IRP”), available to the public, others do not release these documents, which are an important source for the identification of potentially relevant PPR-driven system needs. Without access to all of the IRP and similar documents in the region, it is very difficult for stakeholders to participate effectively in local or regional transmission planning. (As part of its Order 1000 filing, we suggest that any SERTP TPs who do not currently make all of their operating companies’ IRPs available to stakeholders, should do so.) We hope that we will have the opportunity to review any changes the SERTP TPs plan to make to their local planning tariff provisions in order to comply with Order 1000.

(2) Comparable Consideration of Solutions, Including Non-Transmission Alternatives

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) in consultation with stakeholders, evaluate proposed alternative transmission and NTA solutions comparably.⁴

Since the Tariff Proposal does not contain any modifications to the earlier straw proposal, *we maintain all of the concerns and recommendations that we provided in section (3)(b) of our June 1 comments.*

In the supplemental comments that the SERTP TPs issued in August, they did respond, at a high level, to some of our concerns about the consideration of NTAs. The comments stated:

[T]he substantive requirements pertaining to NTAs are also primarily found in Order No. 890 and, therefore, have already been incorporated into the existing

⁴ See Order 1000 at P 80 (“[Transmission providers]...have an affirmative obligation...to evaluate alternatives [to local proposed transmission facilities] that may meet the needs of the region more efficiently or cost-effectively.”); see also *id.*, PPs 148, 205-206, and PP 154-155 (TPs must give those alternatives “comparable consideration”).

SERTP process. To clarify, when evaluating between alternatives to address identified transmission needs, SERTP Sponsors consider all cost effective and reliable solutions. Stakeholders have today, and will continue to have, the opportunity to propose both transmission and non-transmission alternatives.

We are concerned that although the SERTP Attachment K contains Order 890-A-compliant provisions for the comparable treatment of NTAs, the provisions do not ensure satisfaction of Order 1000's comparable consideration requirement. In practice, we are unaware of any material consideration of NTAs as *solutions* to identified transmission needs in the transmission planning process. This lack of consideration suggests that SERTP's existing procedures may be falling short of ensuring the comparable consideration of NTAs.

The Commission has made clear that compliance with Order No. 890 obligations is not dispositive of whether a TP's current procedures assure comparable treatment and the selection of cost-effective and efficient solutions.⁵ Further, Order 890 emphasized "input" and "participation." Order 1000 requires that TPs routinely consider NTAs whenever they are proposed as an alternative to transmission system upgrades. Order 1000 also requires SERTP to establish metrics to be used to evaluate NTAs and identify clear parameters for side-by-side comparison of transmission and non-transmission alternatives showing how one resource is ultimately chosen over another competing alternative.⁶ The emphasis in Order 1000 is not merely on stakeholders' opportunity but on transmission providers' obligation for full comparable consideration.

The Tariff Proposal does not address specifically how NTA solutions will be considered, or what metrics will be used to evaluate proposed NTA solutions as compared to transmission proposals. The final proposal should make clear how NTAs will be proposed and evaluated and whether any special requirements or metrics will be imposed on entities proposing NTA solutions and, if so, how those metrics will apply to NTAs.

A review of recent SERTP documents reinforces our concern that NTAs are not actually considered in transmission planning, and that there is no process, at least in practice, for doing so. The recently completed transmission plan includes a project involving the construction of a new transmission line (partially underground/underwater) to a community served by a radial line due to load growth. This line provides an example where NTAs may have been used to avoid the need for the line, in the form of geographically targeted energy efficiency, distributed renewable energy, and demand response. But through informal discussions with representatives from the TPs, our understanding is that no such solutions were considered as an alternative to the line included in the plan. Neither the current process nor the Tariff Proposal appear to include a specific process for the submission of alternative solutions or the metrics for evaluating them.

⁵ Order 1000 at P 795 ("Whether an existing process was approved previously by the Commission is not dispositive of whether that process complies with this Final Rule.").

⁶ Order 1000, see note 5 above.

The supplemental comments also addressed an issue over which we expressed concern in earlier correspondence – access to planning data and analytics used by the SERTP TPs and needed to help shape proposals for alternative solutions. Order 1000 requires “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.”⁷ 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.”⁸

Again, satisfaction of the planning principles under Order 890 does not ensure satisfaction of those planning principles in light of Order 1000’s new obligations. Order 1000 requires that stakeholders have the opportunity for meaningful input into the evaluation of transmission system needs and the consideration of alternative solutions to identified needs. SERTP stakeholders must have a real opportunity to propose alternative transmission or NTA projects. 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 the SERTP TPs could have an unjust and unreasonable advantage in proposing solutions. We recommend that the Tariff Proposal include explicit procedures by which other stakeholders can access the information used by TPs to propose solutions. The process should also provide for an adequate window of time for stakeholders to develop solutions based on the information TPs provide.

(3) Cost Allocation

We would like to highlight one of our concerns about the Tariff Proposal’s cost allocation method proposal. Section 16.2.1 determines that the only benefit to be considered in determining 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 Tariff 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 (perhaps superior) benefits and, thus, should not be evaluated one-for-one. A strict avoided transmission cost analysis would 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.

⁷ Order 1000 at P 150.

⁸ *Id.*

(4) Stakeholder Participation

Order 1000 requires that stakeholders have an opportunity for meaningful input into the development of regional plans.⁹ As noted in some specific instances above, it is not evident that the SERTP Order 1000 Proposal provides stakeholders with a timely and meaningful opportunity to comment on regional transmission system needs. In the supplemental comments the SERTP TPs responded that they have satisfied Order 1000's stakeholder input obligations; however, we continue to disagree. The Tariff Proposal remains vague and unclear about how and when stakeholders will have the opportunity for meaningful input around the consideration of PPRs, evaluation of identified transmission system needs, and the evaluation of solutions to identified needs. We therefore maintain the concerns expressed in our April 12 comments.

One specific concern relates to stakeholder access to regional planning assumptions, data and other inputs. To address this deficiency in the current planning process, we recommend that at the beginning of each regional planning process, SERTP complete and post, after consultation with stakeholders, all modeling assumptions, data inputs and scenarios to be evaluated. The PowerPoint presented at the December 11 Transmission Summit contained some of this information, but in a summary form. Upfront and continued access to the full range of this information is essential for stakeholders to assess system needs and prepare alternative solution proposals (as well as to provide input on and review of alternative transmission and NTA proposals). Individual stakeholders, including most state regulatory commissions and public interest organizations, are not in a position to engage in such assessments without the data and analyses available to the TPs. We believe Order 1000 requires planning assumptions, data inputs, and scenario analyses used for needs assessments be developed through an explicit stakeholder process open to all interested persons, including state regulators, market participants, consumer and environmental advocates, and customers.

Thank you for your consideration of these comments. We would be happy to discuss these matters further at your convenience. To the extent we have misunderstood the intent of any sections of the Tariff Proposal, we would like to gain a fuller understanding and discuss solutions to the issues described above.

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⁹ Order 1000 at P 11.

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