

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection)))))	Docket No. RM21-17
--	-----------------------	---------------------------

**SOUTHEASTERN REGIONAL TRANSMISSION PLANNING
PROCESS SPONSORS’ REPLY COMMENTS**

The Sponsors of the Southeastern Regional Transmission Planning Process (“SERTP”)¹ hereby submit these Reply Comments in accordance with the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) notice denying extension of time issued on September 2, 2022² and the notice of proposed rulemaking issued in this proceeding on April 21, 2022.³ As explained in the SERTP Sponsors’ Initial NOPR Comments filed in this docket on August 17, 2022,⁴ the NOPR’s goal of addressing the changing resource mix in transmission planning is achievable if the Commission allows sufficient flexibility to enable the regions to tailor their revised processes in a manner that successfully navigates the Federal Power Act’s (“FPA”)

¹ The “SERTP Sponsors” are: Associated Electric Cooperative, Inc. (“AECI”); Dalton Utilities (“Dalton”); Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (“Duke Energy”); Georgia Transmission Corporation (An Electric Membership Corporation) (“GTC”); Louisville Gas and Electric Company and Kentucky Utilities Company (“LG&E/KU”); the Municipal Electric Authority of Georgia (“MEAG”); PowerSouth Energy Cooperative (“PowerSouth”); Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company (“Georgia Power”), and Mississippi Power Company (collectively “Southern Companies”); and the Tennessee Valley Authority (“TVA”). Gulf Power Company is also a sponsor of the SERTP. Gulf Power Company has recently merged with Florida Power & Light Company and is participating in NextEra’s comments in this proceeding.

² Notice Denying Extension of Time, Docket No. RM21-17-000 (Sept. 2, 2022).

³ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,028 (2022) (“NOPR”).

⁴ Southeastern Regional Transmission Planning Process Sponsors’ Initial Comments, Docket No. RM21-17-000 (Aug. 17, 2022) (“SERTP Sponsors’ Initial NOPR Comments”).

division of jurisdictional responsibilities between FERC and the states,⁵ incorporates requisite state support, and otherwise reflects each region’s respective structures, resources, and other unique characteristics. The Commission should not substantially deviate from its precedent approving various Order No. 1000 compliance filings as well as the Commission’s recent determinations that state choices, when it comes to generation resource mix to meet future and changing resource needs, should be respected, even if those choices have an incidental impact on FERC-jurisdictional rates and charges.⁶

In these Reply Comments, the SERTP Sponsors do not attempt to respond to every initial comment with which they disagree.⁷ Instead, these Reply Comments primarily respond to comments that make specific criticisms of the SERTP. As discussed herein, such comments not only often raise matters that are well beyond the scope of these proceedings, but often concern matters that are clearly within state (not FERC) jurisdiction.

⁵ See 16 U.S.C. § 824 (2018) (among other things, limiting the scope of the FPA only to matters that “are not subject to regulation by the States” and providing that FERC does not have jurisdiction “over facilities used for [] generation”). See also, e.g., *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 76 (D.C. Cir. 2014) (affirming that “States retain control over the siting and approval of transmission facilities”).

⁶ See also *N.Y. Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,102, PP 21, 35-42 (2022) (it is just and reasonable for an FPA-jurisdictional tariff to reflect and accede to state policy concerning generation resource mix to further state goals concerning matters within state authority); *ISO New England Inc.*, 179 FERC ¶ 61,139, at P 53 (2022) (“[W]e find that market rules seeking to ‘hermetically seal[]’ ISO-NE’s markets from the indirect effects of state policies are not necessary to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.”). The Commission also has found that state law and policy that impacts the probability that new utility facilities will be built may be respected by the agency in jurisdictional tariffs and processes. See *N.Y. Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,101, at PP 16-18 (2022) (it is not unduly discriminatory to treat state-favored generation projects differently under a tariff than non-favored generation projects because state policy preferences are a legitimate basis to conclude that functionally similar facilities are not comparable for purposes of sections 205 and 206 of the FPA).

⁷ With regard to such comments, reference is made to the portions of the SERTP Sponsors’ initial NOPR comments and/or ANOPR comments. See Comments of the Sponsors of the Southeastern Regional Transmission Planning Process, Docket No. RM21-17-000 (Oct. 12, 2021) (“SERTP Sponsors’ Initial ANOPR Comments”) and Reply Comments of the Sponsors of the Southeastern Regional Transmission Planning Process, Docket No. RM21-17-000 (Nov. 30, 2021) (“SERTP Sponsors’ ANOPR Reply Comments”) (collectively, the “SERTP Sponsors’ ANOPR Comments”).

I. The SERTP is Not a Flawed Structure; Rather, it is Successfully Addressing the Changing Resource Mix

Contrary to the claims made by some commenters that the SERTP is flawed and cannot adapt to an energy transformation,⁸ the facts demonstrate that the SERTP Sponsors' Integrated Resource Planning ("IRP")- and resource procurement/request for proposal ("RFP")-driven transmission planning is fully capable of performing the transmission planning required to address the changing resource mix sought by the Commission. As demonstrated in the SERTP Sponsors' ANOPR Comments and SERTP Sponsors' Initial NOPR comments,⁹ the SERTP Sponsors' vertically integrated, IRP/RFP-driven transmission planning processes¹⁰ are exactly the type of proactive, holistic, and state-supported type of planning that is contemplated by the ANOPR and the NOPR.

The ANOPR and NOPR each expressed concerns that transmission planning: is overly siloed, separately considering reliability, economic, and public policy planning; fails to perform scenario planning; and is inappropriately structured to favor local transmission projects over more significant, regional transmission projects.¹¹ Further, the ANOPR and NOPR recognize the need

⁸ See Comments of the Southeast Public Interest Groups ("SPIG"), at pp. 3-8, Docket No. RM21-17-000 (Aug. 17, 2022) ("SPIG Comments"); Comments of Southern Renewable Energy Association ("SREA"), at pp. 1-2, Docket No. RM21-17-000 (Aug. 17, 2022) ("SREA Comments"); Comments of Advanced Energy Economy ("AEE"), at p. 6, Docket No. RM21-17-000 (Aug. 17, 2022) ("AEE Comments").

⁹ See SERTP Sponsors' Initial ANOPR Comments at pp. 3-14; SERTP Sponsors ANOPR Reply Comments at pp. 8-12; SERTP Sponsors' Initial NOPR Comments at pp. 7-14.

¹⁰ As discussed in the SERTP Sponsors' Initial NOPR Comments, while some of the non-jurisdictional SERTP Sponsors are not vertically integrated, they still typically engage in IRP-type planning in coordination with their load-serving entities. See SERTP Sponsors' Initial Comments at n.8 (discussing TVA's IRP-type planning that is required by 16 U.S.C. § 831m-1).

¹¹ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Advance Notice of Proposed Rulemaking, 176 FERC ¶ 61,024, at PP 30-37 (2021) ("ANOPR"); NOPR at PP 34-49

to incorporate state support for the resulting planning given the shared jurisdictional responsibilities between FERC and the states over the electric industry.¹²

The SERTP Sponsors' transmission planning processes address all of the foregoing concerns. The SERTP Sponsors, by the very nature of their vertical integration and IRP/RFP-driven transmission planning, perform transmission planning that is holistic, proactive, and multi-value. The SERTP Sponsors typically conduct IRP and RFP processes on a reliability and least-cost basis to assess future load-serving needs, considering all reasonably available supply-side and demand-side alternatives, and procure required transmission delivery service. These underlying IRP/RFP processes consider many factors, both cost and non-cost, over a long-term horizon to secure resources and ensure the associated delivery service. Factors considered include: reliability, transmission optimization, environmental attributes, economic growth, federal and state regulatory/public policy requirements, energy efficiency, resource deliverability, fuel delivery, ancillary services, and construction lead times. This IRP/RFP-driven transmission planning, combined with the "physical" transmission service that the SERTP Sponsors provide,¹³ means that the transmission system is planned and expanded such that the underlying, physical transmission capacity exists so that the results from these IRP/RFP processes and other long-term firm transmission commitments made under the SERTP Sponsors' Open Access Transmission Tariffs ("OATTs") can be delivered to their respective loads such that, under normal operating conditions,

¹² ANOPR at PP 176-77; NOPR at PP 244, 246, 299-301.

¹³ See SERTP Sponsors' Initial ANOPR Comments at pp. 9-10 (explaining how "physical" transmission service differs from the "financial" transmission offered in Day 2 RTO/ISO-administered markets in that the latter uses locational marginal pricing ("LMP") to price congestion and allows those willing to bear those LMP costs, or that have hedges against such costs, to secure the underlying transmission service, while physical transmission service providers expand their transmission systems such that those having long-term firm transmission service should, under normal operating conditions, be able to receive firm service without congestion costs or curtailment).

they should suffer neither congestion nor curtailment. As these IRP/RFP processes are state regulated,¹⁴ state siting and other support for the resulting transmission projects is largely assured.

The SERTP, thus, is demonstrably a successful structure that is already performing the resource and transmission planning necessary to address the changing resource mix. Indeed, the NOPR's long-term scenario transmission planning constitutes a form of IRP planning that already occurs in the SERTP region.¹⁵

Some of the initial comments directing criticisms toward the SERTP also assert that other structures—whether for planning or service delivery—would be more advantageous. These claims are unsupported by reliable evidence and are belied by the facts. For example, SPIG points to a study that concludes that some theoretical billions in cost savings would result if a Southeastern RTO were required.¹⁶ While much criticism could be made of such studies, suffice it to say that proven *facts* refute such studies and their projections. As demonstrated in the SERTP Sponsors' ANOPR Comments and the SERTP Sponsors' Initial NOPR Comments, the SERTP region has an expansive and robust collective transmission system, high integration of clean resources, high customer satisfaction and reliability, and low electric rates relative to other regions.¹⁷

SPIG also criticizes the SERTP for being “balkanized.”¹⁸ As an initial response, the individual SERTP Sponsors consist of several large transmission providers, several of whom are

¹⁴ In addition to state-regulated public utilities, the SERTP also includes numerous non-jurisdictional sponsors. While these non-jurisdictional SERTP Sponsors are not subject to state regulation, they have their own respective governing and regulatory authorities, and references to the SERTP Sponsors' state regulators herein should be considered to also include those non-jurisdictional SERTP Sponsors' respective governing authorities.

¹⁵ See SERTP Sponsors' Initial ANOPR Comments at p. 16 (explaining how the NOPR's proposal constitutes top-down, IRP planning).

¹⁶ SPIG Comments at pp. 6-7.

¹⁷ SERTP Sponsors' Initial ANOPR Comments at pp. 10-14; SERTP Sponsors' ANOPR Reply Comments at pp. 4-8; SERTP Sponsors' Initial NOPR Comments at pp. 8-14.

¹⁸ SPIG Comments at pp. 3, 7, 48.

independently as large as certain other transmission planning regions. Given this expansive scope, what might be considered a local transmission line in the SERTP would often be a regional transmission line in another transmission planning region. In addition, the underlying IRP/RFP processes that an SERTP Sponsor utilizes often consider alternatives outside of its respective footprint to address an identified system need; the SERTP Sponsors have a long history of coordinated system planning between themselves and neighboring utilities;¹⁹ and the SERTP itself requires the SERTP Sponsors to perform affirmative regional transmission planning to determine if there are more cost-effective or efficient regional transmission project alternatives than those otherwise included in the SERTP regional transmission plan.²⁰

Such claims that the SERTP is structurally flawed are, thus, unfounded, as well as being beyond the scope of this proceeding and raising significant, divisive jurisdictional issues.

II. Specific Attacks on the SERTP's Transmission Planning Processes are Unfounded

In addition to the above-referenced general attacks on the market structures in the SERTP footprint, several commenters attack specific aspects of the SERTP's transmission planning processes. Such criticisms are also without merit and beyond the scope of this proceeding, as the SERTP provides for open and transparent transmission planning in accordance with the requirements of Order Nos. 890 and 1000,²¹ and the SERTP (again) is more than sufficient to perform the transmission planning necessary to address the changing resource mix.

¹⁹ A recent example of such coordination is provided in the affidavit of Daryl C. McGee included in Southern Companies' Initial NOPR Comments ("McGee Aff"). As discussed therein, Southern Companies are working with Dominion Energy South Carolina, Inc. ("DESC") to address issues identified near their respective interfaces. The result has been that new 230 kV and 115 kV ties lines being constructed between Georgia Power and DESC. See Initial Comments of Southern Company Services, Inc., at McGee Aff. ¶ 13, Docket No. RM21-17-000 (Aug. 17, 2022).

²⁰ SERTP Sponsors' Initial ANOPR Comments at p. 22; SERTP Sponsors' Initial NOPR Comments at pp. 33-34.

²¹ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 (2007), *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009); *Transmission Planning and Cost Allocation by Transmission Owning and*

A. The SERTP Performs Affirmative, Regional Transmission Planning

AEE asserts that the SERTP (and certain Western and other Southeastern regional transmission planning processes) “do not identify and approve new regional transmission projects. Instead, they simply provide a forum for Transmission Providers to present individual projects that each transmission provider has identified for their own ten-year planning needs.”²² At least as to SERTP, AEE is wrong. The SERTP Sponsors annually perform affirmative, regional transmission analyses to determine if there are more cost-effective or efficient regional transmission solutions than the transmission projects otherwise included in the SERTP regional transmission plan.²³ The results of these affirmative regional transmission planning analyses are described in the Regional Transmission Planning Analyses that the SERTP Sponsors annually prepare and post on the SERTP regional transmission planning website.²⁴

Moreover, given the thoroughness of these underlying processes, it should come as little surprise that additional transmission projects are not identified and approved at the regional level.²⁵

Operating Public Utilities, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

²² AEE Comments at p. 6.

²³ See, e.g., Southern Companies OATT, Attachment K, § 11; LG&E OATT, Attachment K, § 21; Duke OATT, Attachment N-1 § 20.

²⁴ See e.g., SERTP, *2021 Regional Transmission Planning Analyses* (Nov. 17, 2021), available at: <http://www.southeasternrtp.com/docs/general/2021/2021-SERTP-Regional-Transmission-Planning-Analyses-Summary-Final.pdf> (describing the 2021 SERTP regional transmission planning analyses). SPIG also makes much ado about the South Hall-Oconee 500 kV transmission line, pointing to it as a demonstration of the supposed failure of the SERTP to give consideration of “a comprehensive benefits analysis.” SPIG Comments at p. 19. In light of a thorough analysis of the IRP/RFP-driven transmission needs, which reflect the resource/generation and other determinations made through the state-regulated processes, the Oconee line was in fact reviewed by SERTP to determine whether it could potentially be a more cost-effective or efficient alternative. As this proposed alternative would have addressed the exact same realm of system needs at ten times the cost, SERTP reasonably determined it could *not* be a more-cost-effective or efficient alternative. SPIG's bald and unsupported assertions to the contrary are, simply put, not credible and entitled to no weight.

²⁵ Some commenters argue that the absence of regional transmission solutions being chosen to supplant those otherwise identified through the SERTP Sponsors' transmission planning processes is evidence of some sort of problem. SPIG Comments at pp. 4, 11-12; Comments of Pine Gate Renewables, at p. 15, Docket No. RM21-17-000 (Aug. 17, 2022) (“Pine Gate Comments”). To the contrary, as explained in the SERTP Sponsors' Initial NOPR

The SERTP’s regional transmission planning is the culmination of many layers of underlying system planning efforts resulting in robust annual SERTP regional transmission plans. As already described, the SERTP regional transmission planning is the product of the SERTP Sponsors’ thorough, proactive, and holistic IRP/RFP-driven transmission planning processes.²⁶ Additional transmission planning is performed in accordance with joint planning arrangements that the SERTP Sponsors have with adjacent transmission systems, such as between Southern Companies and the transmission owners in the Florida Reliability Coordinating Council (“FRCC”),²⁷ as well as through other *ad hoc* transmission studies that are performed in conjunction with SERC-wide reliability assessments.²⁸

B. The SERTP Provides Significant Transparency and Openness

Some commenters argue that the SERTP does not provide sufficient transparency and lacks stakeholder participation.²⁹ To the contrary, the SERTP provides significant coordination, openness, and transparency in accordance with the requirements of Order Nos. 890 and 1000. As explained in the SERTP Sponsors’ respective attachments to their OATTs that implement the

Comments, the “local” transmission planning process utilized by the SERTP Sponsors is not limited solely to lower voltage facilities, but rather covers very broad service territories—which are often substantially larger than the service territories of transmission owners in the various RTO/ISO regions. Moreover, the *lack* of such regionally cost allocated solutions actually illustrates the *strength and vitality* of the SERTP Sponsors’ collective transmission planning, not a weakness, because it demonstrates that no one has been able to identify a superior project than those which result from the SERTP Sponsors’ IRP/RFP-driven processes. *See* SERTP Sponsors’ Initial NOPR Comments at pp. 32-34; *see also* McGee Aff. ¶¶ 7-9.

²⁶ *See supra* at pp. 3-5.

²⁷ *See e.g.*, Southern Companies’ OATT, Att. K. § 6.5 (“Coordination with the Transmission Owners in the FRCC”); *see also* McGee Aff. ¶ 13 (discussing a new 230 kV tie line and a new 115 kV tie line being constructed between Georgia Power and DESC as an example of the coordinated transmission planning performed with neighboring utilities).

²⁸ *See, e.g.* Southern Companies’ OATT, Att. K. § 6.6.2(b)(i)-(iii) (describing the SERC-Wide Assessments and *ad hoc* transmission planning studies). A chart providing a high-level overview of the preparation of the annual regional transmission plan, including the opportunities for stakeholder interaction, is included in the jurisdictional SERTP Sponsors’ respective OATTs and is attached hereto as Exhibit 1 for ease of reference. *See* Southern Companies OATT, Att. K-3; Duke OATT, Att. N-1, App’x 2; LG&E/KU OATT, Att. K, Ex. K-3.

²⁹ *See* SPIG Comments at pp. 47-48; Pine Gate Comments at pp. 5, 15-16.

Commission’s transmission planning requirements, the SERTP provides coordination, openness, and transparency through: in-person meetings (at least pre-pandemic) and web meetings (including those held post-pandemic), the posting of study results and presentations on the SERTP Regional Planning Website, and email notifications to registered stakeholders.³⁰ Links to the SERTP Regional Planning Website are found on the SERTP Sponsors’ respective OATT websites, and Critical Energy/Electric Infrastructure Information (“CEII”) is made available to registered stakeholders in accordance with the Commission’s requirements.³¹

Through these meetings and postings, the SERTP Sponsors provide ample transparency to their transmission customers and stakeholders, providing “the basic criteria, assumptions, and data that underlie [the SERTP Sponsors’] transmission expansion plan, as well as information regarding the status of upgrades identified in the transmission plan.”³² Through quarterly meetings, with each serving one or more specific purposes, stakeholders are provided extensive opportunities to participate in the regional planning process. At the “First RPSG Meeting and Interactive Training Session” held during the first quarter of each calendar year, the Regional Planning Stakeholder Group (“RPSG”) is formed.³³ The RPSG may select up to five stakeholder-requested Economic Planning Studies that they would like have studied by the SERTP Sponsors.³⁴ Also during this first meeting, the SERTP Sponsors provide an interactive training session for stakeholders

³⁰ See Southern Companies’ OATT, Att. K, §§ 1-3; Duke OATT, Att. N-1, §§ 13-15; LG&E/KU OATT, Att. K, §§ 11-13.

³¹ See Southern Companies’ OATT, Att. K, §§ 2.2, 2.3. As discussed further below, several commenters criticize the SERTP for its application of the Commission’s CEII requirements to obtain such information. See *infra* at p. 11. Suffice it say that the SERTP Sponsors take the Commission’s CEII requirements seriously, and the certification process for a stakeholder to receive access to such information is by no means a high hurdle.

³² Southern Companies’ OATT, Att. K, § 3.1; Duke OATT, Att. N-1, § 15.1; LG&E/KU OATT, Att. K, § 13.1.

³³ Southern Companies’ OATT, Att. K, § 1.2.1; Duke OATT, Att. N-1, § 13.2.1; LG&E/KU OATT, Att. K, § 11.2.1.

³⁴ *Id.*

regarding the SERTP Sponsors' transmission planning methodologies and criteria.³⁵ During the second quarter of each calendar year, the SERTP Sponsors host their Preliminary Expansion Plan Meeting with stakeholders. During this meeting, the SERTP Sponsors explain and discuss the development of their preliminary expansion plan, their coordination with the transmission providers in the FRCC, and any *ad hoc* coordination studies they might perform, as well as allowing stakeholders to provide any transmission planning enhancement/alternatives or other input they might have.³⁶ At the Second RPSG Meeting held during the third quarter, the SERTP Sponsors report to stakeholders regarding any such enhancements or alternatives and provide to stakeholders the then-current version of the transmission expansion plan.³⁷ And at the Annual Transmission Planning Summit and Assumptions Input Meeting held during the fourth quarter of each year, the ten-year transmission expansion plan intended to be implemented the following year is presented to stakeholders, and the SERTP Sponsors describe and explain to stakeholders the database assumptions for the ten-year transmission expansion plan that will be developed during the upcoming year, with stakeholders afforded the opportunity to provide input.³⁸ A chart that is included in the jurisdictional SERTP Sponsors' OATTs showing, among other things, the opportunities for stakeholder interaction in the preparation of the annual SERTP regional transmission plan is attached hereto as Exhibit 1 for ease of reference.³⁹

³⁵ Southern Companies' OATT, Att. K, § 3.5.1.1; Duke OATT, Att. N-1, § 13.2.1; LG&E/KU OATT, Att. K, § 13.5.1.

³⁶ Southern Companies' OATT, Att. K, §§ 1.2.2, 3.5.3.3; Duke OATT, Att. N-1, §§ 13.2.2, 15.5.3.3; LG&E/KU OATT, Att. K, §§ 11.2.2, 13.5.3.3.

³⁷ Southern Companies' OATT, Att. K, §§ 1.2.3, 3.5.3.5; Duke OATT, Att. N-1, §§ 13.2.3, 15.5.3.5; LG&E/KU OATT, Att. K, §§ 11.2.3, 13.5.3.5.

³⁸ Southern Companies' OATT, Att. K, §§ 3.5.3.1, 3.5.3.6; Duke OATT, Att. N-1, §§ 13.2.4.1, 13.2.4.2; LG&E/KU OATT, Att. K, §§ 13.5.3.1, 13.5.3.6.

³⁹ See Southern Companies OATT, Att. K-3; Duke OATT, Att. N-1, App'x 2; LG&E/KU OATT, Att. K, Ex. K-3.

Openness and transparency, thus, are afforded, meaning that any lack of stakeholder participation is a decision made by potential stakeholders—the opportunities are there should they decide to take advantage of them. Given this dynamic, it is highly questionable whether providing additional openness and transparency would result in any higher level of stakeholder participation. Again, the SERTP is a robust and effective transmission planning process.⁴⁰

C. The SERTP Sponsors Take their CEII Requirements Seriously

Several commenters argue that the measures that the SERTP Sponsors take to protect CEII in accordance with their Order No. 890 obligations inhibit stakeholder participation.⁴¹ As a legal matter, these attacks on the SERTP Sponsors' reasonable implementation of these requirements constitute a collateral attack on Order No. 890 and should be rejected.⁴² As a practical matter, it is more than appropriate for the SERTP to do their due diligence before allowing access to sensitive data. Requiring a \$180 application fee and a \$100 fee to perform a background check⁴³ in an effort to protect against requestors that might have a malicious intent and/or who have a criminal record is a reasonable precaution that the Commission should encourage (if not mandate) before granting someone access to CEII. Moreover, as these very same commenters seem to advocate for the development of significant regional and even interregional transmission projects that would impose hundreds of millions (if not billions) in costs upon ratepayers, paying these relatively small fees to mitigate against the possibility of harm to infrastructure committed to the public use should be kept in perspective.

⁴⁰ See, e.g., *supra* at pp. 3-8.

⁴¹ See SPIG Comments at p. 16; Pine Gate Comments at p. 15; SREA Comments at p. 28.

⁴² See, e.g., *S. Co. Servs., Inc.*, 129 FERC ¶ 61,253, at P 37 (2009) (“Collateral attacks on final orders and relitigation of applicable precedent ... impede the finality and repose in agency decisions that are essential to administrative efficiency, and are therefore strongly discouraged.”) (footnote omitted).

⁴³ See *supra* n. 41 (criticizing such fees).

D. The SERTP's Public Policy Processes are Appropriate

Several commenters criticize the SERTP's public policy transmission planning processes.⁴⁴ However, as repeatedly explained, the SERTP Sponsors' transmission planning is driven by state-regulated IRP/RFP processes, resulting in pertinent statutory and legal requirements (both federal and state) already being addressed in those state-regulated processes. The SERTP's public policy transmission planning process affords stakeholders the opportunity to raise transmission needs driven by public policy requirements, with the SERTP Sponsors to identify an appropriate transmission project if not already identified.⁴⁵ And while stakeholders have previously raised such transmission needs for consideration, review has determined that those needs were either already addressed in the SERTP Sponsors' bottom-up planning or were to be addressed in such planning, or that the regulatory requirement's effectiveness had been stayed by a court.⁴⁶

III. The Commission Should Reject Calls to Impede State-Regulated Retail Processes

As discussed in the SERTP Sponsors' Initial NOPR Comments, achieving the NOPR's goals involves carefully balancing FERC and state jurisdictional authorities because the NOPR's long-term scenario planning essentially constitutes a FERC-regulated resource/IRP planning process, while the FPA reserves authority over resource/IRP planning to the states.⁴⁷ If the regions are not allowed to carefully tailor their implementation proposals and state support is not secured,

⁴⁴ See, e.g., SPIG Comments at pp. 14-15; SREA Comments at pp. 25-26.

⁴⁵ Southern Companies' OATT, Att. K, § 10.2; Duke OATT, Att. N-1, § 19.2; LG&E/KU OATT, Att. K, § 20.2.

⁴⁶ See SERTP, *2017 Planning Cycle, Transmission Needs Driven by Public Policy Requirements*, available at: <http://www.southeasternrtp.com/docs/general/2017/2017%20Planning%20Cycle%20Transmission%20Needs%20Driven%20by%20Public%20Policy%20Requirements.pdf>; see also SERTP, *2016 Planning Cycle, Transmission Needs Driven by Public Policy Requirements*, available at: <http://www.southeasternrtp.com/docs/general/2016/2016%20SERTP%20PPR%20Results.pdf>.

⁴⁷ SERTP Sponsors' Initial NOPR Comments at pp. 16-18.

the NOPR's proposals will unlawfully intrude into state jurisdiction⁴⁸ and be dead (or at least dying) on arrival.

Rather than recognizing this jurisdictional tight rope, SPIG, SREA, and Pine Gate not only actively encourage the Commission to intrude into state-regulated resource matters, but directly attack recent state-regulated IRP and other state-regulated processes.⁴⁹ Indeed, SREA goes as far as to attach testimony filed in a recently concluded state-regulated IRP process.⁵⁰ Such attacks plainly extend beyond the intended scope of the NOPR and invite FERC to unlawfully intrude into established resource procurement processes that are subject to the exclusive jurisdiction of the states pursuant to FPA section 201.⁵¹

IV. The Commission Should Reject Commenters' Attempts to Make the NOPR's Long-Term Scenario Proposals Even More Prescriptive

Many commenters argue that NOPR's proposed scenario planning factors, transmission planning and cost allocation "benefits," state agreement, and other proposals should be made even more prescriptive than contemplated by the NOPR.⁵² As discussed at the beginning of these Reply

⁴⁸ Resource/generation and IRP planning is clearly state- (not FERC-) jurisdictional. 16 U.S.C. § 824(b)(1); *see also Entergy Nuclear Vt. Yankee, LLC v. Shumlin*, 733 F.3d 393, 417 (2d Cir. 2013) (acknowledging states' "broad powers ... to direct the planning and resource decisions of utilities under their jurisdiction.") (internal quotations and citations omitted); *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009) (explaining that states may "require retirement of existing generators, [require] expensive, environmentally-friendly units, or take any other action in their role as regulators of generation facilities," even if such decisions have incidental impacts on FERC-jurisdictional wholesale markets).

⁴⁹ *See* SPIG Comments at pp. 24-41; SREA Comments at pp. 28-36; Pine Gate Comments at pp. 16-17. SPIG also attacks TVA's resource planning activities (at pp. 38-40), which are not state jurisdictional but are subject to TVA's governing requirements that are established by federal law.

⁵⁰ *See* SREA Comments at Attachments A and B.

⁵¹ Of course, FERC cannot do indirectly what it is proscribed from doing directly. *See Altamont Gas Transmission Co. v. FERC*, 92 F.3d 1239, 1248 (D.C. Cir. 1996) (the Commission is prohibited from "attempting to do indirectly what it could not do directly"); *see also* NOPR (Christie, Comm'r, concurring at P 2).

⁵² *See, e.g.*, SPIG Comments at pp. 44-46 (advocating for expanding the breadth of the mandatory planning factors for use in Long-Term Regional Transmission Planning, including allowing stakeholders to propose additional compulsory factors); Comments of Public Interest Organizations, at pp. 25-28, Docket No. RM21-17-000 (Aug. 17, 2022) (encouraging the Commission to require a minimum set of benefits that all planning regions must meet); AEE Comments at p. 33 (urging the Commission to limit the time for resolving disputes regarding State Agreements).

Comments, these comments do not attempt to address each and every comment with which they disagree, and again reference the SERTP Sponsors' ANOPR Comments and the SERTP Sponsors' Initial NOPR Comments to the extent that other commenters take inconsistent or contradictory positions. Suffice it to say, and as explained in the SERTP Sponsors' Initial NOPR Comments, the NOPR's proposals could easily intrude into matters reserved by the FPA to state jurisdiction, so flexibility (not prescription) is necessary to prevent jurisdictional overreach, litigation, and transmission planning stalemate. Accordingly, the Commission should not heed commenters that seek to have the Commission do the complete opposite because such an approach again would doom the Commission's efforts to litigation and stalemate.

V. The NOPR Wisely Refrained from Proposing to Adopt an Independent Transmission Monitor

Even though not proposed in the NOPR, several commenters attempt to resurrect the Independent Transmission Monitor ("ITM") proposal raised in the ANOPR.⁵³ As discussed in the SERTP Sponsors' Initial ANOPR Comments and ANOPR Reply Comments, such ITMs should not be required because the changes in the generation mix that are driving the need for transmission expansion and reconfiguration are already subject to independent oversight on the state and local levels (*i.e.*, by the state commissions across the Southeast).⁵⁴ Given the transparency already inherent in the SERTP processes, independent monitoring does not add any unique value. Such entities would almost certainly and inappropriately result in the second-guessing of state-regulated IRP/RFP planning, would create friction points in the transmission planning process, and would otherwise be an impediment to transmission planning and the expansion of the grid to successfully address the changing resource mix.

⁵³ See, *e.g.*, Joint Comments of the Non-RTO NASUCA States, at pp. 5-9, Docket No. RM21-17-000 (Aug. 17, 2022).

⁵⁴ SERTP Sponsors' Initial ANOPR Comments at p. 24; SERTP Sponsors' ANOPR Reply Comments at pp. 12-13.

VI. CONCLUSION

Should the NOPR result in more formal Commission action, the SERTP Sponsors respectfully request that any such further initiatives or directives be consistent with these Reply Comments, the SERTP Sponsors' Initial NOPR Comments, and the SERTP Sponsors' ANOPR Comments.

Sincerely,

/s/ Brian Prestwood

Brian Prestwood
SVP, General Counsel and CCO
Associated Electric Cooperative, Inc.
2814 S. Golden
Springfield, MO 65807
(417) 371-5273
bprestwood@aeci.org
Associated Electric Cooperative, Inc.

/s/ Tom Bundros

Tom Bundros
Chief Executive Officer
Dalton Utilities
1200 VD Parrott Jr. Parkway
Dalton, Georgia 30720
(706) 529-1003
tbundros@dutil.com
Dalton Utilities

/s/ Jennifer Stenger

Jennifer Stenger
Federal Energy Policy Director -
Transmission
Duke Energy
299 First Ave South, FL164
St. Petersburg, FL 33701
(727) 820-5628
jennifer.stenger@duke-energy.com
*Representing Duke Energy Progress, LLC &
Duke Energy Carolinas, LLC*

/s/ William DeGrandis

William DeGrandis
Paul Hastings LLP
2050 M Street, N.W.
Washington, DC 20036
(202) 551-1700
billdegrandis@paulhastings.com
*Counsel to Georgia Transmission
Corporation (An Electric Membership
Corporation)*

/s/ Jennifer Keisling

Jennifer Keisling
Sr. Director, Federal Policy
PPL Services Corporation
220 West Main Street
Louisville, KY 40232
(502) 627-4303
jkeisling@pplweb.com
*Louisville Gas and Electric Company and
Kentucky Utilities Company*

/s/ Peter M. Degnan

Peter M. Degnan
Sr. Vice President & General Counsel
Municipal Electric Authority of Georgia
1470 Riveredge Pkwy
Atlanta, GA 30328
(770) 661-2893
pdegan@meagpower.org
Municipal Electric Authority of Georgia

/s/ James W. Brew

James W. Brew, Esq.
Stone Mattheis Xenopoulos & Brew, PC
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007
(202) 342-0800
jay.brew@smxblaw.com
Counsel for PowerSouth Energy Cooperative

/s/ Andrew W. Tunnell

Andrew W. Tunnell
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, Alabama 35203
(205) 251-8100
atunnell@balch.com
Counsel for Southern Company Services, Inc.

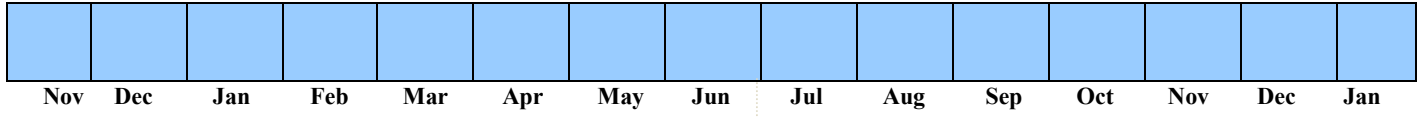
/s/ Richard T. Saas

Richard T. Saas
Senior Attorney
Tennessee Valley Authority
1101 Market Street
Chattanooga, TN 37402
(423) 751-8220
rtsaas@tva.gov
The Tennessee Valley Authority

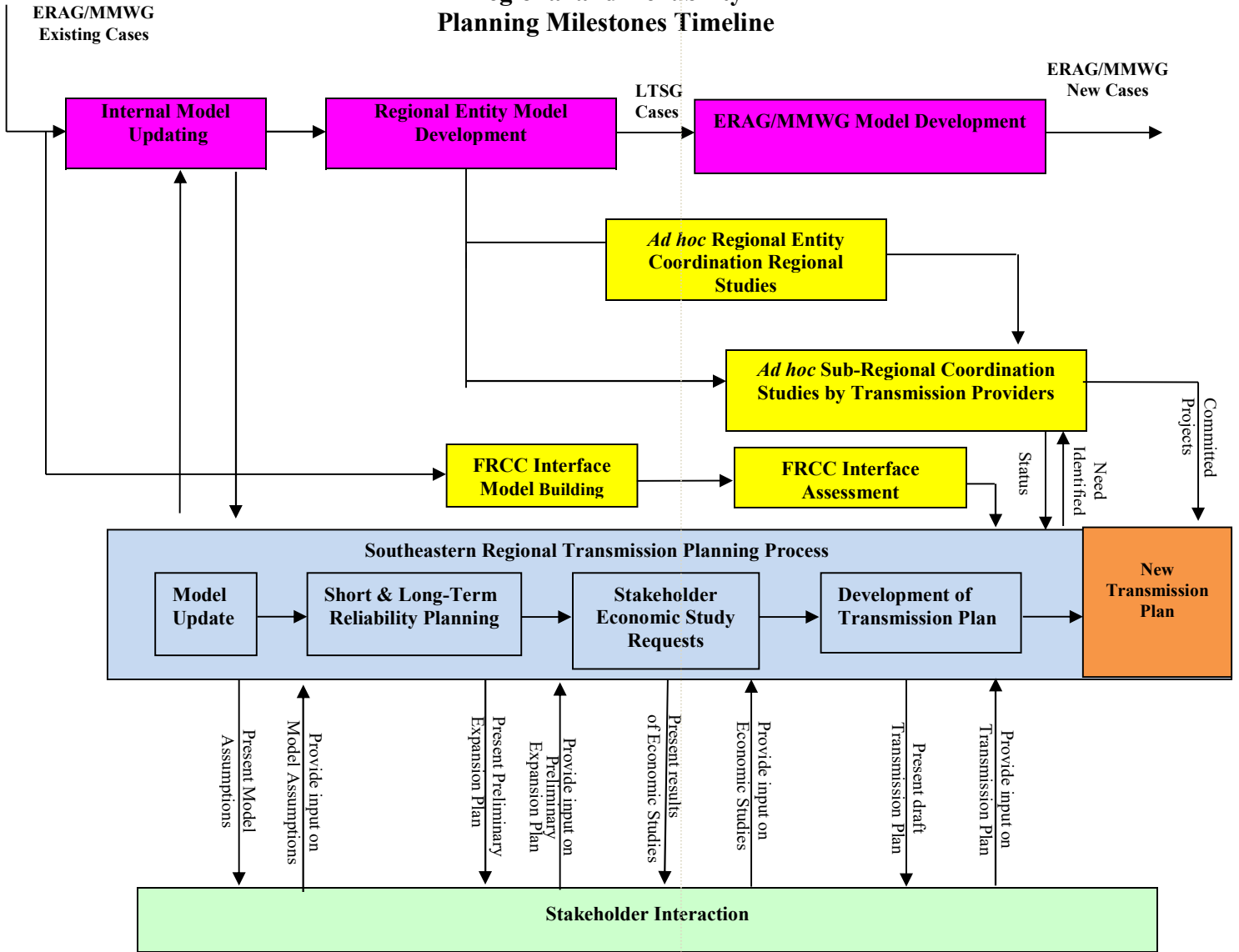
EXHIBIT 1

SERTP REGIONAL AND RELIABILITY PLANNING MILESTONES TIMELINE¹

¹ Southern Companies OATT, Att. K-3; Duke OATT, Att. N-1, App'x 2; LG&E/KU OATT, Att. K, Ex. K-3.



Regional and Reliability Planning Milestones Timeline



CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on those parties on the official Service List compiled by the Secretary in this proceeding.

Dated at Birmingham, Alabama, this 19th day of September 2022.

/s/ Andrew W. Tunnell