

120 FERC ¶ 61,227
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.

Louisville Gas and Electric Company
Kentucky Utilities Company

Docket No. OA07-27-000

ORDER ON PROPOSED VARIATIONS FROM THE
PRO FORMA OPEN ACCESS TRANSMISSION TARIFF

(Issued September 10, 2007)

1. On July 12, 2007, pursuant to section 205 of the Federal Power Act and Order No. 890,¹ E.ON U.S. LLC, on behalf of its operating companies, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, LG&E/KU),² filed proposed revisions to the LG&E/KU joint open access transmission tariff (OATT). Specifically, LG&E/KU propose to revise their rates for point-to-point service to reflect a set-aside of transmission capacity for Capacity Benefit Margin (CBM). They also propose certain clarifications and revisions to Schedules 4 and 9, Energy and Generation Imbalance Services, and a new Schedule 12 providing for the distribution of imbalance and transmission study penalty revenues. As explained below, we will conditionally accept LG&E/KU's filing in part, and suspend it, subject to refund and further order, reject it in part, and direct LG&E/KU to make a compliance filing.

I. Background

2. 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.³ Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability (ATC), open and coordinated planning of transmission

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

²For ease of reference, this order refers to the applicants as LG&E/KU.

³ *Id.* P 26-61.

systems, 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.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.⁴

4. In addition, after submission of their FPA section 206 compliance filings, non-ISO/RTO transmission providers may submit FPA section 205 filings proposing rates for the services provided for in their tariffs, as well as non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are “consistent with or superior to” the *pro forma* OATT.⁵

5. In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the CBM⁶ set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM. We directed transmission providers to submit redesigned transmission charges through a limited issue FPA section 205 rate filing within 120 days after the publication of the final rule in the *Federal Register*.⁷

II. LG&E/KU’s Filing

6. LG&E/KU state that they have determined that it is appropriate and necessary to set aside transfer capability as CBM for load-serving entities to utilize to meet their

⁴ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

⁶ CBM is the amount of total transfer capability preserved by the transmission provider for load-serving entities, whose loads are located on the transmission provider’s system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved reliability standards.

⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

obligation to serve customers and will participate in the North American Electric Reliability Council/North American Energy Standards Board process to develop standards for how CBM is determined, allocated across transmission paths, and used, as required by Order No. 890.

7. LG&E/KU's point-to-point and network service rates are currently calculated pursuant to a single rate formula. In order to eliminate the costs of CBM from the point-to-point transmission rate, LG&E/KU propose to add the amount of CBM capacity withheld from point-to-point customers to the network loads and long-term firm point-to-point reservations in the denominator in the calculation of the point-to-point transmission rate. LG&E/KU propose no changes to the rate for network service.

8. Concerning Order No. 890's three-tiered approach to pricing energy imbalance and generator imbalance services, LG&E/KU propose revisions to *pro forma* Schedules 4 (Energy Imbalance Service) and 9 (Generator Imbalance Service) to clarify how incremental and decremental costs would be determined and how the charges for each tier would be calculated. They also propose revisions to the charges for negative imbalances within Tiers 2 and 3 to recover lost opportunity costs.

9. In addition, LG&E/KU state that at the present time, they are declining the opportunity to propose and implement operational penalties where the transmission customer uses transmission service that is not reserved. They state that they do not currently have any such rates, nor do they feel they are necessary at this time.

10. Finally, LG&E/KU propose to implement a new Schedule 12, which sets forth how imbalance penalty revenues and penalty revenues for late performance of system impact or facility studies would be distributed to appropriate customers.

11. LG&E/KU request waiver of the requirements of Part 35 of the Commission's regulations, to the extent necessary, to allow an effective date of July 13, 2007, the date on which the reforms adopted in Order No. 890 became effective.

III. Notice of Filing and Responsive Pleadings

12. Notice of LG&E/KU's filing was published in the *Federal Register*,⁸ with protests and interventions due on or before August 2, 2007. City Utilities Commission of the City of Owensboro, Kentucky (OMU), as well as Paducah Power System and the Princeton Electric Plant Board (KMPA) jointly filed a timely motion to intervene and protest. East Kentucky Power Cooperative, Inc. (EKPC) filed a timely motion to intervene. On August 9, 2007, EKPC filed a motion for leave to protest out of time and protest. On August 17, 2007, LG&E/KU filed a motion for leave to answer and answer.

⁸ 72 Fed. Reg. 41,726 (2007).

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also accept EKPC's late protest given the early stage of this proceeding, its interests in this proceeding, and the absence of any undue prejudice or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁰ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept LG&E/KU's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. CBM

a. Proposal and Responsive Pleadings

15. As noted above, in order to eliminate the costs of CBM from the point-to-point transmission rate, LG&E/KU propose to add the amount of CBM capacity withheld from point-to-point customers to the network loads and long-term firm point-to-point reservations in the denominator in the calculation of the point-to-point transmission rate. LG&E/KU propose no changes to the rate for network service. No party raises issues concerning LG&E/KU's proposed revisions to reflect CBM set-aside.

b. Commission Determination

16. In Order No. 890, the Commission determined that it is appropriate for load serving entities to set aside transfer capability in the form of CBM in order to maintain their generation reliability requirements and required that transmission providers submit redesigned transmission charges, through a limited section 205 rate filing, that ensure that point-to-point transmission rates do not include the cost of CBM capacity.¹¹ In the instant filing, LG&E/KU follow the Commission's directives as discussed in Order No. 890. Accordingly, we accept the proposed revisions to the rates for point-to-point service in the LG&E/KU joint OATT.

⁹ 18 C.F.R. § 385.214 (2007).

¹⁰ 18 C.F.R. § 385.213(a)(2) (2007).

¹¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 256, 257 and 263.

2. Energy and Generator Imbalance Service

a. Proposal

17. LG&E/KU propose to modify *pro forma* Schedules 4 and 9 to clarify that: (1) imbalance charges for each tier would apply to the portion of the deviation in each tier; (2) imbalance charges for Tier 1 would be based on the monthly net imbalance in MWH times the average incremental/decremental costs for the hours that the customer was out of balance in the month; and (3) imbalance charges for Tiers 2 and 3 would be calculated for each hour in which a Tier 2 and/or 3 imbalance occurred, based on the amount of the deviation within the band times the incremental/decremental costs for that hour.

18. LG&E/KU also propose provisions detailing how the last 10 MW used to serve native load customers would be determined. LG&E/KU would rely upon information supplied through the After the Fact Billing (AFB) Process, a stacking program which determines the cost allocations from generating unit sources, to load sinks (based on dispatch) to determine the cost to serve native load customers, and would identify the top 10 highest cost MWs of energy dispatched to serve native load. After dispatch has occurred, the AFB Process allocates costs and the output of the units to various sinks, first to native load, then to off-system sales. The proposed revisions state that the AFB Process cost comprises: (a) fuel cost, (b) emission cost, and (c) consumables cost.

19. LG&E/KU also propose a formula to recover lost opportunity costs associated with negative imbalances within Tiers 2 and 3. The lost opportunity cost would be a function of the published locational marginal prices (LMP) from Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, LLC (PJM) as they compare to the actual incremental cost determined by the AFB Process described above. The opportunity cost calculation would take the highest Midwest ISO or PJM LMP price and subtract the actual incremental cost for the hour of service. According to LG&E/KU, the resulting differential would be the lost opportunity margin that would have resulted from making an off-system sale into the Midwest ISO or PJM market. In the event that the actual incremental cost is greater than the Midwest ISO-PJM LMP, the opportunity cost will be zero.

b. Responsive Pleadings

20. OMU and KMPA protest LG&E/KU's proposed revisions to the *pro forma* OATT definition of incremental and decremental cost. EKPC, OMU and KMPA protest LG&E/KU's proposal to include lost opportunity costs in imbalance charges. The protestors assert that LG&E/KU have failed to provide proper justification for their proposed deviation from Order No. 890's specific methodology for pricing imbalances.

21. OMU and KMPA note that LG&E/KU propose to eliminate reference to commitment and redispatch costs from the definition of incremental and decremental costs without any justification. OMU and KMPA also state that LG&E/KU's proposal to rely on the AFB Process may be acceptable but that LG&E/KU have not provided any information to determine whether the costs considered by the AFB Process are the same as those allowed by the Commission.

22. In addition, protestors argue that the proposed lost opportunity cost pricing under Schedules 4 and 9 should be rejected because LG&E/KU have not satisfied the Commission's requirement in Order No. 890 that market proxy prices must be shown to be representative of prices that would exist in the seller's market. Protestors argue that even if the Commission were to accept a market-based proxy for LG&E/KU's incremental costs, LG&E/KU would still need to provide evidence that the selected proxy met the Commission's standard of reflecting the actual conditions existing in the seller's market, and not simply the highest price available in the Midwest ISO/PJM regions. Protestors contend that even if LG&E/KU can deliver power into Midwest ISO or PJM, there is no justification for using the highest LMP in either market as a proxy price since there is no evidence that the nodes at which LG&E/KU would make sales into either market would always be the highest price node. Protestors note that LMPs are locational, and the price of LG&E/KU's generation in the market would be set by those specific locational nodes where LG&E/KU interfaces with the Midwest ISO and PJM markets, not the highest LMP in those markets. Even so, according to OMU and KMPA, there are serious doubts about whether a Midwest ISO or PJM proxy price reflects conditions in the LG&E/KU market because of the significant deterioration in ATC posted for deliveries into Midwest ISO since LG&E/KU withdrew from Midwest ISO.

23. LG&E/KU respond that their proposed modifications to the *pro forma* Schedules 4 and 9 are, in fact, consistent with, and superior to, the terms of Order No. 890 and are just and reasonable, as the revisions provide adequate incentives for customers to properly schedule and ensure that LG&E/KU's costs of providing the imbalance service are covered. Specifically, LG&E/KU assert that their proposed Schedules 4 and 9 meet the criteria set forth in Order No. 890 that allows for deviation from the *pro forma* Schedules 4 and 9: the opportunity costs included in their proposed imbalance charges are directly related to the cost of correcting the imbalance; the proposed imbalance charges are tailored to encourage accurate scheduling; and the proposed Schedule 9 includes language stating that intermittent resources are exempt from the Tier 3 penalties, and will pay the Tier 2 deviation band charge for all deviations greater than the larger of 1.5 percent or 2 MW.¹²

¹² LG&E/KU Answer at 8, citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 85.

24. Furthermore, LG&E/KU contend that their proposed deviations are superior to the *pro forma* Schedules 4 and 9 because they provide customers with additional detail regarding how charges will be calculated. LG&E/KU argue that neither the *pro forma* schedules nor the portions of Order No. 890 describing the imbalance provisions provide additional detail regarding how the last 10 MW used to serve native load customers is to be determined, or what mechanisms to use in order to make such rate calculations. Instead, LG&E/KU state that they propose in their Schedules 4 and 9 to include additional language to specify that they will use the AFB Process to determine the last 10 MW.

25. In response to OMU and KMPA's argument that LG&E/KU have failed to show how the information provided using the AFB Process is consistent with, or superior to, the rate components described in Order No. 890's definition of incremental and decremental costs, LG&E/KU state that the results of the AFB Process are consistent with the Commission's definition of incremental costs. In order to demonstrate that the AFB Process includes only costs that are allowed under the Order No. 890 definition of incremental costs, LG&E/KU further describe the costs reflected in the AFB results.¹³ They state that these costs include: (1) fuel costs reflecting the replacement cost of fuel; (2) emission costs calculated based on the sulfur dioxide content of coal, the removal efficiency of the unit, and the market price of the allowance; and (3) variable operation and maintenance costs, including annual maintenance and overhaul maintenance for coal units and variable operating costs associated with scrubbers.¹⁴

26. LG&E/KU note that protestors claim that LG&E/KU failed to demonstrate that sales opportunities into the Midwest ISO and PJM markets exist, but do not claim that the lost opportunity cost is not a legitimate cost if it can be shown that such opportunities do exist. LG&E/KU, therefore, clarify in their answer that they do, in fact, sell into both the Midwest ISO and PJM markets and can make such sales on a non-firm basis even when firm ATC is not available. Furthermore, in response to the protestors' opposition to LG&E/KU's proposal to base the opportunity cost calculation on the highest Midwest

¹³ LG&E/KU's Answer at 11-12.

¹⁴ Incremental operation and maintenance for coal units includes the cost of the annual maintenance and the overhaul maintenance, divided by the MWH generated between the outages. The scrubber consumable cost is based upon the variable operating expenses (limestone, carbide lime, barge unloading, etc.) associated with scrubbing the unit. LG&E/KU Answer at 12.

ISO or PJM LMP price, LG&E/KU clarify in their answer that they intend to base the price on the border price, into either Midwest ISO or PJM, depending on which border price (either Midwest ISO's or PJM's) is highest on that day.

c. Commission Determination

27. The Commission will conditionally accept LG&E/KU's proposed clarification of the manner in which imbalance charges in each tier will be calculated and the manner in which incremental and decremental costs will be calculated, but it will reject LG&E/KU's proposal to recover lost opportunity costs. LG&E/KU propose to calculate imbalance charges for each tier based on the portion of the deviation in each tier and the incremental/decremental costs for the hours in which the imbalances occur. We will accept this aspect of LG&E/KU's proposal because it is consistent with *pro forma* Schedules 4 and 9.

28. The Order No. 890 *pro forma* OATT defines incremental and decremental costs as the transmission provider's actual average hourly cost of the last 10 MW dispatched to supply its native load customers, based on the replacement cost of fuel, unit heat rates, start-up costs (including any commitment and redispatch costs), incremental operation and maintenance costs, and purchased and interchange power costs and taxes, as applicable. While we agree with OMU and KMPA that LG&E/KU did not provide enough information in their application to determine whether the costs considered by their AFB Process are the same as those allowed by the Commission, the additional information provided in LG&E/KU's answer about the costs included in the AFB Process demonstrates that such costs are consistent with those allowed under the Order No. 890 definition of incremental and decremental costs. However, LG&E/KU have not explained why they propose to eliminate the reference to commitment and redispatch costs from the definition of incremental and decremental costs. We will accept as consistent with *pro forma* Schedules 4 and 9 LG&E/KU's proposed revisions to the definition of incremental and decremental costs, with the clarifications provided in their answer concerning how commitment and redispatch costs are reflected in the AFB Process. LG&E/KU are directed to submit revised tariff sheets that incorporate the clarification of the costs included in the AFB Process provided in their answer, and also clarify how unit commitment and redispatch costs are reflected in the AFB Process, within 30 days of the date of this order.

29. We agree with protestors that LG&E/KU have failed to justify their proposal to recover lost opportunity costs. In Order No. 890, the Commission determined that "the feasibility of using market proxies must be considered on a case-by-case basis, given the characteristics of each market" and "if proposed, the proxy price must represent a valid alternative to the incremental cost calculation, reflecting competitive, transparent and liquid conditions similar to those that would exist in the seller's market." LG&E/KU fail to show that their proposal to use the highest LMP in Midwest ISO or PJM, or even the

LMPs at the border into either Midwest ISO or PJM, is an appropriate alternative that reflects market conditions in the LG&E/KU market.

30. Further, we find that the highest LMP in Midwest ISO or PJM could not actually represent LG&E/KU's opportunity costs unless they could deliver without congestion costs to this highest LMP node. Moreover, even under the revised proposal to use the LMPs at the border into either Midwest ISO or PJM, LG&E/KU have failed to show that they would be able to arrange to deliver additional power to Midwest ISO or PJM in order to use the interface price as a proxy. Accordingly, we deny LG&E/KU's proposed deviations from the *pro forma* Schedules 4 and 9, without prejudice to their refiling the proposal with appropriate support. LG&E/KU are directed to submit revised tariff sheets eliminating their lost opportunity cost proposal within 30 days of the date of this order.

3. Operational Penalties

a. Proposal and Responsive Pleadings

31. LG&E/KU state that at the present time, they are declining the opportunity to propose and implement operational penalties where the transmission customer uses transmission service that is not reserved. They state that they do not currently have any such rates, nor do they feel they are necessary at this time. No party raises any issues with LG&E/KU's decision to decline the opportunity to propose and implement operational penalties.

b. Commission Determination

32. In Order No. 890, the Commission stated that a transmission provider that wants to charge operational penalties must explicitly state the penalty in its tariff.¹⁵ However, the Commission did not require that transmission providers adopt operational penalties. Accordingly, we will accept LG&E/KU's proposal to not adopt operational penalties at this time.

4. Distribution of Penalty Revenues

a. Proposal and Responsive Pleadings

33. Under proposed Schedule 12, imbalance penalties would be distributed to non-offending customers allocated on a pro-rata basis according to their monthly peak demand. Transmission study penalties would be amortized over three months and distributed to non-affiliated customers on a pro-rata basis according to their monthly peak demand. No party raises issues with LG&E/KU's proposed new Schedule 12.

¹⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 848.

b. Commission Determination

34. Order No. 890 requires that transmission providers file their proposals for distribution of penalty revenues in their section 206 compliance filings.¹⁶ LG&E/KU's proposed Schedule 12 is more appropriately addressed when we address their section 206 compliance filing in Docket No. OA07-37-000. Accordingly, we will accept LG&E/KU's proposed new Schedule 12, and suspend it for a nominal period, to become effective July 13, 2007, subject to refund and further order when the Commission addresses LG&E/KU's section 206 compliance filing in Docket No. OA07-37-000.

5. Effective Date and Waiver

35. The Commission finds good cause to grant waiver of its prior notice requirements to allow LG&E/KU's proposed tariff revisions, as modified in this order, to become effective July 13, 2007, consistent with Order No. 890.

The Commission orders:

(A) LG&E/KU's filing is hereby conditionally accepted in part and rejected in part, without prejudice, and suspended for a nominal period, to become effective on July 13, 2007, subject to refund and further order, and subject to the compliance filing ordered in Ordering Paragraph (B) below, as discussed in the body of this order.

(B) LG&E/KU are hereby directed to file a compliance filing within 30 days of the date of this order to reflect the modifications that are ordered herein, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ *Id.* at P 727, 1351.