

125 FERC ¶ 61,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

East Kentucky Power Cooperative, Inc.

Docket No. NJ08-4-000

ORDER CONDITIONALLY GRANTING PETITION
FOR DECLARATORY ORDER

(Issued October 17, 2008)

1. East Kentucky Power Cooperative, Inc. (East Kentucky) filed a petition for declaratory order asking the Commission to determine that an updated Attachment M to its Open Access Transmission Tariff (OATT) allows its OATT to continue to be an acceptable safe harbor tariff under the requirements of Order No. 890.¹ East Kentucky also requests waiver of the filing fee.
2. In this order, we conditionally grant the petition for declaratory order and the request for waiver of the filing fee for the reasons stated below.

I. Background

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

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

² The Commission, among other things, also amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability (ATC) and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity. These reforms have been or will be addressed in other orders.

transmission providers to develop transmission planning processes that satisfy nine principles (discussed below) and to clearly describe those processes in a new attachment (Attachment K) to their OATTs.

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

5. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.⁴ Under this procedure, a non-public utility may voluntarily submit to the Commission a transmission tariff and petition for declaratory order requesting a finding that the tariff meets the Commission's comparability (non-discrimination) standards. If the Commission finds that the terms and conditions of such a tariff substantially conform to or are superior to those in the

³ As the Commission explained in Order No. 890, not all rules and practices related to transmission service, or planning activities in particular, need to be codified in the transmission provider's OATT. Rules, standards and practices that relate to, but do not significantly affect, transmission service may be placed on the transmission providers' websites, provided there is a link to those business practices on OASIS. See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55. Transmission providers can therefore use a combination of tariff language in the Attachment K, and a reference to planning manuals on their website, to satisfy their planning obligations under Order No. 890.

⁴ *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 (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), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

pro forma OATT, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open access transmission service upon request to that particular non-public utility.⁵ Order No. 890 requires that a non-public utility that already has a safe harbor OATT (as does East Kentucky) must amend its OATT so that its provisions substantially conform to or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.⁶

6. East Kentucky is not a public utility within the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA). After the issuance of Order No. 888, East Kentucky sought and obtained a determination by the Commission that it had an acceptable reciprocity tariff.⁷ East Kentucky revised its tariff in response to Order No. 890 and obtained a determination by the Commission that it continued to have an acceptable reciprocity tariff.⁸

II. East Kentucky's Reciprocity Tariff Filing

7. East Kentucky is an electric generation and transmission cooperative authorized by the state of Kentucky to produce, transmit and distribute electric energy at wholesale and retail. East Kentucky provides electric energy to its member-owner distribution cooperatives in central and eastern Kentucky. It supplies them the electric power and energy required to serve their retail electric customers through base load generating plants, peaking units, hydropower and more than 2,800 miles of transmission lines.

8. East Kentucky states that its proposed Attachment M outlines a coordinated, open, and transparent planning process in which customers and other interested parties can participate. East Kentucky further states that Attachment M addresses the nine planning principles set forth in Order No. 890. According to East Kentucky, its OATT will continue to be consistent with or superior to the *pro forma* OATT if the proposed Attachment M is accepted for filing. East Kentucky therefore requests that the Commission find that its proposed Attachment M satisfies applicable comparability standards and that its tariff continues to be an acceptable safe harbor tariff. East Kentucky also requests waiver of the Commission's filing fee based on its non-jurisdictional status.

⁵ In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) standards of conduct requirements or obtain waiver of them. *See* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191.

⁷ Commission Letter Order issued December 18, 1997 in Docket No. NJ97-14-000.

⁸ *East Kentucky Power Cooperative, Inc.*, 121 FERC ¶ 61,012 (2008).

III. Notice of Filing and Responsive Pleadings

9. Notice of East Kentucky's filing was published in the *Federal Register*, 72 Fed. Reg. 72,691 (2007), with comments, protests, or motions to intervene due on or before January 7, 2008. No protests or adverse comments were filed.

IV. Discussion

10. We find that, with the revisions described below, East Kentucky's Attachment M transmission planning process satisfies each of the nine planning principles and other planning requirements in Order No. 890, as discussed below.

11. While we find that East Kentucky's transmission planning process generally satisfies the requirements of Order No. 890, we nevertheless encourage further refinements and improvements to East Kentucky's planning process as East Kentucky and its customers and other stakeholders gain more experience through actual implementation of this process. Commission staff will also periodically monitor the implementation of the planning process to determine if adjustments are necessary and will inform the transmission provider and the Commission of any such recommendations. Specifically, beginning in 2009, the Commission will convene regional technical conferences similar to those conferences held in 2007 leading up to the filing of the transmission planning compliance filings. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement.

V. Reciprocity Tariff

A. Compliance With Order No. 890's Planning Principles

1. Coordination

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

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

13. East Kentucky states that it, together with Associated Electric Cooperative, Big Rivers Electric Cooperative, and Tennessee Valley Authority (TVA), has formed the Central Public Power Participants (CPP Participants) and CPP Regional Stakeholder Group for purposes of coordinating transmission planning.¹⁰ Meetings of the CPP stakeholder group are scheduled on a recurring basis, and the meeting cycle is coordinated with East Kentucky's planning cycle to allow opportunities for participation and meaningful input. The first meeting for the annual cycle provides the CPP Participants' base data cases and reviews planning criteria and assumptions to be used in CPP studies. At the second meeting, the CPP Participants will provide an assessment of potential reliability problems being studied and preliminary solutions. Advanced solutions, including those provided by stakeholders, will be reviewed at the third meeting. East Kentucky provides a process flow chart in its Attachment M outlining the CPP study process and interaction with the CPP stakeholder group.

14. East Kentucky further commits to share planning-related data and analyses with interested stakeholders throughout its planning cycle, rather than only at specific points, to ensure that adequate opportunities for input are provided throughout its planning process. To that end, stakeholders will be given the opportunity to question and discuss the initial assumptions used in East Kentucky's transmission planning process through the stakeholder meetings, e-mail or other written communications, or other meetings that may be scheduled. East Kentucky also will provide notice to stakeholders when changes or updates are made to planning databases, methodologies and criteria.

15. The minutes for stakeholder meetings are posted on East Kentucky's OASIS along with notices of meeting dates, times, locations, and agendas; notice procedures and e-mail addresses for points of contact and questions; a calendar of meetings and other significant events; a subscription page that allows stakeholders to receive an e-mail distribution list when there are meetings or announcements; and information regarding development of potential projects or events. East Kentucky will establish additional web-based locations beyond postings on its OASIS site as required.¹¹

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

¹⁰ Third Revised Sheet No. 447 to East Kentucky's FERC Electric Tariff, Original Volume No. 1.

¹¹ Original Sheet No. 447b to East Kentucky's FERC Electric Tariff, Original Volume No. 1.

Commission Determination

16. We find that East Kentucky's proposed Attachment M partially satisfies the coordination principle stated in Order No. 890.¹² East Kentucky provides stakeholders the opportunity to participate in the development of planning studies performed by the CPP Participants, including the ability to review and comment on reliability assessments and the identification of potential solutions. In addition, East Kentucky will share planning-related data and analyses throughout its planning cycle to ensure that there are opportunities for input, including the ability of stakeholders to question and discuss the initial assumptions used by East Kentucky. However, East Kentucky fails to explain the process for stakeholders to participate in planning activities that are distinct from the studies performed by the CPP Participants. East Kentucky refers to the CPP Participants as coordinating for the purpose of conducting reliability studies on a regional basis, yet also states that the CPP stakeholder group would allow for stakeholder participation in local planning activities. It is unclear how participation in the regional CPP stakeholder group would allow for participation in East Kentucky's planning activities beyond the specific studies performed by the CPP Participants. If East Kentucky wishes to maintain its safe harbor status, it must revise its proposed transmission planning process to address this concern within 90 days of issuance of this order in order to satisfy the coordination requirements of Order No. 890.

2. Openness

17. The openness principle requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders. Although the Commission recognized in Order No. 890 that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties, such as a particular meeting of a sub-regional group, the Commission emphasized that the overall development of the transmission plan and the planning process must remain open.¹³ Transmission providers, in consultation with affected parties, must also develop mechanisms to manage confidentiality and Critical Energy Infrastructure Information (CEII) concerns, such as confidentiality agreements and password protected access to information.

18. East Kentucky states that all stakeholders, including, but not limited to, its transmission customers, neighboring utilities and RTOs, and state regulatory agencies,

¹² *Id.*

¹³ The Commission stated in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

will be given the full opportunity to participate in the East Kentucky and CPP Participants' transmission planning processes. East Kentucky also states, however, that the CPP stakeholder group is only open to transmission customers, neighboring utilities and RTOs, regulatory agencies, and generation owners/developers.

19. East Kentucky will provide non-confidential information through the annual stakeholder meetings, postings on its public websites, e-mail distribution lists and other public meetings that may be scheduled as the need arises. East Kentucky will treat as confidential any information about a plan, specification, procedure, design or device that is a proprietary trade secret relating to present or planned business of East Kentucky; its transmission customers or customers thereof; interconnected utilities; or other parties with which it conducts business. East Kentucky states that it complies with the Commission's rules for management of CEII material. East Kentucky contends that, subject to the execution of confidentiality agreements posted on its OASIS site, stakeholders will have access to sufficient planning data to enable the stakeholders to perform their own reliability and economic planning studies.¹⁴

Commission Determination

20. We find that East Kentucky's proposed Attachment M partially satisfies the openness principle stated in Order No. 890. East Kentucky states that all stakeholders will have a full opportunity to participate in the transmission planning process, including access to confidential information and CEII subject to the execution of confidentiality agreements. However, as discussed above, East Kentucky fails to distinguish its own planning processes from the planning activities to be coordinated with the CPP Participants. As a result, it is unclear whether East Kentucky has ensured that all of its planning activities are open to all interested parties. With regard to studies performed by the CPP Participants, we are also concerned that the CPP stakeholder group will only be open to transmission customers, neighboring utilities and RTOs, regulatory agencies, and generation owners/developers. This may exclude certain interested parties, such as developers of merchant transmission or alternative resources. If East Kentucky wishes to maintain its safe harbor status, it must revise its proposed transmission planning process to address these concerns within 90 days of issuance of this order in order to satisfy the openness requirements of Order No. 890.

3. Transparency

21. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. To that end, each transmission provider must

¹⁴ Original Sheet No. 447e to East Kentucky's FERC Electric Tariff, Original Volume No. 1.

describe in its planning process the method(s) it will use to disclose the criteria, assumptions and data that underlie its transmission system plans.¹⁵ The Commission specifically found that simple reliance on Form Nos. 714 and 715 failed to provide sufficient information to provide transparency in planning because those forms were designed for different purposes. Transmission providers also were directed to provide information regarding the status of upgrades identified in the transmission plan.

22. The Commission explained that sufficient information should be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained in Order No. 890 that simultaneous disclosure of transmission planning information should alleviate Standards of Conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand resources in transmission planning. Where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis.¹⁶

23. East Kentucky provides as an addendum to its Attachment M the Transmission System Planning Guidelines that outline East Kentucky's planning methodology. The guidelines include the criteria and assumptions used for analysis of the transmission system. East Kentucky states that it develops information regarding transmission and generation resources based on data obtained from actual experience, manufacturer's data, and industry utilization, while information regarding demand resources is typically developed from customer information.¹⁷ Parties interested in obtaining the underlying data used in East Kentucky's transmission planning can access that data from a password-protected portion of East Kentucky's OASIS, subject to the execution of confidentiality agreements. Non-confidential data will be posted on a publicly available portion of East Kentucky's website.

24. The status of transmission expansion projects will be posted twice annually on East Kentucky's OASIS site and each project will be identified as in service, under construction, planned, postponed, or conceptual. East Kentucky states it considers

¹⁵ In Order No. 890-A, the Commission stated that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to adequately understand the results reached in a transmission plan. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 199.

¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-79.

¹⁷ Original Sheet No. 447h to East Kentucky's FERC Electric Tariff, Original Volume No. 1.

demand-side resources on a comparable basis to other alternatives during its planning processes. Demand-side resources will be evaluated to see if they can provide the necessary functionality and can be relied upon on a long-term basis and, if so, they will be evaluated along with other alternatives, including economics and effectiveness of performance.¹⁸

Commission Determination

25. We find that East Kentucky's proposed Attachment M satisfies the transparency principle stated in Order No. 890. East Kentucky describes how it will disclose the criteria, assumptions, and data underlying its transmission system plans. East Kentucky provides the status of upgrades and permits demand-side resources to participate in the planning process on a comparable basis.

4. Information Exchange

26. The information exchange principle requires network customers to submit information on their projected loads and resources on a comparable basis (e.g., planning horizon and format) as used by transmission providers in planning for their native load. Point-to-point customers are required to submit any projections they have for service over the planning horizon and anticipated receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as a proxy for actual reservations.¹⁹ Transmission providers, in consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

27. East Kentucky requires its network customers to annually submit a ten-year forecast of summer and winter load at each delivery point, a ten-year projection of network resources, and information regarding demand response reductions. East Kentucky requests information from point-to-point transmission customers regarding projected long-term use of the transmission system, including transmission capacity, duration, and receipt and delivery points. East Kentucky requests additional information from stakeholders, including planned generator additions or upgrades (including status and expected in-service date), planned retirements, environmental restrictions, and existing and planned demand resources and their effect on demand and peak demand. East Kentucky states that the above listed information should be submitted by January 15, on an annual basis, to ensure that the data is available at the onset of its annual planning cycle. East Kentucky also states that stakeholders will be given the opportunity to propose alternatives for any upgrades identified in East

¹⁸ *Id.*

¹⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 207.

Kentucky's transmission plan. Additional information or amendments to the information can be made throughout the planning process and will be incorporated into the process as much as possible. East Kentucky also states that a secure File Transport Protocol site will be established to ease the transfer of data. Other forms of data transfer may be used with permission of the customer.

Commission Determination

28. We find that East Kentucky's proposed Attachment M satisfies the information exchange principle stated in Order No. 890. East Kentucky provides clear guidelines for the submittal of information by stakeholders for use in East Kentucky's transmission planning process. East Kentucky identifies the particular information to be provided and the timeframe for submission and inclusion in the planning process.

5. Comparability

29. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop transmission system plans that meet the specific service requests of their transmission customers and otherwise treat similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. In Order No. 890, the Commission expressed concern that transmission providers have historically planned their transmission systems to address their own interests without regard to, or ahead of, the interests of their customers. Through the comparability principle, the Commission required that the interests of transmission providers and their similarly-situated customers be treated on a comparable basis during the planning process. The Commission also explained that demand resources should be considered, where appropriate, on a comparable basis to the service provided by comparable generation resources.²⁰

30. Lastly, in Order No. 890-A, the Commission clarified that, as part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.²¹

31. East Kentucky states that its planning process is an objective process that evaluates use of the transmission system on an equal basis for all customers. The same criteria and planning processes will be applied to the same types of service and/or projects, regardless of type or class of customer. Customer demand resources will be considered on a comparable basis with generation resources in the transmission

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

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

planning process. As noted above, demand-side resources will be evaluated to see if they can provide the necessary functionality and can be relied upon on a long-term basis and, if so, they will be evaluated along with other alternatives, including economics and effectiveness of performance.

Commission Determination

32. We find that East Kentucky's proposed Attachment M partially satisfies the comparability principle stated in Order No. 890. East Kentucky's planning process is designed to meet the needs of all customers and all stakeholders regardless of the type or class of customer. In addition, we note that Order No. 890-A was issued on December 27, 2007, subsequent to East Kentucky submitting its proposed Attachment M. In Order No. 890-A, the Commission provided additional guidance, among other things, as to how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process "how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning."²² We find that East Kentucky has, with the modifications discussed below and elsewhere in this order, adequately described in its Attachment M how resources will be treated comparably.

33. Section 5 of Attachment M states that the same criteria and planning processes will be applied to the same types of service and/or projects, regardless of type or class of customer. Section 5 also provides that customer demand resources will be considered on a comparable basis with generation resources in the planning process. Similarly, section 3 of Attachment M provides that demand side resources will be considered on a comparable basis to other alternatives and that all resources will be evaluated to determine if they can provide the needed functionality and can be relied upon on a long-term basis. If so, the resource will be evaluated along with other alternatives, including economics and effectiveness of performance. Section 3 also provides that stakeholders may propose alternatives to any upgrade identified in East Kentucky's transmission plan, ensuring that alternative resource options are considered by East Kentucky.

34. Taken together, we interpret these sections of Attachment M to mean that East Kentucky will treat generation and demand resources (without regard to the type of resource or whether the resource is a customer) comparably by first determining if these resources provide the needed functionality and can be relied upon on a long-term basis and then evaluating these resources based on economics and effectiveness of performance. East Kentucky will therefore consider during its planning process the costs and benefits of potential generation and demand resources and their relative ability

²² *Id*; see also Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, 487, 494, and 549.

to resolve identified needs.²³ We find that these sections adequately meet the Order No. 890-A comparability requirements as to generation and demand resources. However, Attachment M does not describe how generation and demand resources will be treated comparably to transmission resources. If East Kentucky wishes to maintain its safe harbor status, East Kentucky must revise its Attachment M within 90 days of issuance of this order to describe how generation and demand resources will be treated comparably to transmission resources in East Kentucky's transmission planning process. In this same filing, East Kentucky must also provide greater specificity as to when in the planning process alternative resources are to be considered.

6. Dispute Resolution

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

36. East Kentucky states that, where the disputing party is not a transmission provider, it intends to use a two-step dispute resolution process. In step one, the parties have 30 days to settle the dispute through informal negotiation. In step two, the parties can pursue binding arbitration or file a complaint with the Commission. If the parties choose arbitration, they must follow the procedures set forth in Section 12 of the East Kentucky OATT.

37. For disputes involving regional planning issues and more than one transmission provider, including disputes arising under the CPP regional planning process, East Kentucky states that it will use mediation. East Kentucky states that it and E.ON U.S. (E.ON) currently have in place various transmission planning protocols that include

²³ The Commission does not interpret East Kentucky's proposal to evaluate the economics of potential resources as requiring a formal cost-benefit analysis. We recognize that the benefits of certain resource solutions may be difficult to quantify.

²⁴ *Id.* P 501-03.

dispute resolution procedures requiring the parties to engage in mediation to resolve planning and related cost allocation disputes.

Commission Determination

38. We find that East Kentucky's proposed Attachment M partially satisfies the dispute resolution principle stated in Order No. 890. East Kentucky's dispute resolution provision uses a combination of negotiation, mediation, and a choice of arbitration or filing a complaint with the Commission to resolve substantive and procedural disputes that arise from its local and regional transmission planning process. We encourage parties to seek the resolution of issues relating to transmission planning through this dispute resolution process. However, during the dispute resolution process affected parties should retain any rights they may have under FPA section 206 to file a complaint with the Commission.²⁵ East Kentucky's proposed dispute resolution process may inappropriately affect the ability of a party to certain disputes to exercise its rights under section 206 of the FPA. If East Kentucky wishes to maintain its safe harbor status, East Kentucky must revise its proposed dispute resolution process within 90 days of issuance of this order to preserve the ability of a party to exercise its rights under section 206 of the FPA.²⁶

7. Regional Participation

39. The regional participation principle provides that, in addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider is required to coordinate with interconnected systems to: (1) share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data; and (2) identify system enhancements that could relieve congestion or integrate new resources. In Order No. 890, the Commission stated that the specific features of the regional planning effort should take account of and accommodate, where appropriate, existing institutions, as well as physical characteristics of the region and historical practices. The Commission declined to mandate the geographic scope of particular planning regions, instead stating that the

²⁵ *Id.* P 510-03.

²⁶ We also note that East Kentucky's dispute resolution provision for disputes not involving another transmission provider omit the second step, mediation, of a three step dispute resolution process consisting of negotiation, mediation and arbitration. While we are not requiring the inclusion of mediation, we strongly encourage East Kentucky to consider including a mediation step in its dispute resolution process. We have found that a high percentage of disputes sent to the Commission's Dispute Resolution Service or another mediator or an Administrative Law Judge serving as a Settlement Judge settle without adjudication. If East Kentucky desires to include the mediation step, it should do so in its filing.

geographic scope of a planning process should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and subregions. The Commission also made clear that reliance on existing North American Electric Reliability Corporation (NERC) planning processes may not be sufficient to meet the requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations. To the extent a transmission provider's implementation of the NERC processes is not appropriate for such economic issues, individual regions or subregions must develop alternative processes.²⁷

40. In Order No. 890-A, the Commission clarified that while the obligation to engage in regional coordination is directed to transmission providers, participation in such processes is not limited to transmission providers and should be open to all interested customers and stakeholders.²⁸ The Commission also emphasized that effective regional planning should include coordination among regions and subregions as necessary, in order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.²⁹

41. East Kentucky states that it coordinates regional and interregional planning through its participation in the planning activities performed by the CPP Participants, described above. East Kentucky states that it is also a member of the Southeastern Electric Reliability Council (SERC) Regional Reliability Organization and that its planning personnel participate in a number of SERC groups and committees to ensure regional coordination of reliability assessments. East Kentucky generally describes the SERC process for annually developing regional models and operational requirements, referring to SERC reference documents for further details.

42. Due to the strongly interconnected nature of the E.ON and East Kentucky transmission systems, East Kentucky also performs several joint planning studies with E.ON to ensure that consistent data and assumptions are used, and to identify potential system enhancements useful to both systems. East Kentucky states that it will work with the Southwest Power Pool, Inc. which is responsible for many of E.ON's planning functions.³⁰ East Kentucky states that it is interconnected with American Electric Power, Dayton Power & Light Co., Duke Energy-Ohio, and TVA and that it coordinates plans with these companies and, where applicable, with the regional entities responsible for their planning. Finally, East Kentucky refers to participation in the Southeastern

²⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-28.

²⁸ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

²⁹ *Id.*

³⁰ Original Sheet No. 4471 to East Kentucky's FERC Electric Tariff, Original Volume No. 1.

Interregional Planning Group through membership in the CPP, which appears to be a reference to the Southeast Inter-Regional Planning Process (SIRPP) proposed by a number of other transmission providers in the region.³¹

Commission Determination

43. We find that East Kentucky's proposed Attachment M partially satisfies the regional participation principle stated in Order No. 890. As described in the Coordination section above, East Kentucky coordinates with the CPP Participants to perform studies to assess potential reliability problems and identify potential solutions. Stakeholders may participate in the development of these studies through stakeholder meetings and provide input regarding models and assumptions used to perform the studies. East Kentucky also participates in the development of study models and operational requirements by SERC.

44. However, as discussed above, East Kentucky does not adequately distinguish between the planning activities it performs independently and those performed on a regional basis through coordination with the CPP Participants. In addition, East Kentucky does not identify the timelines and milestones for the coordination of models and operational requirements by SERC. A description of how stakeholders can participate in SERC processes is lacking, as is a description of how the SERC processes will interact with East Kentucky's own planning activities. If East Kentucky intends to rely on SERC documentation for these purposes, it should provide direct links (i.e., URLs) to the appropriate documents on the SERC website. East Kentucky also refers to joint planning activities and studies performed with interconnected systems, but it provides no details regarding those activities or studies in its Attachment M, such as how they are integrated into East Kentucky's planning process or the ability of stakeholders to be involved. If East Kentucky wishes to maintain its safe harbor status, East Kentucky must revise its proposed transmission planning process to address these concerns within 90 days of issuance of this order in order to satisfy the regional participation requirements of Order No. 890.

45. East Kentucky also fails to explain its process for coordinating economic studies on a regional basis. As noted below, East Kentucky will perform economic planning studies upon request that are related to (i) transmission congestion issues either within East Kentucky or between East Kentucky and other control areas and/or (ii) integration of new resources or loads on an aggregated basis. In its Attachment M, East Kentucky appears to reference participation in inter-regional economic planning studies performed

³¹ In other orders being issued concurrently with this order in Docket Nos. OA08-37-000 (Southern Companies), OA08-46-000 (South Carolina Electric & Gas Company), and OA08-50-000 and OA08-51-000 (Duke Energy Carolinas, LLC and Progress Energy Carolinas, Inc.), the Commission accepts proposals to rely on the SIRPP to coordinate inter-regional economic planning studies, subject to certain modifications.

through the SIRPP. However, East Kentucky provides no additional information regarding its commitment to coordinate with other transmission providers to perform economic planning studies. To the extent East Kentucky intends to participate in the SIRPP, it should state that commitment in its Attachment M and provide sufficient detail for customers to understand how they can request that economic upgrades be studied on a regional basis.³² Otherwise, if East Kentucky wishes to maintain its safe harbor status, East Kentucky must revise its proposed transmission planning proposal, within 90 days of issuance of this order, to provide an alternative process to coordinate economic studies on a regional basis.

8. Economic Planning Studies

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

47. All transmission providers, including RTOs and ISOs, were directed in Order No. 890 to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies would be recovered as a part of the transmission provider's overall OATT cost of service, while the cost of additional studies would be borne by the stakeholder(s) requesting the study.³³

48. In Order No. 890-A, the Commission made clear that the transmission provider's planning process must clearly describe the process by which economic planning studies can be requested and how they will be prioritized.³⁴ The Commission also made clear

³² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 528. We note that, in the orders being issued concurrently with this order addressing the SIRPP proposal, the Commission is requiring certain modifications to the SIRPP process to comply with the requirements of Order No. 890.

³³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 542-51.

³⁴ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

in Order No. 890-A that a transmission provider's affiliates must be treated like any other stakeholder and, therefore, their requests for studies must be considered comparably, pursuant to the process outlined in the transmission provider's planning process.³⁵

49. East Kentucky states that it will perform economic planning studies related to transmission congestion issues either within East Kentucky or between East Kentucky and other control areas, and/or integration of new resources or loads on an aggregated basis. East Kentucky explains that it strives to combine reliability and economic benefits related to transmission congestion and integration of new transmission users, pursuing a holistic approach to obtaining benefits from both perspectives to identify an optimal plan. To that end, East Kentucky will compile data identifying congested facilities/areas of its transmission system and will conduct economic planning studies for any facility on which Transmission Loading Relief procedures have been implemented on at least 5 separate occasions or for at least 120 hours in a calendar year.

50. In addition, stakeholders may submit requests for economic planning studies by January 1 of each year, which will be posted on East Kentucky's OASIS site along with responses, subject to confidentiality requirements. East Kentucky will solicit input from all stakeholders via stakeholder meetings and/or email subscription lists regarding the prioritization of economic planning study requests. Using this feedback, East Kentucky will identify the two studies that the stakeholders indicate have the highest priority by the end of March of each year, the costs of which will be rolled into rates. Where possible, East Kentucky will attempt to cluster similar requests into a single study to address as many issues as possible in an efficient manner, conducting specific sensitivity analyses where requested by stakeholders as part of the two highest-priority studies.³⁶ East Kentucky will request data for the studies from the parties that are requesting an economic study. The information collected will be used at stakeholder meetings for discussion and to help look for improvements that may be beneficial to all stakeholders. East Kentucky states that it will not accept additional economic planning studies in exchange for payment.

51. East Kentucky states that it will also participate in the economic study process that is being developed by the CPP Participants and, as noted above, refers to participation in inter-regional economic studies performed through the SIRPP. East Kentucky states that these studies will be separate from any studies that East Kentucky is specifically and singularly asked to perform by stakeholders.³⁷

³⁵ *Id.*

³⁶ Original Sheet No. 447m to East Kentucky's FERC Electric Tariff, Original Volume No. 1.

³⁷ *Id.*

Commission Determination

52. We find that East Kentucky's proposed Attachment M partially satisfies the economic planning studies principle stated in Order No. 890. Stakeholders may request that East Kentucky perform economic planning studies related to congestion or the integration of new resources on its system. East Kentucky will prioritize those requests in consultation with stakeholders, seeking data as necessary from stakeholders requesting a study. However, East Kentucky refers to participation in an economic study process being developed by the CPP Participants and appears to reference participation in inter-regional economic studies performed by the SIRPP, yet provides no detail regarding either of those processes or how stakeholders can be involved. In Order No. 890, the Commission required transmission providers to develop a process for studying the alleviation of congestion through integration of new supply and demand resources into the regional transmission grid or expanding the regional transmission grid in a manner that can benefit large numbers of customers, such as by evaluating transmission upgrades necessary to connect major new areas of generation resources.³⁸ If East Kentucky wishes to maintain its safe harbor status, East Kentucky must revise its transmission planning proposal within 90 days of issuance of this order to provide additional detail regarding the economic planning processes implemented by the CPP Participants and its participation in the inter-regional economic planning process through the SIRPP.

9. Cost Allocation

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

54. The Commission suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation

³⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 549.

proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.³⁹ In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new transmission investment need some degree of certainty regarding cost allocation to pursue that investment.⁴⁰

55. East Kentucky states that the costs of projects that do not fit under existing rate structures will be allocated to the customer or customers requesting that the project be built. If multiple parties request a project, those parties will share the cost of the project equally. If East Kentucky expands or enhances the project in excess of what was requested by the party/parties, East Kentucky is responsible for the cost of the enhancement.

56. If a party requests that East Kentucky accelerate a project already planned for implementation within the planning horizon, the requesting party will be responsible for the difference in costs due to acceleration. If East Kentucky or another party elects to enhance a requested project, the requesting party will be responsible for the cost of the project at the level that party needs and East Kentucky or the other party will be responsible for the incremental cost of the enhancement.

57. In applying these cost allocation principles, East Kentucky will identify the benefits that a requested project may provide to East Kentucky, such as deferral of other transmission projects or a reduction in energy losses. Costs assigned to a requesting party will be a net value, recognizing the value of any such benefits.

Commission Determination

58. We find that East Kentucky's proposed Attachment M proposal satisfies the cost allocation principle stated in Order No. 890. Costs associated with a project requested by a particular party will be allocated to that party, while costs associated with a project supported by multiple parties will be allocated to those parties equally. Costs allocated to any party will be net of the benefits that a requested project may provide to East Kentucky and will be adjusted as necessary to reflect enhancement or acceleration of the project or other planned upgrades.

10. Recovery of Planning Costs

³⁹ *Id.* P 557-61.

⁴⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

59. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically addressing that issue after discussing the nine principles that govern the planning process. The Commission directed transmission providers to work with other participants in the planning process to develop cost recovery proposals in order to determine whether all relevant parties, including state agencies, can recover the costs of participating in the planning process. The Commission also suggested that transmission providers consider whether mechanisms for regional cost recovery may be appropriate, such as through agreements (formal or informal) to incur and allocate costs jointly.⁴¹

60. East Kentucky states that its planning-related costs will be recovered as part of the overall OATT cost of service when it develops an updated rate for transmission service. It does not currently propose to include a mechanism to allow parties to recover the costs of participating in East Kentucky's transmission planning process.

Commission Determination

61. East Kentucky's Attachment M adequately addresses the recovery of its planning-related costs.

VI. Filing Fee

62. We will grant East Kentucky's request for waiver of the filing fee. As we stated in Order No. 888-A, "[the Commission's] regulations specifically exempt states, municipalities, and anyone who is engaged in the official business of the Federal Government from filing fees. Because of the nature of the safe harbor and waiver provisions, we will also waive the filing fee for declaratory orders for all other non-public utilities in those circumstances."⁴²

The Commission orders:

(A) East Kentucky's petition for declaratory order is hereby conditionally granted for the reasons stated in this order.

(B) East Kentucky's request for waiver of the filing fee is hereby granted.

By the Commission.

(S E A L)

⁴¹ *Id.* P 586.

⁴² Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89.

Kimberly D. Bose,
Secretary.