

123 FERC ¶ 61,301  
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.

E.ON U.S. LLC

Docket No. OA07-37-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued June 24, 2008)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> E.ON U.S. LLC, on behalf of its operating companies Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU),<sup>2</sup> submitted LG&E/KU's compliance filing as required by Order No. 890.<sup>3</sup> In this order, we will accept LG&E/KU's filing, as modified, as in compliance with Order No. 890, as discussed below.

**I. Background**

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission 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.

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<sup>1</sup> 16 U.S.C. § 824e (2000 & Supp. V 2005).

<sup>2</sup> For ease of reference, we refer to the applicants as LG&E/KU.

<sup>3</sup> *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), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (January 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2008).

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.<sup>4</sup>

## **II. Compliance Filing**

4. LG&E/KU state that they are submitting a revised LG&E/KU OATT with the revisions required by Order No. 890. LG&E/KU have included, among other things: (1) provisions regarding the potential clustering of transmission studies in section 19.4; (2) provisions regarding the crediting of imbalance penalty revenues and late study penalty revenues in Schedule 12; and (3) creditworthiness procedures in a new Attachment L.

## **III. Notice of Filing and Responsive Pleadings**

5. Notice of LG&E/KU's filing was published in the *Federal Register*, 72 Fed. Reg. 41,726 (2007), with interventions and protests due on or before August 3, 2007. East Kentucky Power Cooperative, Inc. filed a timely motion to intervene, raising no substantive issues. The City Utilities Commission of the City of Owensboro, Kentucky (OMU) and Paducah Power System and the Princeton Electric Plant Board, the current members of the Kentucky Municipal Power Agency (KMPA) (collectively, OMU and KMPA) filed a timely motion to intervene and protest. On August 17, 2007, OMU and KMPA filed a motion to amend and an amended motion to intervene and protest.<sup>5</sup> On August 17, 2007, LG&E/KU filed a motion for leave to answer and answer. On August 31, 2007, OMU and KMPA filed an answer in opposition to LG&E/KU's answer.

6. OMU and KMPA protest LG&E/KU's inclusion of variations from the definition of incremental costs in the *pro forma* Schedules 4 (Energy Imbalance Service) and 9 (Generator Imbalance Service) to include opportunity costs. OMU and KMPA note that

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<sup>4</sup> 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).

<sup>5</sup> OMU and KMPA amend their protest to remove their original objections to LG&E/KU's revisions to Schedule 2 because the Commission had previously accepted those revisions. *Citing E.ON U.S. LLC*, 119 FERC ¶ 61,340 (2007).

LG&E/KU filed these variations from the definition of incremental costs in a separate filing under section 205 of the FPA,<sup>6</sup> in Docket No. OA07-27-000, on July 12, 2007, the day prior to submitting their section 206 compliance filing. OMU and KMPA attach the protest they filed in Docket No. OA07-27-000 and request that the Commission reject LG&E/KU's proposed changes to Schedules 4 and 9 for the same reasons set forth in that protest.

#### **IV. Discussion**

##### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept LG&E/KU's answer and will, therefore, reject it. We likewise reject OMU and KMPA's answer to this answer.

##### **B. Substantive Matters**

###### **1. Clustering**

9. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.<sup>7</sup>

10. LG&E/KU propose a new section 19.4 (Procedure for Clustering System Impact Study Requests) setting forth procedures that will be followed if an eligible customer or eligible customers wish to have their system impact studies clustered together. On

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<sup>6</sup> 16 U.S.C. § 824d (2000).

<sup>7</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

August 1 of each year, the Independent Transmission Organization (ITO)<sup>8</sup> will announce via OASIS posting the opening of a “clustering window” that will close on January 31 of the following year. For any eligible customer who executes a system impact study agreement during the clustering window, and indicates that its system impact study should be clustered with others, its system impact study will be held until the end of the clustering window. The ITO will commence the clustered system impact study on March 1 and will use due diligence to complete the clustered system impact studies within a sixty-day period. On February 1 of each year the ITO will announce via OASIS posting the opening of a second “clustering window” that will close on July 31.

11. We find LG&E/KU’s proposed clustering provisions to be deficient. LG&E/KU’s proposed clustering provisions do not provide for how the costs of the cluster study will be allocated among the cluster participants. In addition, LG&E/KU’s proposed clustering provisions apply only to point-to-point transmission service requests. LG&E/KU have not proposed clustering provisions applicable to requests for network integration transmission service.

12. LG&E/KU’s proposed clustering provisions do not describe the transmission customers’ obligations if they opt out of a cluster, or the potential effect of such transmission customers’ opting out on other customers requesting to be clustered. In Order No. 890, the Commission gave transmission providers “discretion to determine whether a transmission customer can opt out of a cluster and request an individual study,” because the transmission provider is in the best position to develop clustering procedures that prevent a customer from strategically participating in clusters to avoid costs for needed transmission system upgrades.<sup>9</sup> That notwithstanding, we find that LG&E/KU’s provision requires further specificity to address what happens when a transmission customer requests to opt out of a cluster study. The tariff language should address how LG&E/KU will proceed (should it determine that the request can be studied individually) including specifying whether the remaining customers in the cluster can move forward as their own cluster and addressing how LG&E/KU will structure the remaining customers’ obligations when one or more participants opt out of a clustered system impact study.<sup>10</sup>

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<sup>8</sup> Section 1.16 of LG&E/KU’s OATT defines the ITO as the entity to which LG&E/KU have delegated the responsibility and authority to administer the OATT. Southwest Power Pool is the ITO for the LG&E/KU transmission system. LG&E/KU Filing at 2.

<sup>9</sup> Order No 890, FERC Stats. & Regs. ¶ 31,241 at P 1371.

<sup>10</sup> See *Xcel Energy Operating Companies*, 123 FERC ¶ 61,053, at P 38 (2008), citing *Idaho Power Company*, 122 FERC ¶ 61,243, at P 20-22 (2008).

13. Accordingly, we will direct LG&E/KU to file, within 30 days of the date of this order, a further compliance filing that includes clustering provisions that address these deficiencies.

## 2. Energy and Generator Imbalance Charges

14. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. LG&E/KU's section 206 compliance filing reflects the rates that LG&E/KU proposed in their section 205 filing in Docket No. OA07-27-000. In that section 205 filing, LG&E/KU proposed variations from *pro forma* Schedules 4 and 9 to clarify how incremental and decremental costs would be determined and how the charges for each tier would be calculated. They also proposed variations from the Schedule 4 and 9 charges for negative imbalances within Tiers 2 and 3 to recover lost opportunity costs.

15. OMU and KMPA request that the Commission reject LG&E/KU's proposed variations from *pro forma* Schedules 4 and 9 for the same reasons set forth in their protest in Docket No. OA07-27-000. In Docket No. OA07-27-000, OMU and KMPA protested LG&E/KU's proposed revisions to the *pro forma* OATT definition of incremental and decremental cost and LG&E/KU's proposal to include lost opportunity costs in imbalance charges.

16. By order dated September 10, 2007, the Commission accepted LG&E/KU's proposed variations from the *pro forma* Schedules 4 and 9, subject to modification, as consistent with or superior to the *pro forma* Schedules 4 and 9, and directed LG&E/KU to make a compliance filing.<sup>11</sup> On October 10, 2007, LG&E/KU submitted revisions to Schedules 4 and 9 in compliance with the Commission's directives in the September 10 Order. The revised tariff sheets in that compliance filing, which have been accepted for filing,<sup>12</sup> supersede the Schedule 4 and 9 tariff sheets submitted in the original section 205 filing in Docket No. OA07-27-000 and those submitted in the section 206 filing at issue in this order. The proposed variations from *pro forma* Schedules 4 and 9 are now moot, and we need not act on them here.<sup>13</sup>

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<sup>11</sup> *Louisville Gas and Electric Co. and Kentucky Utilities Co.*, 120 FERC ¶ 61,227, at P 27-30 (2007) (September 10 Order).

<sup>12</sup> *Louisville Gas and Electric Co. and Kentucky Utilities Co.*, Docket No. OA07-27-001, (March 4, 2008) (unpublished letter order).

<sup>13</sup> In the September 10 Order, the Commission determined that, between their application and their answer, LG&E/KU had adequately supported their proposal to include lost opportunity costs in imbalance charges. However, the Commission directed

(continued...)

### 3. Imbalance and Late Study Penalty Revenue Distribution

17. In Order No. 890, the Commission required transmission providers to credit imbalance revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.<sup>14</sup> It also required transmission providers to distribute late-study penalty revenues to non-affiliated transmission customers.<sup>15</sup>

18. Under LG&E/KU's proposed new Schedule 12, energy and generator imbalance penalties collected under Schedules 4 and 9 would be distributed to non-offending customers allocated on a pro-rata basis according to their monthly peak demand. Schedule 12 defines a non-offending customer as one who has not incurred a payment under Schedules 4 or 9 for the month. 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.

19. We will accept LG&E/KU's proposed provisions subject to modification. The Commission clarified in Order No. 890-A that the imbalance penalty revenues received

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LG&E/KU to further explain their proposal to eliminate the reference to commitment and redispatch costs from the definition of incremental and decremental costs. LG&E/KU provided that information in their compliance filing that the Commission accepted in the March 4, 2008 letter order. *See supra* note 10.

<sup>14</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 727.

<sup>15</sup> *Id.* P 859. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848. We note that LG&E/KU's revised OATT in its July 13, 2007 compliance filing does not contain an unreserved use penalty rate and, as a result, LG&E/KU may not charge transmission customers for unreserved use penalties under that OATT. However, we also note that on March 17, 2008, in Docket No. OA08-76-000, LG&E/KU filed revisions to their OATT in compliance with Order No. 890-A in which LG&E/KU propose to institute unreserved use penalties under a new Schedule 13. That filing is currently pending before the Commission and will be addressed in a future order.

in a given hour should be distributed to those non-offending customers in that hour.<sup>16</sup> The Commission further clarified that non-offending customers would include “those customers to whom the penalty component did not apply in the hour,” and that “customers that were out of balance, but within the first tier, should therefore be included in the distribution.”<sup>17</sup> Accordingly, we will direct LG&E/KU to file, within 30 days of the date of this order, a further compliance filing that includes a revised imbalance penalty revenue distribution mechanism that defines non-offending customers on an hourly basis and includes customers that were out of balance, but within the first tier, in the distribution.<sup>18</sup>

#### 4. Creditworthiness

20. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider’s credit requirements.<sup>19</sup>

21. In Attachment L of their OATT, LG&E/KU propose a credit review procedure to determine the creditworthiness of a transmission customer, and outline the criteria regarding determination of unsecured credit amounts. Furthermore, LG&E/KU propose a communication process with transmission customers by which to relay credit level determinations and collateral requirements, as well as a process by which transmission customers can contest credit level determinations. LG&E/KU also outline requirements for non-creditworthy customers.

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<sup>16</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 333.

<sup>17</sup> *Id.*

<sup>18</sup> We note that in their March 17, 2008 Order No. 890-A compliance filing, LG&E/KU propose to modify Schedule 12 to reflect that for the purposes of imbalance penalty distribution “a ‘non-offending Network or Transmission customer’ is one to whom the penalty component did not apply in the hour, or who was off balance, but within the first tier.” *See* LG&E/KU’s March 17, 2008 filing in Docket No. OA08-76-000, Schedule 12, First Revised Sheet No. 140.

<sup>19</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61.

22. The Commission finds that LG&E/KU's proposed Attachment L does not comply in full with Order No. 890's requirements. Although LG&E/KU sufficiently laid out their credit requirements, acceptable forms of collateral for non-creditworthy customers and some notification procedures, LG&E/KU failed to adequately prescribe the timeframe in which customers can expect to receive an initial credit determination. Specifically, section 3.3.1 of LG&E/KU's proposed Attachment L states that "an initial credit determination will be communicated to the Transmission Customer within a reasonable period following the determination," but does not specify what constitutes a "reasonable period." In addition, the proposed creditworthiness provisions provide that a customer's creditworthiness may be reevaluated at any time, upon LG&E/KU's discretion. LG&E/KU must provide specific criteria as to when they will reevaluate a customer's creditworthiness that would protect the customer against constant "ratcheting up" of its financial assurances.<sup>20</sup> LG&E/KU's proposed Attachment L also contains typographical errors that must be corrected.<sup>21</sup> Finally, section 6 of LG&E/KU's proposed Attachment L provides that in the event a customer fails to comply with its credit obligations, the transmission provider may suspend service until such time as the customer complies with such obligations. These suspension provisions are not required by Order No. 890, and we will therefore reject them without prejudice to LG&E/KU refiling suspension provisions pursuant to section 205 of the FPA. Accordingly, we will direct LG&E/KU to file, within 30 days of the date of this order, a further compliance filing that includes a specific timeframe during which a customer can expect to receive an initial decision regarding its creditworthiness, provides specific criteria as to when LG&E/KU will reevaluate a customer's creditworthiness, corrects the typographical errors, and eliminates the suspension provisions.

##### **5. Attachment J - Procedures for Addressing Parallel Flows**

23. The *pro forma* OATT adopted in Order No. 890 includes a blank Attachment J entitled "Procedures for Addressing Parallel Flows" that is to be "filed by the Transmission Provider." The Commission in the NERC Transmission Loading Relief Order<sup>22</sup> amended the *pro forma* OATT to incorporate NERC's Transmission Loading

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<sup>20</sup> *Maine Public Service Co.*, 122 FERC ¶ 61,073, at P 14 (2008).

<sup>21</sup> In section 3.1, the second sentence should be corrected to begin "The Unsecured Credit Limit is \$1 million less all unsecured credit extended..." In section 4, the two references to section 4 in the first sentence should be replaced with references to section 3. In section 5, the reference to section 4.2 in the first sentence should be replaced with a reference to section 3.2.

<sup>22</sup> *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

Relief (TLR) procedures. The Commission also required that every transmission operating public utility adopting NERC's TLR procedures file with the Commission a notice that its tariff shall be considered so modified to reflect the use of such procedures. That order addressed the NERC TLR procedures for public utilities in the Eastern Interconnection. Later, in Order No. 693, the Commission approved, as mandatory and enforceable, the IRO-006-3 Reliability Coordination --Transmission Loading Relief Reliability Standard, which includes the NERC TLR procedures and, by reference, the equivalent Interconnection-wide congestion management methods used in the WECC (WSCC Unscheduled Flow Mitigation Plan) and ERCOT (section 7 of the ERCOT Protocols) regions.<sup>23</sup> As a result, all transmission providers must complete Attachment J by incorporating either the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol and must provide a link to the applicable procedures.

24. LG&E/KU have not filed any procedures in Attachment J. LG&E/KU are directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment J as shown below:

The North American Electric Reliability Corporation's ("NERC")'s TLR Procedures originally filed March 18, 1998, which are now the mandatory Reliability Standards that address TLR, and any amendments thereto, on file and accepted by the Commission, are hereby incorporated and made part of this tariff. See [www.nerc.com](http://www.nerc.com) for the current version of the NERC's TLR Procedures.

## **6. Other Typographical Errors**

25. Our review of LG&E/KU's filing reveals other typographical errors in the body of LG&E/KU's proposed OATT. In section 1.33, the reference to section 28 should be replaced with a reference to section 27. In section 1.34, the reference to section 29 should be replaced with a reference to section 28, and the reference to section 36 should be replaced with a reference to section 35. In section 1.46, the reference to section 28.1 should be replaced with a reference to section 29.1. In section 4, the reference to section 33 should be replaced with a reference to section 32. In section 15.4(a), the reference to section 26 should be replaced with a reference to section 27. In section 19.10, the reference to section 19.4 should be replaced with a reference to section 19.5. In section 29.2(viii), the reference to section 28.2(v) should be replaced with a reference to section 29.2(v). In section 30.3(iv), the reference to section 29.2 should be replaced with a

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<sup>23</sup> See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242, at P 961-65 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

reference to section 30.2. In section 30.4, the reference to section 28 should be replaced with a reference to section 29. In the opening paragraph and in paragraph “2” of Schedule 12, the reference to section 33.5 should be replaced with a reference to section 32.5. We will direct LG&E/KU to file, within 30 days of the date of this order, a further compliance filing that corrects these typographical errors.

#### **7. Other Issues**

26. LG&E/KU have included the rollover reforms in section 2.2 of their revised tariff sheets, with a requested effective date of July 13, 2007. However, LG&E/KU’s Attachment K, setting forth its transmission planning process, which was filed on December 7, 2007, in Docket No. OA08-27-000, has not yet been accepted. This is contrary to Order No. 890’s requirement that rollover reforms are not to become effective until after a transmission provider’s Attachment K is accepted. Therefore, we direct LG&E/KU to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. LG&E/KU should re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of their Attachment K, requesting an effective date commensurate with the date of that filing.

#### **8. Acceptance and Effective Date**

27. Accordingly, we will accept LG&E/KU’s compliance filing, as modified, to be effective July 13, 2007. We also direct LG&E/KU to file, within 30 days of the date of this order, a further compliance filing as required above.

#### **The Commission orders:**

(A) LG&E/KU’s compliance filing is hereby accepted, as modified, to be effective July 13, 2007, as discussed in the body of this order.

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.