

130 FERC ¶ 61,178
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

E.ON U.S. LLC

Docket No. OA08-27-002

ORDER GRANTING CLARIFICATION

(Issued March 15, 2010)

1. On August 17, 2009, E.ON U.S. LLC, together with and on behalf of its subsidiaries Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU), filed a request for clarification of the Commission's June 18, 2009 order¹ in this proceeding.² For the reasons set forth below, we grant the request for clarification.

I. Background

2. In an order issued September 18, 2008,³ the Commission accepted, subject to further compliance filings, LG&E/KU's transmission planning process as an attachment to their Open Access Transmission Tariff (OATT) to comply with the nine transmission planning principles and other requirements of Order No. 890.⁴ LG&E/KU participate in

¹ *E.ON U.S. LLC*, 127 FERC ¶ 61,276 (2009) (June 18 Order).

² In this order, we refer to the applicants as LG&E/KU.

³ *E.ON U.S. LLC*, 124 FERC ¶ 61,263 (2008) (September 18 Order).

⁴ *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), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

an inter-regional transmission planning process called the Southeast Inter-Regional Participation Process (SIRPP), which is included as part of their OATT.

3. In the September 18 Order, the Commission found, among other things, that the SIRPP provisions of LG&E/KU's OATT inappropriately required stakeholders seeking any confidential transmission planning data to meet the criteria to access Critical Energy Infrastructure Information (CEII) even if the data they seek is confidential but not CEII. The Commission, therefore, directed LG&E/KU to revise the SIRPP provisions of their OATT so that stakeholders seeking non-CEII confidential information would not have to meet the same requirements as those seeking CEII.⁵

4. On December 17, 2008, LG&E/KU submitted a filing in compliance with the September 18 Order that included, among other things, revisions to the SIRPP provisions of their OATT to distinguish between stakeholders seeking CEII and those seeking non-CEII. However, LG&E/KU also proposed to include the following new language in the SIRPP provisions of their OATT:

Resource-specific data shall not be made available by the Participating Transmission Owners if the data has been designated confidential by the data provider or if the data can be used to (a) Determine security constrained unit commitment or economic dispatch of resources; or (b) Perform an economic evaluation of costs and benefits.⁶

5. In the June 18 Order, the Commission found that the new SIRPP language that forbids Participating Transmission Owners from disclosing certain resource-specific data unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP. Accordingly, the Commission directed LG&E/KU to revise the SIRPP language to "require that resource-specific data in the planning process be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies."⁷

6. On August 4, 2009, LG&E/KU filed the instant request for clarification of the Commission's June 18 Order in this proceeding. The issue raised relates to disclosure of

⁵ September 18 Order, 124 FERC ¶ 61,263 at P 55.

⁶ E.ON Operating Companies, FERC Electric Tariff, Fourth Rev. Vol. No. 1, First Rev. Sheet No. 174jj.

⁷ June 18 Order, 127 FERC ¶ 61,276 at P 54.

confidential competitive information to merchant function personnel. This is discussed further below.

7. On August 17, 2009, pursuant to the June 18 Order, LG&E/KU submitted their compliance filing regarding their transmission process, deleting, as directed, the provision quoted above restricting availability of resource-specific data.

II. Request for Clarification

8. Although LG&E/KU revised their OATT in their August 17, 2009 compliance filing to delete the language restricting the availability of resource-specific data, as directed by the Commission in the June 18 Order, they seek assurance in their request for clarification that resource-specific data concerning individual resources can be restricted from personnel that are not engaged in transmission planning activities, like merchant personnel. In support of their argument, LG&E/KU cite Order Nos. 890 and 890-A, where the Commission stated that confidentiality agreements may appropriately restrict the sharing of sensitive information with customer personnel that are involved only in transmission functions, as opposed to merchant functions.⁸

9. LG&E/KU state that they fully support an open and transparent transmission planning process and believe that most of the information used in transmission planning will not involve commercially sensitive information. They state, however, that reasonable restrictions must be placed on access to commercially sensitive information to ensure that the information is used only by those personnel undertaking regional transmission planning activities and not for some other use that could harm the wholesale power markets.

III. Discussion

10. As discussed below, the Commission grants the request for clarification of the June 18 Order.

11. The directive in the June 18 Order is that resource-specific data in the planning process be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies. This directive was not intended to require that confidential competitive information be disclosed to merchant function personnel. As LG&E/KU correctly point out, the Commission previously stated,

⁸ LG&E/KU Request for Clarification at 3, citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 276 n.177 and Order No. 890-A, FERC Stats. & Regs ¶ 31,261 at P 92 n.48.

in Order Nos. 890 and 890-A, that confidentiality agreements may restrict the availability of confidential competitive information and data in the transmission planning process such that it is available only to customer personnel that are involved in transmission functions, as opposed to merchant functions.⁹ The Commission's requirement that Participating Transmission Owners disclose certain resource-specific information, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies did not overturn these previous findings. Accordingly, confidentiality agreements may restrict the availability of certain resource-specific confidential competitive information that is needed to participate in the transmission planning process and/or replicate transmission studies to stakeholder personnel that are involved only in transmission functions, as opposed to merchant functions.

The Commission orders:

The request for clarification of LG&E/KU is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ See *supra* note 8.