

Jennifer L. Key
202.429.6746
jkey@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

December 17, 2008

Via Electronic Delivery

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: **Duke Energy Carolinas, LLC, Docket No. OA08-50-003**
Progress Energy Carolinas, Inc., Docket No. OA08-51-003

Dear Secretary Bose:

In compliance with the Commission's Order No. 890¹ and *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267 (2008) (*September 18 Order*), Duke Energy Carolinas, LLC ("Duke") and Progress Energy Carolinas, Inc., also known as Carolina Power and Light Company ("Progress"), collectively, the "Filing Parties," tender for filing their joint compliance filing regarding their Attachment Ks.² The Filing Parties' revised OATTs will be posted on their websites.

- Attachment A, a clean copy of the Duke tariff sheets effective December 7, 2007-March 16, 2008;³

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs., Regs. Preambles ¶ 31,241 (2007), *reh'g*, Order No. 890-A, FERC Stats. & Regs., Regs. Preambles ¶ 31,261, *reh'g* Order No. 890-B, 123 FERC ¶ 61,299 (2008), *reh'g pending*.

² For Duke, "Attachment K" is Attachment N to its OATT. To prevent confusion, the Filing Parties refer to the attachment as Attachment K.

³ As to each company, there is one Tariff Sheet from the December 7, 2007 filing of each Attachment K that is not being replaced and thus does not appear in the clean or redline sets of Tariff Sheets (Sheet No. 259I (Progress) and Sheet No. 497K (Duke)).

- Attachment B, a clean copy of the Duke tariff sheets effective March 17, 2008;⁴
- Attachment C, a redline of the changes to the Duke tariff sheets⁵;
- Attachment D a clean copy of the Progress tariff sheets;
- Attachment E, a redline of the Progress tariff sheets.

I. NCTPC PROCESS

In Section I of this letter, the Filing Parties address the various compliance requirements imposed by the Commission with regard to their regional planning process - the North Carolina Transmission Planning Collaborative Process (“NCTPC Process”). Changes to the Southeast Inter-Regional Participation Process (“SIRPP”), which is the inter-regional economic coordination process in which they participate, are discussed in Section II.

A. Coordination

The Commission directed the Filing Parties to “provide an opportunity for input of stakeholders in the development of the base case and alternative case models used in the transmission planning process.”⁶

The Filing Parties provided an opportunity in Section 5.1.2 for stakeholder input into the development of the base case and alternative case models by allowing stakeholders (i.e., Transmission Advisory Group (“TAG”) participants) to review the study assumptions. The one element of the base case and change case model development which did not include TAG participation was with regard to reviewing the base case and change models to determine whether the models represent the study assumptions approved by the Oversight/Steering Committee (“OSC”). The Filing Parties are thus amending Sections 5.1.4 and 5.1.5 to permit TAG participants, just like the

⁴ Duke revised its entire OATT in March, 2008 (from Fifth Revised to Sixth Revised). The effective date of the proposed changes – December 7, 2007, however, pre-dates this tariff revision and thus Duke understands that it is required to submit two sets of tariff sheets.

⁵ Duke’s redline is against the first set of tariff sheets being replaced, i.e., those issued on December 7, 2007. The second set of clean sheets merely changes the headers and footers and thus a redline would be of no value to persons reviewing this filing.

⁶ *September 18 Order* at P 18.

Planning Working Group (“PWG”), to review whether the models represent the study assumptions approved by the OSC and to provide their input on this subject.

B. Openness

1. Participation

The Commission found that the Filing Parties’ two-tiered (voting and non-voting) TAG membership that allowed only valid stakeholders to vote was unreasonable because “by limiting voting rights only to certain specified groups, Duke and Progress appear to exclude other classes of stakeholders, such as developers of alternative resources, from participation in voting and review of planning-related information.”⁷

The filed proposal allowed developers of alternative resources to both vote and review planning-related information. Alternative resource providers were specifically included in the definition of valid stakeholder, as they would be qualified as either generation developers or entities capable of providing Ancillary Services. Nonetheless, the Filing Parties are eliminating the concept of TAG Voting Members. Given that the Filing Parties were not permitted to limit voting to those entities that demonstrated some valid stakeholder interest in the transmission planning process, the NCTPC decided that on compliance, the replacement voting arrangement should be open to all parties but should be more structured. The NCTPC agreed that the Filing Parties should comply with the requirement to not limit voting to stakeholders by adopting sector voting instead.⁸ The class of persons previously excluded from voting, i.e., those who did not qualify as valid stakeholders, can now vote in the “General Public” sector. (Developers of alternative resources potentially fall within multiple sectors.) Because the entire existing voting structure had to be replaced, all of these changes constitute a compliance change.

The goal is that all decisions of the NCTPC TAG participants will be made by consensus. If consensus is unachievable, the TAG Sector Voting Process will be used to reach a decision. There will be eight TAG Sectors: Cooperative Load-Serving Entities (serving load in the NCTPC footprint); Municipal Load-Serving Entities (serving load in the NCTPC footprint); Investor-Owned Load Serving Entities (serving load in the NCTPC footprint); Transmission Providers/Transmission Owners that are not LSEs in the NCTPC footprint; Transmission Customers (a customer taking Transmission Service from at least one Transmission Provider in the NCTPC footprint); Generator

⁷ *Id.* at P 22.

⁸ The alternative, allowing the general public to vote under the prior (majority-wins) structure, could result in anomalies.

Interconnection Customers (a customer taking FERC- or state-jurisdictional generator interconnection service from at least one of the Transmission Providers in the NCTPC footprint)); Eligible Customers and Ancillary Service Providers (which category includes, among others, developers, ancillary service providers (including demand response resources), and power marketers not currently taking transmission service); and General Public.

Persons not affiliated with any TAG Sector Entity can register as an unaffiliated “Individual” and vote in the General Public sector. In the other sectors, only organized entities (TAG Sector Entities) will have authority to vote. TAG Sector Entities will be entities such as corporations, partnerships, associations, government agencies, etc. An entity cannot subdivide itself into subgroups in order to increase its number of TAG Sector Entities (and potentially increase the number of TAG Sectors of which it is a member), but as long as an entity has a separate existence, it may be a TAG Sector Entity. For example, Southern Company Services, Inc. could be a TAG Sector Entity, and so could each of the five Southern operating companies, which are legally separate corporations. But, Alabama Power Company (“APC”), cannot subdivide itself and claim that the “APC Distribution Group” is a TAG Sector Entity as is the “APC Generation Group.” Likewise, NCMPA #1 can be a TAG Sector Entity and so can each municipal utility that comprises NCMPA #1. But, Lexington, North Carolina, a municipal member of NCMPA #1, cannot further claim that the Lexington Police Department, the Lexington Board of Education, and the Lexington Fire Department are each separate TAG Sector Entities. The ITP will monitor registrations to ensure that the “no gaming” intent of the provision is carried out.

TAG Sector Entities can only join one TAG Sector. A TAG participant must be present in person or on the phone to vote. Only one TAG participant can vote on behalf of a particular TAG Sector Entity for any particular vote.⁹ An individual TAG participant may vote on behalf of more than one TAG Sector Entity, if he or she is authorized to do so.¹⁰ There is no voting by proxy.

At a meeting at which a vote is to be taken, the ITP will determine how many TAG Sectors are represented. Each TAG Sector present shall be entitled to cast one (divisible) vote worth 1.00. The process immediately below describes how the “1.00 vote” of each TAG Sector will be divided.

⁹ If a TAG Sector Entity chooses, it may inform the Independent Third Party (“ITP”) which of its employees, agents, or members is authorized to vote on its behalf.

¹⁰ A TAG participant may be an agent, member, or an employee of several TAG Sector Entities.

Each TAG Sector Entity and each Individual shall be entitled to cast one non-divisible vote in its respective TAG Sector. The votes of each TAG Sector Entity or Individual are then weighted by multiplying them by one divided by the number of TAG Sector Entities (or Individuals and TAG Sector Entities in the case of the General Public Sector) voting in that TAG Sector. These divisible votes of each TAG Sector are then multiplied by one divided by the number of TAG Sectors present. An example follows:

Sector	No. of Voters	Yes Votes	No Votes	Sector Yes Vote	Sector No Vote	Weighted Sector Yes	Weighted Sector No Vote
Coop LSE	6	6	0	1.00	0	.20	0
Muni LSE	8	2	6	.25	.75	.05	.15
IOU LSE	2	1	1	.50	.50	.10	.10
TP/TO	0	0	0	0	0	0	0
TCs	1	0	1	0	1.00	0	.20
GICs	0	0	0	0	0	0	0
ECs	0	0	0	0	0	0	0
GP	10	6	4	.60	.40	.12	.08
Total Vote						0.47	0.53

In the example, five TAG Sectors are present at the meeting, each with a varying number of TAG Sector Entities or Individuals present (from one to ten as shown in the “No. of Voters” column). Each TAG Sector vote is divisible. For example, the Muni LSE sector has cast its divisible vote .75 No and .25 Yes. That is, the “Sector Yes Vote” for the Muni LSEs is .25 and the “Sector No Vote” is .75. Then these votes are weighted once more; the five TAG Sectors are accounted for by multiplying each Sector Yes Vote and Sector No Vote by 20%. These weighted votes are totaled to obtain the “Weighted Sectors Yes Votes” and “Weighted Sectors No Votes,” here .47 and .53, with the larger total being the “winning” position. The TAG Sector Voting process is described in Section 2.4.4 of Attachment K.

2. Access to Confidential Information

The Commission found that the Filing Parties unreasonably limited access to confidential information and CEII only to those that have obtained authorization from the Commission to access CEII contained in Form 715 reports.¹¹ They were required to

¹¹ *Id.* at P 23.

modify their Attachment Ks to remove the requirement that stakeholders obtain authorization from the Commission to access CEII contained in Form 715 reports before they are permitted access to confidential information and CEII related to the planning process.¹²

The Filing Parties have requested clarification as to the issue of whether persons seeking CEII not contained in Form 715 can nonetheless be required to obtain Form 715.¹³ The requirement to obtain Form 715 before being provided access to “other CEII” is quite rational. As explained in the clarification request, the Commission permitted such a requirement to be imposed with regard to both SIRPP and Southern Company stakeholders seeking CEII that is not contained in Form 715. Given that a person with any true interest in the transmission planning process would need *both* the Form 715 CEII and non-Form 715 CEII to obtain a complete picture of the planning process, the fact that a person is unwilling to turn to FERC to obtain the Form 715, but nonetheless seeks “other CEII,” would raise serious concerns as to whether such a person should be provided any CEII. It would appear that such a person that only seeks non-Form 715 CEII both lacks the requisite interest in the planning process to merit the receipt of such information and raises suspicions as to his or her motives by refusing to go through the Commission’s CEII process. Moreover, the Form 715 process allows the Filing Parties to preserve resources, as they do not have to check the background of persons that have been through the FERC process for obtaining CEII.

Thus, the modification that has been made in this filing only eliminates the Form 715 requirement as to non-CEII Confidential Information. Section 9.4.3 has been amended accordingly. Certainly, if the Commission does not grant the requested clarification, the Filing Parties will further revise Attachment K.

C. Transparency

The Commission objected to the Filing Parties proposal to restrict access to data and information necessary to replicate planning studies only to TAG Voting Members. It directed them to allow all stakeholders to obtain access to planning-related information necessary to replicate the results of transmission studies.¹⁴ As noted *supra*, given the elimination of the concept of TAG Voting Members, such restriction is being

¹² *Id.*

¹³ Request for Clarification of Duke Energy Carolinas, LLC and Progress Energy Carolinas, Inc., Dkt. No. OA08-50, *et al.* (Oct. 21, 2008).

¹⁴ *September 18 Order* at P 27.

eliminated. All TAG participants will be permitted access to Confidential Information as reflected in revised Section 9.¹⁵

D. Comparability

Since Order No. 890-A was issued subsequent to the filing, the Commission found that the Filing Parties did not have an opportunity to demonstrate that they comply with the requirement of Order No. 890-A that they will treat resources on a comparable basis by identifying how they will determine comparability for purposes of transmission planning.¹⁶ FERC directed the Filing Parties to provide the necessary demonstration. The Filing Parties include such a demonstration in the amended Section 4 of their Attachment Ks.

The Filing Parties first ensure that demand response resources are treated on a comparable basis by requiring Transmission Customers and Eligible Customers to accurately reflect demand response resources in the information they submit through the NCTPC Process. This approach ensures that demand-response programs of customers are included in the planning process in a comparable manner as the demand-response programs of the Transmission Providers. Second, to the extent a TAG participant has a demand response resource or a generation resource that the TAG participant desires the NCTPC to specifically consider as an alternative to transmission expansion, or otherwise in conjunction with the NCTPC Process, such TAG participant can provide the necessary information (cost, performance, lead time to install, etc.). This information will allow the NCTPC Participants to consider such demand response resource or generation resource alternatives on a comparable basis.¹⁷

The Commission suggests that tariff language should provide for participation throughout the transmission planning process by sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources. Nothing in the Attachment Ks prohibits participation by any such entities. And, Sections 4.1 and 4.2.2 have been amended to reflect the fact that participation is permitted.

¹⁵ TAG participants and NCTPC Participants may prohibit the release of Confidential Information, but this fact does not prevent TAG participants from replicating the results of transmission studies.

¹⁶ *Id.* at P 36.

¹⁷ This approach does not mean, however, that the Filing Parties will interfere with the load and resource decisions of their Transmission Customers. That is, if a transmission upgrade is required for a new Network Resource, but could be avoided if the Network Customer instead adopted a proposed demand response resource, the final plan would reflect the Network Customer's preference as to how best to meet its needs.

E. Dispute Resolution

With regard to Dispute Resolution, the Commission found that the Filing Parties did not identify dispute resolution procedures to be used “by other parties involved in planning-related activities, such as stakeholders and other entities with which Duke and Progress interact in the transmission planning process.”¹⁸ The Commission ordered the Filing Parties to provide dispute resolution procedures for all parties involved in all NCTPC and non-NCTPC transmission planning activities.¹⁹ The Commission also suggested that the Filing Parties add a mediation option for dispute resolution.²⁰

Given the elimination of the TAG Voting Member concept, for all NCTPC transmission planning activities, a TAG participant has the right to seek assistance from the NCUC Public Staff to mediate an issue and render a non-binding opinion on any disputed decision concerning the NCTPC planning activities. If this NCUC Public Staff facilitation approach does not result in a resolution, a TAG participant may seek review from a judicial or regulatory body that has jurisdiction over the disputed issue. For disputes that arise under the Tariff, the Filing Parties have opened up the Tariff’s dispute resolution process to all TAG participants, not just actual Transmission Customers. They also have added a voluntary mediation step, which is permitted in a compliance filing.²¹ Section 6 of Attachment K reflects these changes.

As to “non-NCTPC transmission planning activities,” as discussed below, all activities outside the NCTPC Process are coordination, not planning activities. Nonetheless, a dispute resolution provision has been added to the SIRPP stakeholder process as discussed in Section II *infra*.

F. Regional Participation

The Commission indicated in its order that the Filing Parties have not provided sufficient detail to allow customers and other interested stakeholders to understand how the NCTPC planning activities will be integrated into regional processes.²² According to the Commission, the Filing Parties “do not identify the timelines and milestones for the coordination of models and planning information with SERC and its subgroups or the process by which stakeholders can be involved. It is also

¹⁸ *September 18 Order* at P 39.

¹⁹ *Id.*

²⁰ *Id.* n.28

²¹ *See Xcel Energy Services Inc.*, 125 FERC ¶ 61,284 (2008).

²² *September 18 Order* at P 59.

unclear how each of the regional and inter-regional processes will interact with each other when coordinated with the NCTPC planning activities.”²³ The Commission asked the Filing Parties to revise their transmission planning process to detail “their process for coordinating with interconnected systems to share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and identify system enhancements that could relieve congestion or integrate new resources.”²⁴

As an initial matter, the NCTPC planning activities will not be integrated into any other “regional planning process” because the NCTPC is the one, and the only, regional planning process in which the Filing Parties are participating. The Filing Parties have not proposed to participate in any planning process for a region that is larger than the NCTPC footprint. That said, the Filing Parties certainly do intend to coordinate with neighbors outside the NCTPC footprint. With that clarification, the Filing Parties explain below how they meet the requirements of Order No. 890 with regard to both their regional planning and inter-regional coordination activities.

The Filing Parties are required on a region-wide (and thus on a *NCTPC-wide*) basis 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.²⁵ Attachment K fully meets this requirement for regional transmission planning by creating a process whereby only one transmission plan is developed for the entire NCTPC region and only one set of assumptions and data are used.²⁶ That process identifies system enhancements that could relieve congestion and integrated new resources through its reliability and economic processes.²⁷

In Order No. 890-A, the Commission refused to expand this Regional Participation principle to expressly require regions to adopt inter-regional planning processes.²⁸ Instead, the Commission emphasized that effective regional planning should include “coordination among regions.”²⁹ The Commission found that “the identification of relevant regions and sub-regions will depend on the integrated nature of the power grid

²³ *Id.*

²⁴ *Id.*

²⁵ Order No. 890 at P 523.

²⁶ Attachment K, § 5.

²⁷ Attachment K, §§ 4-5.

²⁸ Order No. 890-A at P 224.

²⁹ *Id.* at P 226.

and the particular reliability or resource issues affecting individual regions and sub-regions” and that “[e]ach of these regions and sub-regions should coordinate as necessary to share data, information and assumptions to maintain reliability and allow customers to consider resource options that span the regions.”³⁰ Any activities that include a footprint broader than the NCTPC thus are coordination activities.³¹ The Filing Parties readily meet the stated inter-regional requirement to “coordinate as necessary to share data, information and assumptions to maintain reliability and allow customers to consider resource options that span the regions.” In order to demonstrate this is the case, Attachment K has been clarified to more clearly differentiate planning activities from coordination activities, which activities are not planning processes. Rather, these are activities that ensure that the coordination requirements set forth in Paragraph 226 of Order No. 890-A are met. Such activities themselves are not subject to the nine planning principles of Order No. 890. The two key sets of coordination activities in which the Filing Parties participate are those conducted by SERC, which focuses on reliability and those conducted by the SIRPP, which focuses on economics.

1. SERC Coordination Activities

Section 10.1 now explains in some detail how inter-regional coordination activities are integrated with the regional planning process. The Commission also asked for timelines and milestones for the coordination of models and planning information with SERC and its subgroups or the process by which stakeholders can be involved. Appendix 2 has been added to provide a timeline showing the interaction of the processes.

More specifically, Section 10.1.1 has been amended to reflect that input from the NCTPC Process model development is used by the Filing Parties to develop and submit their transmission models to the annual SERC model development process. Section 10.1.2 describes how SERC-registered Transmission Planners, such as the Filing Parties, determine if any transmission system in another region is potentially impacted by a projected transmission project and are then contacted to determine if there is a need for an inter-regional *ad hoc* coordinated study. The SERC-Wide Reliability Assessment, which determines if the different regional reliability transmission expansion plans are simultaneously feasible and otherwise ensures that the SERC-registered Transmission

³⁰ Order No. 890-A at P 226.

³¹ The Commission has indicated that the requirements to share system plans to ensure that they are simultaneously feasible and identify system enhancements that could relieve congestion or integrate new resources apply only to a particular region. In contrast, the inter-regional coordination requirement applies to multiple regions. *See, e.g., ISO New England Inc.*, 123 FERC ¶ 61,161 at PP 67-68 (2008).

Planners are using consistent models and data is described in Section 10.1.3. Section 10.1.4 describes other coordination activities, including the SERC transmission model development and other inter-regional studies. Section 10.1.5 explains how stakeholders may participate in and contribute to the planning and coordination activities.

As described in Section 10.1, each Transmission Planner in SERC, incorporating input from their regional planning process (including stakeholder input), develops and submits their transmission models to a model development databank. Additionally, the SERC-wide models are then used in each open, regional planning process as an update to the current transmission models and as a foundation for the development of next year's transmission models. Should the SERC-wide assessment identify projected planning criteria concerns that were not addressed in the regional reliability plans, then any such additional issues (and the corresponding solutions) are addressed at the regional level, with the regional stakeholders providing input in these regional forums. Planning criteria concerns identified at the SERC-wide level are "pushed down" to the regional process level (i.e., NCTPC-level for the Filing Parties) for detailed resolution. These are some of the numerous ways in which the SERC coordination process and the NCTPC interact. The Filing Parties also have committed to share the results of any coordination activities with the TAG participants. TAG participants will be notified in advance if a TAG meeting will discuss results of coordination activities and provide an opportunity to discuss such results with the NCTPC Participants. Section 10.1.5 of Attachment K reflects this commitment.

2. SIRPP Coordination Activities

Through the SIRPP, a large number of transmission owners in the southeast engage in a process designed to identify system enhancements that could relieve congestion or integrate new resources. This result is accomplished by all parties being able to propose and study various economic projects that can relieve congestion or integrate new resources. Appendix 1 sets forth how any stakeholder may participate in the SIRPP. The Commission seeks information regarding how the SIRPP interacts with the NCTPC. The SIRPP is a means for conducting Economic Planning Studies across multiple interconnected systems. How or whether those study results impact the NCTPC Process is up to the TAG participants and whether they seek to move forward with an economic project that has been studied. For example, if a SIRPP study reveals to a TAG participant that a Regional Economic Transmission Path ("RETP") might be appropriate, the TAG participant could seek to initiate an RETP. If a SIRPP study spurs an Eligible Customer to request transmission service in order to ensure an economic project is built, such request would be accounted for in the NCTPC planning cycle. If an Economic Planning Study performed by SIRPP causes a TAG participant concern as to the viability of a particular set of assumptions used by the NCTPC, it could comment to the NCTPC Participants on that concern. It thus remains up to each TAG participant to determine

how, in practice, the SIRPP “interacts” with the NCTPC Process; the Filing Parties do not dictate such interaction.

G. Economic Planning Studies

With regard to economic planning studies, the Commission found it unreasonable to limit full participation in the Enhanced Transmission Access Planning (“ETAP”) Process to TAG Voting Members.³² This flaw has been corrected.

The Filing Parties also were directed to revise their Attachment Ks to provide for stakeholder input (e.g., through the TAG) in the determination as whether to combine and/or cluster proposed scenarios. The Filing Parties have provided this option in Section 4.2.3.

H. Cost Allocation

The Commission found that the Filing Parties needed to submit a cost allocation methodology for non-RETP economic projects that involve the transmission systems of multiple NCTPC Participants.³³ The Filing Parties’ OATTs do not distinguish between economic and reliability projects, thus it is unclear what the Commission means by an economic project that involves the transmission systems of multiple NCTPC Participants. By clarifying the OATT and Attachment K, however, the Filing Parties believe that they can readily explain how projects that are not RETPs that involve the transmission systems of multiple NCTPC Participants would be constructed and have their costs allocated. As explained below, it is the mechanism through which a customer selects to pursue a multi-system project, and not any label, which determines cost allocation.

There is only one process by which any transmission project that adds capacity to the grid is constructed – a customer makes a binding commitment after the Facilities Study process is complete. The form of such commitment depends on whether the customer is a Network Customer or a Point-to-Point Customer. The requirement that a commitment be made is necessary whether the project being committed to is labeled economic or reliability and whether it is the result of the RETP process or the traditional OATT process. Once the commitment is made, however, the resulting project is needed for reliability because the obligation to provide the requested service on a reliable basis cannot be fulfilled absent the construction. Absent a project’s costs being allocated under Attachment K’s RETP or Regional Reliability Project cost allocation policies, a project,

³² *September 18 Order* at P 76.

³³ *Id.* at P 91.

whether labeled reliability or economic, would have its costs allocated pursuant to the OATT's "higher-of" pricing principle.

The RETP is a vehicle for proponents of projects to have them *initially* studied and subscribed to outside of the OATT's traditional transmission queuing and commitment process, with cost allocation *pre-determined* to be under the requestor-pays approach set forth in Attachment K. But, nothing prevents a customer from using the "traditional" OATT process to request that a project be constructed (i.e., by submitting a transmission service request), whether that project is an economic or reliability project is in the eye of the proponent.

In sum, the costs of any non-RETP project or any non-Regional Reliability Project that involves the transmission systems of multiple NCTPC Participants, whether an economic or a reliability project, would be allocated pursuant to the OATT of each Transmission Provider. The proponent would submit a transmission service request (including, if relevant, a Network Resource application) under the OATT of each Transmission Provider.

In order to better clarify the Filing Parties' intent, Section 7.1 has been revised to simply indicate that, with the exception of Regional Reliability Projects and RETPs, nothing in Attachment K is intended to alter the cost allocation policies of the Tariff. This approach reflects the Filing Parties' position that the economic and reliability labels are not particularly relevant in the construction and cost allocation context and are not concepts used in Parts II and III of the OATT. Then, the two allocation "exceptions", for Regional Reliability Projects and RETPs, are addressed in Sections 7.2 and 7.3. Finally, the Filing Parties would note that dictating cost allocation for a merchant transmission project is not the role of the Transmission Provider, and thus is not addressed in Attachment K.³⁴

I. Miscellaneous Change

Section 11.1 has been altered to reflect the fact that the North Carolina Utilities Commission requires the Filing Parties to issue a report describing all generating facilities and known transmission facilities with operating voltage of 161 kV or more which, in the judgment of the utility, will be required to supply system demands during a *15-year* forecast period. The prior forecast period was 10 years. This change is a ministerial change that should be permitted to be included in a compliance filing. The

³⁴ The Filing Parties are not taking a legal position herein as to whether merchant transmission providers are authorized to construct transmission projects in the States of North Carolina and South Carolina.

provision merely describes a state-imposed requirement, it does not seek to establish a new policy or requirement. Thus, the Filing Parties should be allowed to correct the provision without having to make a Section 205 filing. To the extent necessary, the Filing Parties seek waiver to allow this change to be made in this compliance filing,

II. SIRPP PROCESS

A. Stakeholder Definition

The Commission raises the concern that the definition of stakeholder in the SIRPP process may unduly restrict the ability of all interested parties to participate in the inter-regional economic planning process.³⁵ The Commission's discussion at Paragraph 79 provides no identification of any interested party that has been excluded.³⁶ Nonetheless, the SIRPP transmission owners have agreed to eliminate the requirement that SIRPP Stakeholder Group ("SIRPPSG") membership be limited to valid stakeholders and instead have made it open to interested parties, as set forth in the "Membership" section of Appendix 1 to Attachment K.

B. Access to Confidential Information

Under Appendix 1, SIRPP stakeholders may not obtain data supporting an SIRPP study unless they first request and obtain from the Commission the FERC Form 715, including CEII, for the relevant SIRPP participants. The Commission required the Filing Parties to revise their Attachment Ks, to remove the requirement that stakeholders seeking non-CEII confidential information from SIRPP participants first request and obtain from the Commission the Form 715.³⁷ This requirement has been removed for non-CEII confidential information, although the SIRPP transmission owners do not expect that much, if any, non-CEII confidential information will be used in implementing the SIRPP.

Appendix 1 has also been amended to clarify that resource specific data will not be made available if the data has been designated confidential by the data provider or if the data can be used to: (a) Determine security constrained unit commitment or economic dispatch of resources; or (b) Perform an economic evaluation

³⁵ *September 18 Order* at P 79.

³⁶ Southern Company has sought rehearing of the need to expand the list of entities who may become SIRPP stakeholders.

³⁷ *September 18 Order* at P 80.

of costs and benefits. This limitation was accepted by the Commission in *Southwest Power Pool, Inc.*³⁸

C. Dispute Resolution

Although the SIRPP is not independently subject to the nine planning principles stated in Order No. 890, the Filing Parties were ordered to establish a mechanism for resolving disputes that arise in planning activities performed by the SIRPP.³⁹ It was unclear to the Commission whether Section 6 of Attachment K was sufficient because that section did not address how disputes involving a Duke and Progress stakeholder and other SIRPP stakeholders would be addressed and resolved under Duke and Progress' dispute resolution provisions if neither Duke nor Progress were a party to the dispute.⁴⁰ A dispute resolution provision has been added to Appendix 1 of Attachment K, which addresses this issue. Disputes between a Duke/Progress stakeholder and a SIRPP transmission owner other than Duke or Progress would be resolved pursuant to the dispute resolution provisions of that transmission owner's regional planning process. Disputes among stakeholders may be resolved by the stakeholders using the Commission's dispute resolution services. Such disputing parties are free to use other means for resolving such disputes as well, as the Filing Parties have no authority to dictate otherwise.

D. Cost Allocation

The Commission notes that the Filing Parties fail to identify the cost allocation methodology that will be used for economic upgrades identified through a SIRPP study but rather merely state that cost allocation for economic projects identified in a SIRPP study will be determined by each region in which the construction of such upgrades, in whole or in part, would occur. The Commission required that the allocation of costs for upgrades identified through the SIRPP economic planning process be addressed.⁴¹ Appendix 1 has been clarified to reflect the intent of this approach to cost allocation and describe how it might work in more detail. Appendix 1 does not list each cost allocation methodology for each regional planning process, however, if it did, then each SIRPP Transmission Provider would have to update its Attachment K each time another SIRPP Transmission Provider altered its cost allocation approach. Instead, Appendix 1 provides that the cost allocation principles for each SIRPP member's

³⁸ 124 FERC ¶ 61,028 (2008) (*see* SPP OATT, Attachment O, Section X.7(d)).

³⁹ *September 18 Order* at P 82.

⁴⁰ *Id.*

⁴¹ *Id.* at P 92.

regional planning process will be posted on the SIRPP website. Also, the Filing Parties have added a Section 7.4 to their Attachment Ks that clarifies that for the portion of an Inter-Regional Economic Upgrade project that is located in the NCTPC footprint, the cost allocation principles set forth in Section 7 would apply.

E. Other Changes

In addition to correcting some ministerial errors, which is permitted in compliance filings,⁴² Appendix 1 has been amended to reflect several other changes as well. Information to be discussed at SIRPP meetings will be made available in final draft form for stakeholder review prior to any such meeting by posting it on the SIRPP website and/or e-mails to SIRPPSG members. The SIRPP will use reasonable efforts to make such information available at least ten calendar days prior to a particular meeting. Also, the SIRPPSG may consider clustering similar Economic Planning Study requests. If two or more of the Economic Planning Study requests are similar in nature and the participating transmission owners conclude that clustering of such requests and studies is appropriate, the participating transmission owners also may, following communications with the SIRPPSG, cluster those studies for purposes of the transmission evaluation.

III. CONCLUSION

Wherefore, the Filing Parties request that the Commission accept these revisions to their respective OATTs as fulfilling their compliance obligations.

Respectfully submitted on behalf of the Filing Parties,

/Jennifer L. Key/

Jennifer L. Key
Attorney for Duke Energy Carolinas, LLC

Attachments

⁴² *Xcel Energy Services Inc.*, 125 FERC ¶ 61,284.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 17th day of December, 2008.

/Jennifer L. Key/

Jennifer L. Key

STEPTOE & JOHNSON LLP

1330 Connecticut Ave., N.W.

Washington, D.C. 20036

(202) 429-3000