

130 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Ohio Valley Electric Corporation

Docket No. OA08-19-002

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued March 9, 2010)

1. On May 11, 2009, Ohio Valley Electric Corporation (Ohio Valley) submitted a revised transmission planning process to its Open Access Transmission Tariff (OATT) in compliance with the Commission's directives in the Ohio Valley Planning Order.¹ In this order, we accept Ohio Valley's compliance filing, as modified, effective December 7, 2007, subject to a further compliance filing.

I. Background

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

¹ *Ohio Valley Electric Corp.*, 126 FERC ¶ 61,106 (2009) (Ohio Valley Planning Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (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).

principles and to clearly describe that process in a new attachment to their OATTs (Attachment K).³

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

4. On December 7, 2007, Ohio Valley made its filing in compliance with Order No. 890's transmission planning requirements in Docket No. OA08-19-000. In the Ohio Valley Planning Order, the Commission accepted that compliance filing, as modified, to be effective December 7, 2007. The Commission also directed Ohio Valley to file, in a compliance filing to be submitted within 90 days of the date of the Ohio Valley Planning Order, revisions to its Attachment K to further address: (1) openness; (2) transparency; (3) comparability; (4) dispute resolution; (5) regional participation; (6) economic planning studies; and (7) recovery of planning costs.

5. On May 11, 2009, Ohio Valley made its filing to comply with the Ohio Valley Planning Order.

³ Ohio Valley's transmission planning attachment is labeled "Attachment M," rather than "Attachment K," because of a pre-existing attachment to its OATT labeled with the letter "K." In this order, we refer to Ohio Valley's transmission planning attachment as "Attachment K" for uniformity with other Commission orders.

⁴ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

II. Notice of Filing and Responsive Pleadings

6. Notice of Ohio Valley's filing was published in the *Federal Register*, 74 FR 23,689 (2009), with interventions and protests due on or before June 1, 2009. None was filed.

III. Discussion

7. We find that Ohio Valley's Attachment K transmission planning process, as modified below, complies with the directives in the Ohio Valley Planning Order. Accordingly, we accept Ohio Valley's Attachment K, as modified, effective December 7, 2007, subject to a further compliance filing to be submitted within 60 days of the date of this order, as discussed below.

8. Although the Commission will accept Ohio Valley's compliance filing, subject to a further compliance filing to address certain discrete issues, the Commission remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. We reiterate the encouragement made in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes. As part of the Commission's ongoing evaluation of the implementation of the planning processes, the Commission in September 2009 convened three regional technical conferences to determine if further refinements to transmission planning processes are necessary. The Commission has also received comments in response to the October 8, 2009 notice that it issued in Docket No. AD09-8-000, which sought additional input on questions relating to enhancing regional transmission planning processes and allocating the cost of transmission.

A. Compliance with Order No. 890 Planning Principles

1. Openness

a. Ohio Valley Planning Order

9. In the Ohio Valley Planning Order, the Commission found that Ohio Valley's proposed Attachment K partially complied with the openness principle. The Commission found inappropriate Ohio Valley's proposal to condition participation in planning meetings or the receipt of any planning-related information on the execution of a confidentiality agreement.⁶ The Commission directed Ohio Valley to revise its Attachment K to provide that only confidential information or Critical Energy

⁶ Ohio Valley Planning Order, 126 FERC ¶ 61,106 at P 19.

Infrastructure Information (CEII) is subject to confidentiality agreements or password-protected access, as relevant for each class of material.⁷

b. Ohio Valley Filing

10. Ohio Valley modified its Attachment K to provide that Ohio Valley will use a confidentiality agreement to address sharing of CEII and/or confidential information. If an entity wishes to participate in the committee meetings, or to receive information provided to or by the committee, Ohio Valley will request that the entity requesting participation execute a form confidentiality agreement. Ohio Valley states that if an entity refuses to enter into the confidentiality agreement, Ohio Valley will put into place appropriate procedures to allow the entity access to non-CEII and non-confidential information, such as by creating a separate section of its OASIS site with restricted access for CEII or confidential information and/or by structuring meetings to have separate discussion of issues involving CEII or confidential information with only those participants who have executed the confidentiality agreement.

c. Commission Determination

11. We find that Ohio Valley partially complies with the directives in the Ohio Valley Planning Order regarding the openness principle. Ohio Valley revised its Attachment K to provide that if an entity refuses to enter into a confidentiality agreement, Ohio Valley will put into place appropriate procedures to allow such entity access to non-CEII and non-confidential information, and access to non-CEII and non-confidential discussion of issues at committee meetings. We find that it is not sufficient to condition implementing procedures to access non-CEII and non-confidential information and discussion on an entity's refusal to enter into a confidentiality agreement. Order No. 890 requires that the development of the transmission plan and the planning process remain open at all times.⁸ Therefore, Ohio Valley is directed to file, within 60 days of the date of this order, a further compliance filing that revises its Attachment K to provide that it will put into place appropriate procedures to access non-CEII and non-confidential information and discussion, without conditioning the procedures on an entity's refusal to enter into a confidentiality agreement.

⁷ *Id.*

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

2. Transparency

a. Ohio Valley Planning Order

12. In the Ohio Valley Planning Order, the Commission found that Ohio Valley's proposed Attachment K partially complied with the transparency principle. The Commission noted that although Ohio Valley stated that the planning guidelines provided on its Form 714 allow others to replicate its transmission planning process, Ohio Valley does not explain whether that information is sufficient to allow stakeholders to replicate the results of planning studies.⁹ Accordingly, the Commission directed Ohio Valley to submit a further compliance filing revising that section of its Attachment K to describe how it will disclose to interested stakeholders the basic methodology, criteria, and processes used to develop transmission plans sufficient for them to be able to replicate a transmission plan.

b. Ohio Valley Filing

13. Ohio Valley modified its Attachment K to provide that its transmission system planning guidelines are available on its OASIS. Further, Ohio Valley's Attachment K now provides that all of the underlying assumptions used in developing the transmission plan, along with information on how to obtain access to CEII modeling data, will be available on Ohio Valley's OASIS.

c. Commission Determination

14. Upon review of Ohio Valley's OASIS website, the transmission planning guidelines are available on its OASIS, including "information on how to obtain access to CEII modeling data."¹⁰ Accordingly, we find that Ohio Valley complies with the Commission's directives in the Ohio Valley Planning Order regarding the transparency principle.

3. Comparability

a. Ohio Valley Planning Order

15. In the Ohio Valley Planning Order, the Commission found that Ohio Valley's proposed Attachment K complies with the comparability principle stated in Order No. 890. In particular, the Commission found that Ohio Valley's planning activities will

⁹ *Id.* P 24.

¹⁰ Ohio Valley Electric Corporation, FERC Electric Tariff, Original Vol. No. 2, First Rev. Sheet No. 438.

reflect the needs of firm point-to-point customers, bundled retail customers or network customers that may exist on the system and will apply the same planning criteria to the same types of projects.¹¹ However, the Commission noted that Order No. 890-A was issued on December 28, 2007, after Ohio Valley submitted its Order No. 890 Attachment K compliance filings. In Order No. 890-A, the Commission provided additional guidance as to how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process “how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.”¹² The Commission directed Ohio Valley to provide the necessary demonstration required by Order No. 890-A in a compliance filing.

b. Ohio Valley Filing

16. Ohio Valley modified its Attachment K to provide that throughout the transmission planning process Ohio Valley will solicit information such as load forecast, generation requirements, generation retirements, generation outage schedules, demand response availability (including demand resources available to reduce demand for interconnected entities), distribution construction programs, and any other relevant information as it deems necessary or appropriate, from sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources.

17. In the regional participation section, Ohio Valley’s Attachment K provides that individual transmission-owning participants, such as Ohio Valley, work with their stakeholders to identify problems or projects. In the economic planning section, Ohio Valley’s Attachment K provides that committee members may collectively request up to five economic planning studies per year. The planning committee comprises representatives from Ohio Valley’s owners and a representative from the Department of Energy. Any other stakeholder may participate.

c. Commission Determination

18. We find that Ohio Valley partially complies with the directives in the Ohio Valley Planning Order related to the comparability principle as outlined in Order No. 890-A. Specifically, Attachment K identifies where in the planning process stakeholders have an opportunity to provide their input regarding the development of assumptions used by Ohio Valley in transmission planning activities. Attachment K allows sponsors of all types of resources, including transmission, generation and demand resources, to provide

¹¹ Ohio Valley Planning Order, 126 FERC ¶ 61,106 at P 33.

¹² *Id.* P 34 (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216).

information for use in developing the base-line assumptions and models used by Ohio Valley. Ohio Valley states that it will solicit such information from such entities as it deems necessary or appropriate. Ohio Valley also states that stakeholders can request economic planning studies to evaluate potential upgrades or other investments that could integrate new resources or loads.

19. However, Ohio Valley does not specify when it would find information for use in developing base-line assumptions and models “necessary or appropriate” from sponsors of all types of resources. Accordingly, in a compliance filing ordered below, Ohio Valley must indicate when developers of transmission, generation, and demand resources must submit their data. In addition, Ohio Valley’s Attachment K does not affirmatively provide that, once needs on the Ohio Valley system are identified, sponsors may propose transmission, generation, and demand resources as alternative solutions to identified needs, or when and where in the transmission planning process stakeholders can propose alternative solutions to identified needs. Ohio Valley also fails to identify how it will evaluate alternative solutions when determining what facilities will be included in its transmission plan. We therefore require Ohio Valley to submit a compliance filing, within 60 days of the date of this order, revising its Attachment K to provide: (1) when developers of transmission, generation, and demand resources can submit their data; (2) where and when stakeholders can propose alternatives; and (3) how Ohio Valley will evaluate and select from competing solutions such that all types of resources are considered on a comparable basis.¹³

4. Dispute Resolution

a. Ohio Valley Planning Order

20. In the Ohio Valley Planning Order, the Commission found that Ohio Valley’s proposed Attachment K partially complied with the dispute resolution principle. The Commission noted that Ohio Valley includes a three-step process for resolving any disputes that may arise from the planning process, including both procedural and substantive planning issues. However, the Commission found that Ohio Valley’s proposed dispute resolution process may inappropriately affect the ability of a party to exercise its rights under section 206 of the Federal Power Act (FPA). Therefore, the

¹³ Tariff language could, for example, state that solutions will be evaluated against each other based on a comparison of their relative economics and effectiveness of performance. Although the particular standard a transmission provider uses to perform this evaluation can vary, it should be clear from the tariff language how one type of investment would be considered against another and how the transmission provider would choose one resource over another or a competing proposal.

Commission directed Ohio Valley to revise its dispute resolution procedures to preserve the ability of a party to exercise its rights under section 206 of the FPA.¹⁴

b. Ohio Valley Filing

21. Ohio Valley modified its Attachment K to provide that, notwithstanding the dispute resolution procedures, any party to a dispute retains its rights to file a complaint pursuant to section 206 of the FPA.

c. Commission Determination

22. We find that Ohio Valley has complied with the Commission's directives to preserve the ability of a party to exercise its rights under section 206 of the FPA.

5. Regional Participation

a. Ohio Valley Planning Order

23. In the Ohio Valley Planning Order, the Commission found that although Ohio Valley described commitments to coordinate its planning activities with those of ReliabilityFirst Corp., Ohio Valley's proposed Attachment K did not provide any detail regarding the regional assessment procedures in which it participates.¹⁵ The Commission therefore directed Ohio Valley to file a compliance filing describing in detail its process for coordinating with interconnected systems to share system plans in order 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.¹⁶

b. Ohio Valley Filing

24. Ohio Valley modified its Attachment K by including a more detailed description of its participation in regional planning processes. Ohio Valley's Attachment K provides that as a member of ReliabilityFirst Corp., Ohio Valley participates in ReliabilityFirst Corp.'s regional assessment processes. As part of such processes, Ohio Valley provides the latest information about changes on the Ohio Valley system, and models used in the Ohio Valley planning process also reflect the latest available information about plans and conditions in surrounding systems. Accordingly, Ohio Valley plans can be formulated in the context of regional developments. Transmission network models are continually

¹⁴ Ohio Valley Planning Order, 126 FERC ¶ 61,106 at P 37.

¹⁵ *Id.* P 41.

¹⁶ *Id.*

updated to reflect ongoing changes in the equipment forecast, project approvals, and other factors. Ohio Valley modeling data is submitted annually to ReliabilityFirst Corp.

25. The Ohio Valley data are combined with those submitted by other ReliabilityFirst Corp. members and submitted to the Multiregional Modeling Working Group. The Multiregional Modeling Working Group assembles the models to create power flow base case models of the Eastern Interconnection transmission system. The Multiregional Modeling Working Group models are the starting point for subsequent studies conducted by Ohio Valley, ReliabilityFirst Corp., or interregional groups.

26. Ohio Valley states that further coordination occurs as Ohio Valley also participates with adjacent systems and/or Regional Transmission Groups (RTOs) to address system developments with the potential for mutual interest, such as evaluating requests for generator interconnection or transmission service in the adjacent systems.

27. In addition, Ohio Valley has revised its Attachment K to provide that, as an overall matter, Ohio Valley's participation in regional planning operates on a "bottom-up" principle. Individual transmission-owning participants work with their stakeholders to identify problems or projects which are then presented to the regional group as appropriate. The project or problem is then studied and/or acted upon pursuant to the regional group's standards using objective criteria. If a project moves forward on a regional level, costs are allocated pursuant to such regional group's cost allocation methodology (if any).

28. Lastly, Ohio Valley states that the Ohio Valley system is strongly interconnected, including one 345 kV tieline and two 138 kV tielines, to utilities that are members of the SERC Reliability Corporation (SERC). Thus, Ohio Valley states that it has recently taken steps to participate in the Southeast Inter-Regional Participation Process (SIRPP).

c. Commission Determination

29. We find that Ohio Valley partially complies with the directive in the Ohio Valley Planning Order to describe in detail its 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. Specifically, Ohio Valley revised its Attachment K to specify how it participates in ReliabilityFirst Corp.'s regional assessment processes. Additionally, Ohio Valley's Attachment K provides that Ohio Valley works with its stakeholders to identify problems or projects, and coordinates with adjacent systems and/or RTOs. Ohio Valley has also added language describing the Multiregional Working Group process. However, although Ohio Valley commits to participate in the SIRPP, it provides no detail regarding the SIRPP. Therefore, Ohio Valley is directed to file, within 60 days of the date of this order, a further

compliance filing that revises its Attachment K to provide additional detail about its participation in the SIRPP.¹⁷

6. Economic Planning Studies

a. Ohio Valley Planning Order

30. In the Ohio Valley Planning Order, the Commission found that Ohio Valley's proposed Attachment K partially complied with the economic planning studies principle stated in Order No. 890. The Commission found that Ohio Valley's proposed provisions for economic planning studies were limited and did not consider the integration of all types of resources.¹⁸ In addition, Ohio Valley's proposed Attachment K did not provide that requests for economic planning studies, as well as the responses to the requests, would be posted on its OASIS or website, subject to appropriate confidentiality restrictions, as required by Order No. 890.¹⁹ Ohio Valley was directed to revise its Attachment K to provide for: (1) the evaluation of network additions or upgrades necessary to integrate any new resource on the transmission system and (2) the posting of any request for economic planning studies and responses to the request.²⁰

b. Ohio Valley Filing

31. Ohio Valley modified its Attachment K to provide that, in addition to network additions or upgrades that may alleviate significant and/or recurring congestion on the transmission system, and network additions or upgrades necessary to integrate new generation resources, economic planning studies may be used to evaluate network additions or upgrades necessary to integrate any new resource on the transmission system. In addition, Ohio Valley's Attachment K now provides that Ohio Valley will post on its OASIS site any request for economic planning studies and responses to such requests.

¹⁷ Other utilities participating in the SIRPP have included the complete SIRPP process as appendices to their OATTs. *See, e.g.*, E.ON U.S. LLC filing, Docket No. OA08-27-001.

¹⁸ Ohio Valley Planning Order, 126 FERC ¶ 61,106 at P 48.

¹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 546.

²⁰ Ohio Valley Planning Order, 126 FERC ¶ 61,106 at P 48.

c. **Commission Determination**

32. We find that Ohio Valley complies with the Commission's directives in the Ohio Valley Planning Order regarding the economic planning studies principle.

7. **Recovery of Planning Costs**

a. **Ohio Valley Planning Order**

33. In the Ohio Valley Planning Order, the Commission noted that Ohio Valley's proposed Attachment K did not provide any information regarding the recovery of planning costs. Ohio Valley was directed to revise its Attachment K to address the recovery of its planning costs, as required by Order No. 890.²¹

b. **Ohio Valley Filing**

34. Ohio Valley explains that costs associated with its transmission planning process will be recovered through existing rate structures. Any committee member requesting an economic planning study in excess of the five economic planning studies discussed above shall be assessed directly for the cost of the study. The committee may consider and propose methods of cost recovery associated with participation in regional planning activities.

c. **Commission Determination**

35. We find that Ohio Valley has partially complied with the Commission's directives in the Ohio Valley Planning Order with regard to the recovery of planning costs. Although Ohio Valley's transmission planning processes provide a mechanism for the recovery of some planning costs, it does not provide a mechanism for the recovery of planning costs associated with participation in regional planning activities. Therefore, Ohio Valley is directed to file, within 60 days of the date of this order, a further compliance filing that revises its Attachment K to address how it will recover planning costs associated with participation in regional planning activities.

The Commission orders:

(A) Ohio Valley's compliance filing, as modified, is hereby accepted, subject to a further compliance filing, as discussed in the body of this order.

²¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586.

(B) Ohio Valley is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.